Municipal Law

Municipal law is defined as a rule of civil conduct prescribed by the supreme power of the state commanding what is right and prohibiting what is wrong. It is a rule of civil conduct regulating their rights which arise in civilized society.

This rule, to correspond with the definition, must be permanent, uniform, universal. By permanent is not meant eternal or immutable, but that it is not occasional, that it is to continue for an indefinite term, or till altered or repealed by the legislature.

By universal is not meant that it extends to the whole nation, for there are so many laws that it is universal within its own limits that is general to not personal. 1 Bl. Comm. 42.

The difference between natural and municipal law is, that the former is a rule of moral conduct, the latter of civil. 1 Bl. 45.

It is called a rule in contradistinction to council or advice or a compact or agreement.

The definition requires that the rule be prescribed, i.e., promulgate before it takes effect. So no law ought to be retroactive, yet in fact many
written laws are. A retroactive law is not from post facto. It bas known a retroactive & facts that took place before it is made. An effort to post facto law is a final law of this description. So that the former is a genus of which this latter is a species. In general construction really prohibits both; yet it often happens that laws have a retroactive effect. You will find the above distinction well explained in 3 Dallas 86 391. And it is very material in this country, for our constitution. Prohibits it post facto laws.

This rule is prescribed by the supreme power in the legislative power. The power of making laws, which necessarily involves that of repealing them is the highest power known among men and shall be all other powers. 1 Bl. 26 90.

With regard to the rules of intendment I do not intend to dwell upon them as I have formerly. as they can readily be mastered before the superior of Blackstone from whom they may be as well I can help better learned those mainly reside.

As to intendment there are certain rules intended to discover the intention of the lawmakers. Which intention when expressed is the law of the land.

Thus words of the laws are generally to be understood according to their most known, usual & popular signification.

This rule completes...
itself to the understanding of every body. The popular
meaning of a word is properly its true meaning.
It ought always to be the practice to use words as the
common people understands them, and then they will
never be entangled by the law.

Terms of art are to be construed according to this acceptation among the learned
in that art; else often they could not be construed at all. Hence if the technical terms of the law
were to be construed according to their
technical B. & C. import. Thus if the term "a man
of his house" or "a man & his AFFIRE" we must go
to the C. for a definition. This rule is universal.
1 Bl. 59. 60. 1 B. & C. 647. 6 Moore 143. The same
rule applies to the construction of contracts. 1 Deo bot.
403.

2. Words which are used are to be construed by reference
to the context. And when the same principle is useful it often necessary to refer to the preamble and
is no part of the law, but as it shows the intention
of the legislature and the subject of the law it is to be
referred to. So it is often useful to compare the law
with other upon the same subject. 1 Bl. 60. 1 Vg. 365.

3. Words are always
to be understood as having reference to the subject
matter of the rule; for there are many words in our
language that have different significations ac-
cording to the subject to which they are applied.
1 Bl. 60.
5th. The last and that which is instar omnisius is, that the spirit of the law is to be consulted. This is the object to which all the other rules tend, and is the reason why one part of the law is the law itself, and is used without a judgment as to final laws, as when discovered concluded in all questions of construction. Plow. 2:32. 1 Inst. 62:1, 1 S. 61.

From this last and cardinal rule arises what is called the equity of the law. The word equity is here used in its etymological and not in its usual sense. It does not mean moral equity, but a construction agreeable to the reason and spirit of the law. Thus when it is said, that a case is within the equity of the law, it is only meant that it is within its letter and spirit. 1 Inst. 24:6:1, 1 S. 62:1, 3 S. 43:1.

All municipal law is divided into two branches which includes the whole viz. scripta et non scripta. The written and the unwritten law.

The unwritten law includes the common law properly, so called or general customs. 2nd particular customs. 3rd particular laws which are observed only in certain jurisdictions or particular courts.
The unwritten law is founded in custom or use. 

Case: 1 B. 63. 67.

The unwritten law is called unwritten because its original institution is not set down in writing, as acts of the legislature are; its authority is derived from long and immemorial usage, whether the memory of man remiﬂes not to the contrary, and this is the foundation of all unwritten law. It statute is reduced to writing and the role of the legislature is conclusively evidenced, what that statute is never to be contradicted. 1 B. 64. 67.

The common law is nothing more than a formal custom, or a rule of civil conduct formed in custom and extending over the whole realm. It is called common because of its extensive application not being confi ned to a particular district. 1 B. 67. 74.

I would have observed that Common law and unwritten law are not synonymous; the oft conﬁned to the B.C. is a brand of the unwritten law and it deﬁned like all the other branches of it for its authority on immemorial usage or its universal reception from time immemorial, the Long position rule which regulates the extent of legal memory cannot apply to us. By B.C. it was good custom the time when the memory of man remiﬂes not to the contrary. But the Long rule is that legal memory extends back to the decease of Rich. I in the 12th century, 1 B. 68. 2 B. 31. 3 Roll. 269. 2 Inst. 235. 9.

To one wholly unacquainted with the unwritten
it would allow a minister inquiring whom to the G.L. to be found. It is not written originally, but it is to be found in the records of courts, books of report, and judicial decisions, and in the writings of the learned. And the law as thus found is to be ascertained and explained by the judges. 1 Bl. 634. 69.

These records deciding to are only evidence of what the law is, and not the law itself. If they were, they could not be altered or amended from that by which the legislature may find, however that decision is occasionally corrected, so that they can only prima facie and not conclusive evidence. 1 Bl. 70.

A precedent is a former decision upon the point in question and is therefore evidence of only evidence of what the law is.

With regard to the authorities of precedents, it is a general rule with lawyers that it is to be followed implicitly unless it can be shown to be flatly absurd or unjust. A precedent is not to be overruled merely because the reason of it cannot be discovered, it is authoritative if binding unless shown to be unjust and the only previous case on the same point lies on him who would overrule it aside. And indeed if it were not so we should have no known and established law. This rule is as absolutely indispensable as it is to yield obedience to the legislature. This is the present disposition of men this the country with few different sentiments even entertain for a few
I observe that the C.D. is theoretically founded upon immemorial usage, time out of mind. If this is the true description of the C.D. it may be asked, how did it commence? for it must have had a beginning. If this it cannot have existed from time immemorial. The truth is, that it was built up by the courts of justice.

There must be an unwritten law in all countries for it is not feasible for the written statute law to reach all possible cases.

It would then be said that it is not prescribed by the supreme power and indeed the only way it can be said to be so prescribed is that it has been acquired in by the supreme power. Indeed entire branches of the C.D. as the law of evidence audio have originated since the time of legal memory, so too the law-Much of this branch of the C.D. and as much unknown in the time of Rich., 1st as any of the modern discoveries in chemistry, this truth is in reality a fictitious quality. This discovery merely promulgates the law they do not create it. this can only evidence of what the law always was it would have been as close as to be had the question arisen in the time of Rich., 1st.

The second branch of the unwritten law is what is called particular customs, these are distinguished from the C.D. only by being confined to local limits not common to the whole
realm or state, they are defined to be local usage
attending some particular districts, or some custom
of Gavelkind or Borough Exp, and are binding
as far as they extend. 1 Bl. 74: 2 Bl. 263

Of particular customs, the courts do not regularly take
notice of them, if not presumed judicially to know
them, they are, therefore, to be proved as proofs like
any other matter of fact. If their existence is de-
mised, it is to be tried by jury. 6 & 7 Vic. c. 75. 1 Bl. 76.

There is, however, an exception to this rule
when any particular custom has been before obtaining
proved in the same court in which the question
arises. It must not be again proved, for it already
exists as established by the recollection of the court. Exp.
365. 1 Bl. 76.

There is another exception in the case of
Gavelkind or Borough Exp. These customs are unknown
to our law: the the land in most of the states of
the Union are held in Gavelkind tenure as bos.
Of the existence of these two customs, the courts take
notice, so that to take advantage of them all that
it is necessary to be proved is that the case comes
within them. 1 Nutt. 175. 1 Bl. 76.

It is remarkable that
Blackstone calls, the law merchant with particular
customs for it is no one says a particular custom nor
has a single trait of that class of laws. The law
merchants extends thus the whole realm, it is
indeed confined to particular subjects but that day, not constitute it a particular custom. The law of
descent is confined to particular subjects. But only
to the laws; the truth is that the law merchant is
nothing more or less than a branch of the civil
property so called. 1 Bl. 75. cont. 2 Bl. 459. 461. 467.
2d Ray. 176. Chit. 13. 46. 55. 152. 2d Vent. 295. 310.

And

the law merchant is not followed by the incidents of a par-
ticular custom. It need not be specially pleaded, nor is it
tried by jury; the court notices it as evidence. 2d Ray. 125.
It is said that if new cases arise in which it is doubt-
ful it may be proved by evidence. 4d I have no doubt
but that a local usage may be so proved. But this is not
evidence to be offered to the jury to establish a matter
of fact. It has been so used, but I believe it contrary
to principle. As to such particular customs, the testimony
of witnesses may be taken, but it is only to give infor-
mation to the court or to the usage of merchants who
are from that to determine the law in the case. The
merchants are how to be and by the judge like dictio-
naires. Chit. 13. 28. 109. 2d Vent. 1236. 1218. 1222. 1d Ref. 298.
Doug. 72. 3. 653. 2d Ref. 282.

As to the legality of customs

I can only refer you to a page or two in Blackstone.
To be legal a custom must have seven requisites. 1d
1 Bl. 76 to 78. 1d Vent. 113. 114. 1d Rol. 565. 960. 58.

Customs

in derogation of the b. & l. can to be construed strictly.
If can never be extended by construction, the case
must come literally within the custom to be affected at all. Thus, by the custom of galuchting an infant can convey his land by testament, but he cannot lease it, altho' of much life's consequence, than to convey the fee.

1 Bl. 789

3

The thirce branch of the unwritten law consists of certain particular laws, adopted by custom; and only in certain particular jurisdictions or courts. Particular customs are confined to local limits, but particular laws are not. It is immaterial where the cause of action arise provided it is brought to one of these courts. Thus, the civil & canon laws which are adopted by the maritime, ecclesiastical, military and universitv courts. 2 Bl. 67, 79 to 80.

It is the adoption of these laws from time immemorial that gives them their authority, for they have no more intrinsic or inherent force in Eng. than the laws of the German Empire.

When the legislation of a country adopts a particular code it becomes part of the written law. But when it is adopted by the usage & custom of courts it is only unwritten.

1 Bl. 79, 80.

The common & statute law of Eng. as far as binding at all in this country, derive their authority from the same sanction viz. adoption and immemorial usage. Having been so adopted our courts cannot reject them except so far as they can be shown to be totally unjust abroad or inapplicable.
Then on certain points it indeed whole branches of the Eng. B. L. which cannot apply to us, or those parts which have arisen from their monarchic form of government. So of those powers that are plainly unjust the burden force of which has been very much lamented by the Eng. judges.

The true rule then is that the B. L. of Eng. is per se foreign to the law of our country this bill the state, some have abolished it by statute, the all have not and more since the B. L. has been adopted it has acquired in it the people consider it as the preservation of their rights, our judge cannot reject it. Tuckey 3 B. 411. 412.

Soon after the adoption of our constitution it was found that we had had a different kind of law from the Eng. law. The question was formally discussed whether we could have a common or unwritten law distinct from that of England. The objection to this in unquestionable right was altogether technical but it was determined that it is competent for the courts of the several states, to set up a common law of their own. It seems strange that this should have been doubted and it is needless for us to go into the argument. I would however just observe that there are two or three grounds on which it is demonstrable that we must have a common unwritten law of our own. As to this point of the Eng, B. L. which are inapplicable to us we must have a substitute, further it is impossible for a unit
to be provided in the simplest case without the
assistance of unwritten law; the court would
then have to adopt a maxim, but this ques-
tion is at an end.

II. The second general branch
of municipal law is the written law or the
statute law, this needs no definition and means
only the law as prescribed by the act of the
legislature.

It has been a question in some points of the
Union how the Eng. Stat. are binding here. It was
the rule to be that the ancient Eng. Stat., as they
are called are binding upon the same law
as the unwritten law of Eng. is. By the ancient
Eng. Stat. are meant those that existed at the time
of the colonization of this country. The reason is
that our ancestors brought over with them
so much of the Eng. laws and some extent at
that time, they considered them as their bill
rights. I do add the Eng. jurisprudence with respect
to all the colonies. Then comes the ampli-
ment of our law; this is the principle which our
jurists have adopted. With respect to the b.i.c.,
a distinction between ancient & modern would
be a sociology. A modern decision in derogation
to some ancient rule of the b.i.c. does not make
a rule; it only declares what the b.i.c. originally
was. It would not be understood as saying that
our legislature are bound by the an-
cient Stat. of Eng. doubtless they can other
than when they please, but our courts, as private persons, bound by them. See the subject well treated in 1 Tuck. 1 Bl. 380, 382, 391, 393. 1 Bl. 106 108. Salk. 411. 666. 2 P. N. 75. Pow. Dec. 52. Tuck. 362.

I will sum up the whole thus thus. The ancient statute law of Burg as such is prior to our law except so far as our legislatures have attuned it. But those statutes which have been sanctioned by our colonization are not so even prior a fact. In some states the body of the Burg statutes have been adopted down to a certain period by the legislature & incorporated with this Stat. law as the State of New York. But in both, we have no such statute.

In the two preceding lectures I have given you a general view of the nature of municipal law. Not municipal particularly:

1. All statutes are either pub.

2. Public stat. is one which regards the whole community, a private statute regards particular individuals or private concerns which is indeed in the nature of an exception to the general law. 1 Bl. 386.

The application of this distinction is not always obvious. Not every statute is indeed actually it in being, regards the concerns of the whole community as the Stat. of Prud. &c. is. In such cases, plainly public. Again that an statute prohibiting certain ac.
and inflicting penalties upon him who commits them what
seems public. But it respects to all these as like them into
difficulty in making the distinction. But the one
cases in which statutes relating to some one class form
an considerable public even the relation is immediate.

The rule in these cases appears to be that if
the class to which the law relates amounts to a genus it
is a public. It is to only a species it is private. This is some-
what vague for that which in relation to a higher class
a species to a lower genus is a genus it is known the
only distinction given in the books.

A statute relating to
all mechanics is agreed to be a public statute. But one
relating to all tailors or blacksmiths is a private one.

Here it is said the class cannot be divided into species.
A statute relating to all persons capable of serving process
is public referring to a genus. But if it refers to all
Shiffs, certainly it is private for the class is divisible
only into individuals. 6 Bac. 148, 152.

On the other hand if one individual
only is referred to it is clearly a private statute. So that
there exists no difficulty in applying the distinction ex-
ccept when the statute relates to a class. 1 Bli. 86. 269. 76
3 Peck. 154. 25 J. 129. 381. 1 Law 86. 1 Bac 463. 251. N. 155

Every statute that re-
gards the King is a public statute for every subject has
an interest in the King. So an act in relation to the pre-
dent of MD. in his official capacity must necessarily
regard the whole community. 260. 71. 8 Co. 23. 195. 566
237. 1 Ed. 209. 1 Phil. Ev. 258.
A statute giving a fortuitous or personal to the king or the public is a public statute; although it operates upon a private or public class of men. 12 Bac. 640. See 1229. On a similar principle are statutes concerning the public revenue. A public statute although raised from a class of persons amounting only to a shilling 10 60 37. Plow 65. 12 M 261. 613. 12 Bac. 640.

It is not unusual for the legislature to declare a state public which is in its own nature very private, of the public. They do not have the power and for the sake of public convenience often exercise it as it prevents the necessity of counting upon it raising the state. when an act is laid upon it. This is the common practice in both in acts of incorporation as of banks insurance companies &c. &c.

A state may be in public in part private as in different sections.

Another division of statutes which like the other is practically very important is into Declaratory. 1. Remedial as the dividing are usually termed. One being declaratory the other remedial of its defects.

As declaratory it simply declares what the law is and always has been and makes no new law. To this division may be added those cases that are declaratory or explanatory of former statutes. as the 1st. of 54. is of the 1st. of 32. See 85. this division of statutes is not noticed there.

Parr. 141. 1 Bac. 650. 1 Bl. 86. 12 Bac. 650. Can 396.
Nominal statues, in the other hand, introduce a new
law by supplying the deficiencies or abridging the sup-
feriorities of the old, as the old of precede. Thus possi-
ble declaratory acts, and with the reception of the final
statute, most of the statutes came under the denomina-
tion of nominal. 1 Bl. 86.

Another coordinate division is that of personal and beneficial, the last is some-
times called nominal. Beneficial herein is the word
used by P. Coke, to be distinguished from personal and
other nominal, will be properly applied to declaratory
acts 1 Salk. 214, 15. 1 B. & C. 656, 3 Co. 76; 1 Wms. 126, 7 T. R. 257.

I would now observe that the word penalty in its most
ostensible sense is synonymous with punishment, 1 Bl.
92. I say it is now more appropriately used to signify
a pecuniary restitution. Now in strict up all
statutes giving higher remedies than the rules of
natural justice require, as double damages in town would
seem to partake of the nature of penal acts, as
to the reeks, but I do not find them so considered.
Inf. 217, 1 Wms. 125, Co. 1. 414.


Statutes giving costs to the
prevailing party in an action are always held
to be penal, the reason is that costs are unknown
to the old. If costs are considered as punishment,
then come in the place of the old b. & c. annuements,
the form of which is still kept up, but it is really
punishment. 1 Bl. Ch. 126, 7 T. R. 257.
the 2d was annulled but now the statute gives 2d. 

The first 2d giving 2d was that of Glanvill, 1 Ed. 1, 11 B. C. 1 St. 205. 2 Co. 119, 122. 2 W. W. 7, 13 B. C. 65.

An action brought by an individual in his own right to recover a sum of money is a civil action as there is no interest, interest, or fixed amount. Thus, the statute gives 2d. to the prosecutor for putting man in 2d. to recover this is a civil action between 2d. and 2d. of the state of money. It is a suit setting action up and.

What determines the action to be civil or criminal is the form of process. If it comes by suit or declaration it is civil of course, but if by indictment or information on which the process is founded it is criminal. This distinction is very important even in practice. 2 Co. 119, 122. 2 El. 1st. 25.

In consequence of a mistake as to the law in this point in the last session of the 2d. in 2d. 18. 1st. 2d. for the penalty on the 2d. of money, some blame was put on the action is civil it is transitory if criminal it is local.

All statutes are said to be either affirmatory or

negative. This division is practically of no use unless to be perfectly negative, its foundation is in the phraseology of the 2d. 18. 1st. 64.

With respect to the commencement of the operation of statutes the 2d. rule is that the commencement from the first day of the time or session of Parliament, in which they are enacted unless some other time is prescribed.
and the rule was founded on the maxim that there is no function of a day or time; in point of fact as it might they become retroactive; the according to the theory of the C. L it would meet. Nov. 11. 222. 307. D. App. 371. 1 Seco. 910. 19 Vtn. 413.

And on the principle it has been determined that if two states are concurrent at one session on the same subject a new time fixed by either within shall have the priority of the other under which each would repeal the other. The time of the first act of the other's acts, each would repeal the other. It has however been lately decided that this which was last in point of fact should prevail to other actions of this I think the better opinion. 4 Bae. 636. 6 Mod. 287. 19 Vtn. 520.

The Em. general rule as to the operation of statues has been explained in Coxe and there is no precise rule substituted with events however have determined that no man's right can be affected by a statute unless he has had time to find out what it is.

C. the construction of statutes.

The construction of statues is the means of discovering the intention of the legislature and that which properly comprehends is always the law. In the construction of state and especially penal cases the points are principally to be considered viz. the old law, the mischief which preceded and a statute should if possible be always so construed as to suppress the mischief and advance the remedy. 1 B. 57, 3 Co. 76. The law first enacting to be regarded. If there is an error as to the remedy the rule
has been successfully in the case of the State, forbidding bishops to make long leases. 3 c. 1531. 87.

With regard to the construction of words, phrases, or statutes, the same rules are to be regarded as in the construction of unwritten law, of which I have before spoken.

Every rule in the construction of statutes is that final phrase to be construed strictly or according to the letter. 1 Bl. 88. 3 Bl. 768. Blow. 12 Leach 1049. ii. e. a literal interpretation is not to be extended for the purpose of bringing a party within the statute. 41 R. 64. 2 B. & 1 W. 319.

This rule has in some instances been pursued so closely as to make it ridiculous. Thus 1 3 Ed. 6 took away the benefit of the 2.5 years from those who were convicted of stealing horses, that is, said he who had stolen that one horse was not within the statute. 3 4 Ed. 6 374. While the shooting of dogs, that is, said that it would not protect him. But this rule requires explanation. As it has been above said could not be correctly understood, the rule is that the statute is to be construed strictly against the party charged or subject, but liberally in equity for him. Thus a person is not to be adjudged within the penalty of a statute unless he is within the letter of it, the clearly within the spirit of the law, and on this other hand a person who is within the letter may be exempted by not being within the spirit of the law. So that all codes without these rules of construction would be intolerable.
The rule then is that the spirit may be consulted to take out those who are within the letter, but not bringing in those who are without. So that it appears that its direction must be considered guilty who is not within both. I find this rule no where laid down explicitly but in 1. How. T滑雪. Pen. A. § 12. 2. De Luce. bru. Can. 187. 233, 310. 1. Maur. 53, 61, 116, 131, 1320, 136. 2. 193. 3. Plow. 17. 265. O Bae. 390.

There are several modern cases in which this rule has been strictly followed. When the letter has been abandoned to bring the party within the penalty, who was clearly within the spirit. Leach bru. Can. 1. 70. 295.

I observe that a literal rule is to be construed strictly and that the reason behind the law may be consulted to relieve a party from the it must can be to bring him within the penalty.

Hence in general any violation of this provision in a literal sense, will not include those persons who by reason of legal incapacity are exempted from similar literal laws. Unless indeed they are there. Thus it is that statute, that those persons who commit certain acts shall be subject to relief of such an act, will not include railroad insurers, nor if the punishment is corporal in form, implies that the application of language must be and 19 Pen. 501. 1 Stew. cap. 64. Sec. 35.

But notwithstanding the rule that literal sense to be construed strictly, it must be
confused that this is our reason of the intention of the legislature. J. P. H. Enyon says that intention is the true rule. It is universally true that the intention of the legislature is not to be disregarded merely because the state is casual. But this rule is too vague to be unenforceable. T. L. B. 36. 360. 7. 8.

Pac. 361.

Upon the same principle of construction of the intention of the offence in our an augmented punishment, that augmented punishment is not to be inflicted unless there has been given against the offender for the first offence, and indeed he must have been convicted for the first offence before he committed the second, to incur the punishment of the second. This appears to be carrying the enormity of the law a great way. Our courts, however say that it is in terrorism, if the convict ought have the voluntary discipline of the first before incurring an increased punishment. T. L. B. 362. 427. 570. 685. Syr. 323. 1 Exon. 168. 1 Ross. 52. 103. 2 B. 349.

The rule of strict construction against the subject has not always been followed for under the art. of 28. 3 it has been determined that treason cannot be tried by any manner of jury. The decision is beyond question. T. L. B. 366. 2 B. 367. 6 B. 369.

It has been determined by our courts that if the same penalty is repeatedly incurred by a continuance of the same offence, as for a misdemeanor, neglect to prove will be only one penalty can be sued for to receive at the
some time, they being considered as a stimulant to duty. This however is opposed to the Eng. rule. 1 Swift 289. 1 Inst. 52.

And the Eng. rule is strictly the reverse. see Plato, b. 57.

It is a maxim of the law, that the personal code of every country is strictly local. this is founded upon the elementary principle of Municipal law. The remedy is to be sought by the party injured. Since the personal laws of one state cannot be noticed in another so as to affect the rights of citizens in the latter. Thus a thief cannot be punished in Con. for a theft committed in Ky. If it was a breach of the laws of Ky. of which only one court has cognizance. 1 Odd 122. 3 T. Rep. 73. Phil. 93. Yates 19. C. A. 19 Sec. 232.


The personal laws of every country, however extended to all aliens while within that country, if the commit crimes there, they must be tried by the laws of that country for they have a temporary allegiance to them as long as they reside within their jurisdiction.

It has however been determined in the state v. in Maps. that if goods be stolen in one state and transported by the thief into the other, he may be tried and punished in the latter. this is to me a very extraordinary decision, for an agent whilst he has an express legal authority, is now successfully entertained. 1 Maps. 1116. This point has been settled similarly, the other way in 

In 10th. 2 John 277. 9. and by Judge Patterson of the U.S. Court. in the case of day v. Payne. and I conceive their rationale similarly, to be demonstrated th.
law. It has been observed on this principle in the English practice, that when a felony is continued into different counties it may be tried and punished in either. But the analogy cannot be extended to two separate governments like two states governed by different powers, when in them the same punishments are inflicted under the same supreme jurisdiction. If there the punishment in one state was a fine for stealing horse it in the other death it would certainly be improper inigators in a lot of loss to inflict death on a man for committing a crime in Mapa for which the he could only be fined for what it is unjust for a court judicially to know whether what we call theft is any offence at all in a neighbouring state. The man might have come honestly by the horse t bringing him into this state is of itself certainly no offence. Besides what we call larceny might be t indeed in what was under certain circumstances no offence. But what is still worse on trial t acquittal or a conviction is no bar to an indictment in another state.

Beneficial statutes are to be construed equitably or literally that is according to their true spirit and may be exceptions or enlargements to effect the intention of the legislature. There is hardly a single beneficial statute that does not afford examples of this rule. Thus the 9 Ed 3 gives a pernicious ex. of the courts determining that Administrator even within the limits of it t extended it to them, so t on the other hand the spirit may restrain the letter. Thus the
state 32. Stat. 6. enacts that "all persons" may devise land. The court, however, determined that the word "all persons" did not include idiots, lunatics, insane coram nobis. To the explanatory text of 34. Stat. 6 continues that decision. 3 Bl. 430. 3 56 7 106c. 125. 11 6071. Powell 365. 266
Pown. Sec. 354. 1 607. 905. 1 140. 1

Under the rule of construction an act or transaction declared by statute to be "void" is construed by the courts to be but voidable for the distinction between void and voidable is explained in the title of parent and child. The rule is that the mischief intended to be prevented would be to be remedied by construing the act void, it must be construed voidable. On the other hand if the intention of the legislature would be frustrated if the mischief was prevented by construing the transaction voidable it is to be construed voidable only. Thus if fraudulent conveyance was to be construed voidable only now the fraudulent parties themselves could invalidate the conveyance. 1 Bl. 57. 56. 59. 60. 1060. 107. 2 60 7. 2 5. 6 7. T. Rep. 310. 2 New 4 18.

Thin a statute enables a court to do a matter of justice to a party, the general rule is that the court is bound to do it in cases falling within the statute. In these cases the plain plain language is construed as if it were imperative. Thus, the 5. 8 5. M. cap. 10. says the court may grant relief on information. The 5. 5. 8 and 10. 0. 9. 5 12. 5 4. 5. 11. 3. 15 5. 3 15. 3 14. 12 15. 3. Bac. 644.
A statute taking away a civil remedy known is to be construed strictly. This rule was not made to be a mere in practice that the statute of limitations have in many respects been construed liberally, although they after a certain length of time take away a civil remedy. 2 Bae. 650. 10 Mod. 282. 1 Salt. 221. 4 T. 191. 30. Rumington on Eq. 5.

A statute in plenary of a former statute is always to be construed strictly, and must to be interpreted by construction. for that would be to destroy what is in itself construction, then there would be no end of construction upon construction. Carter 396. Salt. 534. 2 Bae. 650.

When a statute partly prejudicial to partly remedial to a beneficial the construction is to be strict as to the former liberal as to the latter. This is exemplified in that against fraudulent conveyance, for it has the twinfold object of declaring the conveyance void of punishing the offender; the first which is there medicinal part is to receive a liberal, the latter strict construction. Plow. 86. 57. 59. Pe. 61 a 215 1 Bl. 86. 3 Co. 82. 4 Bae. 650.

The different parts of a statute are always so to be construed, that the whole may take effect, or as it is sometimes said, that the whole statute stand together, whenever one, if possible can to be reconciled, if irreconcilable the latter part repeal the former pro tanto. Assuming that among statutes, the whole body of the statute is utterly void for
court is now to suffer a point to destroy the whole
or to change the legislation with such an absurdity. 160. 43. 1 60. 89.

The rule of construing statutes on the same in a court of Eq. or in a court of law
the they have different methods of affording relief under them. 3 60. 43. 4 38. 7 Font. 22. Doug 264.

Note: 89.

It is in the nature of all municipal law both written and unwritten to be repealable. If then the 6. 2.
1. 2. state acts for the latter will repeal the former not however on the idea of it being of high
authority, but on the ground that it is the latter of the two. that it is the last determina-

ation of the legislation. the last expression of the sovereign will. And on the same principle the
last state repeals the prior so of different sections
of a statute. 1 Inst. 111. 115. 4 60. 638. 12 60. 1 60. 89.

14 60. 63.

And it follows that as every statute is

probable a clause in a statute that it shall not

be repealed is void. such a clause is indirect
denigration of the authority of a subsequent
legislation if the at length the power of making
claws might at length be completely taken a-
way. So that every act in derogation of
subsequent grant legislation is void. 2 60. 638. 126.
90. 4 Inst. 24.

But the law never favours an

null by implication. When it is claimed that
a prior or later state, or clause of a statute un-umbed, that reimbursement must be clear to avoid the hirer, for it is paramount that if the legisla-
tion intended to repeal they would have done it expressly. 11 Co. 33. 1 Poth. Rep. 26. 10 Mod. 118.

It is said
in some of our books, that an affirmative statute
must repeal the C. & if the former statute (1 Bl. 115) & Bay. 641. Now this has arisen out of
that division of states into affirmative & negative
which I hold to be injurious. 29th. an affirmative
statute does not change the C. & if it is un-umbed
to it, e.g. further, how the rule of the 2. L. to be that
a defect made with no help is to have 15 days; I believe that rule is. I think that should be it
matter the cleaning 9 days sufficient, it would
be an affirmative statute & still repeal the C.

The true rule is this: if a statutory provision is
inconsistent with a rule of the 6. & it repeals
that rule, Com., Dig. 32. 34., stat. C. Poth. 200. back
3rd. 252. 1 Bl. 89.

If a state gives a remedy in a case in
which there was one before at 6. & without expressly or
implicitly abrogating the sect 6. there will be
two concurrent remedies, and the state remedy is called
an accumulation remedy. 2 Deer. 803. 805. Com. Dig. 45.

If a final state inflicts a higher or lower penalty,
there is inflicted by an erewet. the clause is upheld.
for as the latter varies it is clear the legislation in-
tended the former not to remain in force. 2 Bker. 2026
2 Bker. 652. Leach 6th Case. 252.

And when a statute
institutes a higher punishment than is inflicted by the
| Ch. 6. Ch. 6. mandy is repealed. But when a higher
| rule, the old mandy or punishment is accumulated by
| rule, the latter rule would remain in force so that a
| crime which may be prosecuted within 8th of
| 2 Bker. 2026. 2 Show. 100. 3d. 33. 2 Bl. 138.

The formation of a new crime or offense, does not repeal an old offense. This is an unwritten and arbitrary rule, and at every rate it is a supposition only, whereas the latter will replace the former.

2 Show. 130. 1 Bl. 89. The only real criterion is this: whether the latter state is inconsistent with the former.

When a repealing statute is itself repealed, the original statute prevails, for the repealing statute is the intentions of the legislature that the former should remain in force. 2 Bker. 658. 1 Bl. 90.

When a statute is repealed by two statutes or more than one, and two of them or two statutes or more or more statutes is repealed for the remaining third, sufficiently indicates of the legislature's intention 2 Stat. 23. 2 Bker. 638.

If a statute that has been repealed is revived the repealing statute, if it is merely a repealing statute, void in toto, if more it becomes void per se, for it is impossible that the repealing statute
should remain in force. 2 Inst. 286, 2 Buc. 638.

It is a well-recognized rule that the very definition of law is that a law cannot have a retroactive effect. The definition requires that it be pronounced. 1 Bl. 261, 2 Mcl. 310.

Hence, if a statute is violated before it is in force, the violation is not a violation of the law as there is no law for it to be violated. If a statute is violated before it is in force, the violation is not a violation of the law. Instead, the law is violated when it is in force as to all acts committed before it was in force. 1 Bl. Rep. 267, 2 Harris 1679, 2 Buc. 638, 1808.

But if a contract or other contract is made which is lawful at the time it becomes unlawful by a subsequent statute, the contract is annulled. This is a
contract should be made to import certain commodities and when the time of performance arrives an embargo, non-importation act or a declaration of war should render the performance the contract would be annulled. It amounts to the same as an inevitable accident. Black 198 1 Pown. 2 142; 2 146; 1 Port. 211. 8 T. Rep. 264; P. Chy. 317; 321, 1352 2 P. M. 210.——So on the other hand if an infant, not to do an act which is afterwards made his duty by law to do, the contract would be annulled not if an affranchis should consent not to enter the public service at a certain time and make it his duty he might be sued by fulfilling his contracts 198.

But if one consents not to do an unlawful act a statute making that act lawful does not make the contract void. There is no inconsistency in obeying both its laws.

If a contract is made which a statute makes illegal or void, a subsequent act authorizing that act does not give the contract validity even not set it up. Instances of this kind occur on the stamp act. If contracts to be performed in the interim the act was repealed in such cases the contract is void at once. We are to look at the state of circumstances, or they even when the contract was made. 1 John 65.

If a lawful contract be made, complete
performance of which is prohibited by a subsequent statute, a performance of the same not prohibited will if possible be enforced in Equity and in a Court of Law if that Court can adapt it readily to the case. Thus a landlord to covenants to make a lease for 90 years before lease makes a statute was enacted forbidding such bodies to make leases longer than for 40 years the Statute obliged them to make a lease for 40.

Pinc. 178. 2 Am. 168. 531. 1 Torr. 209. 211. 27.

Pinc. 254. 1 Pinc. 124. 250. 2 id. 81.

The Constitution of U.S. prohibits the several States from making any post facto laws or laws impairing the validity of contracts. Art. 1. Sec. 10. Now it might become a question whether a statute making a covenant void according to the rules above conficts with the section of the Constitution. It is not we suppose that that section applies to the act which simply make void contracts between individuals, and not those which consequentially have that effect. If it were not so individuals might deprive the legislature of the power of making laws.

It is said that a statute requiring what is impossible is void. This is no instance of this kind. But if not it is supposed to the principle, for the law obliges no man to do impossibility. 13 Bl. 91.

It is said by Coke & Dobson & indeed by Judge Bl.
in one place that a statute contrary to reason or the
divine law is void. But Mr. Blackstone afterwised
approves this rule in that extent. — If the requirement
of the statute is possible it is not for the court, decide
whether they are reasonable or unjust for they would
have the supreme power to do the latter
part of the rule; the judge or court of munici-
pal must not of the divine law. — The aim to conduct
so as to make a statute reasonable & just to interfere
with the divine law if possible — if however
the intention is plain they must administer it or
reason to be judge. If their conscience are too delicate
they may resign as did G. Hale in the town of
the commonwealth. — Besides there are many
points in the divine law concerning which man
kinds differ — thus a question arises the right to
administer an oath. So the rule cannot but have
in the extent in which it is laid down. 8 Co
118, 120, 87, 80, 1 P. & R. 21, 91, 1 P. & R. 23.

It was once
question whether appeals to the written constitution was
void or could be declared void by courts of justice.
it has known how ceased to be a doubt. The consti-
tution is the paramount law of the land and
courts may declare a statute so to upset a form
or expugnant one they may also declare a state
void which is expugnant to the constitution and
indeed a jury can decide upon it under the direc-
tion of the court. U. S. v. Holt, 2 Fed. 293 and on-
weren at —
If a state makes a new law concerning an old offense, it appoints certain particular judges to execute it, this would not take away the jurisdiction of courts of previous general jurisdiction, so that two justices should try certain cases without abrogating the higher jurisdiction, the circuit, etc., would still have cognizance for this circuit jurisdiction on not to be ousted by implication. 2 Nank. 189, 914, 9 Co. 118. Salt 252, 2 Durr. 1094, 21 R. 248.

But if a state creates a new offense and establishes a new jurisdiction for the trial of it, it seems that the general jurisdiction of other courts is excluded. The case referred to is one in which those courts had no prior jurisdiction of cases the rule as to implication could not apply. 1 Nank. 28; 2 Rule P.B. 5. 1 Durr. 196, Cr. 1563, Com. 524. 2 Nank. 302, note.

If a state confers special authority upon an individual to affect the property of other individuals, that authority must be strictly pursued or must so appear upon the face of the proceedings. As in case of commencing good devices, etc., the same have no arbitrary power if they do not strictly pursue their authority, they are trespassers. Com. 256.

If a state enables certain set of men to do by majority certain acts and constitute a certain number a quorum, it seems that a majority of the quorum cannot do a binding act without it is also a majority of the whole, they are creators of the state and must exercise their authority for
cEDURE, you will observe that I am not now speaking of corporations. 3 Mod. 13. 1 St. Bac. 614. 2. 10 Co. 30. 302. 311.
3 T. Dig. 592. 2 T. Dig. 110. 822.

In authority, of a private nature given to live or move to joint or to move until it is otherwise enjoined. Of course the authority
does not survive to the successor. An authority given to live to sell the property of another is taken. But when
the authority is of a public nature or for bare public
to sell, it does survive being in the nature of an office.
Gor. 117. 2 St. Bac. 403. 242. 1 Inst. 181. 1 Pott. 67.

If a power
of a public nature is given to sell, the act of a
majority of them in the execution of it, all being
present is the act of all & binding. 1 Inst. 181. 279. 2
St. Bac. 1017. 1020. 3 T. Dig. 592. - Thus if five
men make contract of work or bridge, the act of them
all being present would be binding.

In the case of cor-
poration, the rule is different, for if all are summoned
the act of majority of those present, however small
the number present, will bind the whole; provided
there be nothing in the act of incorporation against
it. 2 B. 207. 211. 1 B. R. 236. 7.

Pleading statutes. I am now to treat of pleading
statutes & the modes of presenting upon them.

Mere
pleading a stat. consists in stating the facts & acts which
bring the case within it. Stat. must not be admired
refers to all for the purpose of pleading it. This in a
form of the st. of limitation on the face of the
pleadings and
in the
of
is the place of simple
... machinery. In an
form
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different.
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do
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necessarily
imply
a
reference
to
it.

It is a

real
rule
that
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public
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is
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be
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notice
of
by
officers
by
the
judge,
so
it
must
be
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if
the
facts
are
sufficiently
stated.
The
court
taking
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officer
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will
apply
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st.
to
them.

But
of

a
private
st.,
the
judge
is
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to
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notice
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For
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matter
of
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course
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is
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bar
until
the

specially
pleaded.
1
St.
36; 1
Co.
36; 1st
Eliz.
286;
1
Bac.
38; 10
Co.
67; 2
Mo.
37.

According
to
C.
then
it
is necessary to set out a private statute in the pleadings, to take advantage of it. In Corp. however, a private statute as well as a public statute, may be given in evidence upon the quit claim, for any act or omission, or act of Base amounting to a discharge, may be given in evidence under that plea. 11 Corp. 3 LL. 332.

Even here however, if one sues on it, he must read it to the jury, for it is a matter of fact or evidence as much as a deed.

But if an action is founded on a private statute, the Base must as well him as in Corp. recite it as a specialty for the Corp. it attends to pleadings only or the part of the plea. If Base does not this recite it, no cause of action can possibly arise, for there is nothing to which to apply his facts. 1 Bisc. 28. 2 C. B. 655. 2 Co. 76. 10 Id. 57. 2 East. 341.

A public statute however when it is necessary to be pleaded (and thus in such cases) must be recited, for the judge can never be officer to take notice of its provisions. There are no cases in which it is necessary to recite a public statute, and it is a most burdensome and unwieldy business proceeding to do it. Dr. Mansfield said that when it was done he would hold the pleader to half a tithe of it, lengthening the words, it increased cost to no purpose, it arose.

Thus in cases in which they must be recited when suits they must never be recited. But it is not of course necessary to recite upon
when it is necessary to plead them.

It appears that it is not necessary to state a misrecital is not in all cases fatal, although it is in some cases after verdict. On this subject it is said that the misrecital of an immaterial point is not fatal after verdict. You will however find a variety of rules as to this point. Co. Litt. 571, 535, 532. 4 B. & C. 637.

How I take it to be impossible to reconcile all the authorities on this point. J. Holt says that it is not fatal unless the party tries himself to the state (as he says) as matter of law, concluding with the words 'according to' or against the state unless afraid of knowing the pleasure in his conclusion, says against the note made. Without the words after said or words of like import, it is not fatal, for the judge will take judicial notice of the true state. P. C. 382 Clo. 740, 840. Co. Ch. 233. Farnum 911. 2 Mc. N. 2 516. Long 92 92. — This applies when the whole to be the rule whether the point misrecited be immaterial or not. After all however it is still unsettled.

The misrecital of a fact is not fatal on demurr or after verdict only, it is waived upon offer of evidence on jury questions, form defects is waived on jury the judge cannot know the provisions of it. It is indeed exactly the same as a note of hand or bond. The former would be either to plead and try record. In that the it would consist in what the declaration or to show the variance by special pleading, or to waive it on jury and then demurr for when it is
resides. The party may assume 1 B. C. 658. 2 McIlw. 517. 2 Cray 382. 1 Mev. 241. 1 Cr. 206.

a public

Treaty when called on as a defendant to defend a specialty

as a bond, must be specially pleaded. Thus, the statute

of every state must place such facts as bring

the case within it, as if of a gambling suit. A statute

does that is required from the solemnity of specialties

that of the same act. The reason, how can the guar-

antee be even pleaded to a specialty? The true

reason is that when the statute is relied on as evidence it

would be in consistent with a plea of non est fac-
tum. 5 B. C. 419. 5 Co. 59. 6. 1192. 258. 72. 3 Dan. 391.

In Brown's 3d rule is otherwise by virtue of two statutes

of pleading. For here a state to defect a specialty

may be used under the general issue. 4th sect. 342.

By a rule of our judge, if the defense to a specialty

is such as must at law be specially pleaded, the defen-
dee must give notice to the court that he is about to give it in

evidence.

In the showing upon a private act or pleading,
it in any way, it is always necessary to state it; not

verbatim but all that is material must be stated.

2 Co. 76. 2 Roll. 663. 2 Mev. 57.

When a statute is partly

preliminary and partly principal, the particular statute must be

adjudged, so the last act holds, now. 116. 60. 17. 18. 22.

But it is more necessary to state the title or personal

of any act, for neither of them constitute a part of
the law, the title is only the reason which the legis-
lator chose to give it, and the preamble is simply
a statement of the reasons, objects, or motives of the state.
36c. 3a. 4 Bac. 655. 656.

Hence it was once held that
the misnometal of the title of a public act was not fa-
tat in demin. but it has since been decided other-
wise. 2 D. Ray. 7. Bac. 324. 1 Bac. 328. 6 Mod. 60.

After all, I think that neither of the rules, nor the
misnometal of a publie stat, correct in the extent
they stand thus that the misnometal of a public
stat is fatat in demin, and again that the mis-
nometal of the title is not. I think they ought
both to be qualified in the manner of De Hatt,
which I have before mentioned to you.

In Eng. the
misnometal of a stat, when necessary to be recited as in
cell cases, a private stat, must contain the dict
of it, and the place where it was made, or it will be
demesn. Indeed the same form is required
as in pleading deeds, &c. 1 Blauneh. 246 Ch. 311.
19 Vin. 507. Co. CIt. 2 32. Com. 274. Com. Dig. CIt.
stat.

So a Dem. on a private stat, and the reciting
the title, must not so as to a publie stat, for as the misuse
of it is no question in fact it would be negatuated, but
in case of private stat the rule is different be-
cause the reason is different. 2 Co. 76. 8 60. 28 Co.
CIt. 355. 2 Mod. 55.

It is a great rule that in decla-
ring on a pub. stat. the plaintiff must count upon it. that is, he must do no more, than state the facts which bring the case within it. Bac. 38. Com. 382. Co. Elip 664.

But if the general rule there are several exceptions. 1. If there are two concurrent statutes, and one at Ct. if an accumulative stat. remedy, the plaintiff would found his action on the stat. he must count upon it, or it will not be known which remedy is sought or rather that at Ct. will be presumed. 4 B 36. 18. Com. 382. B. 7.

2d. In an a. or from a claim on a pub. stat. the complainant must always count upon the stat. even if the stat. be a pub. one. The action must be removed or in force it, if at all. The rule derailed as a positive one of which I have no reason for the appeal to sue no ground or distinction between this & a civil action on a pub. stat. Plow. 206 1 Bac. 38. Huglinge 32 1 Wint. 109. 7 T. El. 521. 2 Com. 33 5 It 126.

3d. If a pub. stat. gives a new action i.e. an action enjoining at Ct. the party who sue upon the stat. must count upon it. Some of the books say that the party must state it. I understood it somehow with synonymous with counting, and it appears that Ellen brought it understood it he showed that this confusion was occasioned by a form rule according to which the stat. must the rea
led in their case. 19 Vin. 304. 4 B. & C. 631. 60 Law. Cow. 632. 2 East 334. 344. This was, in effect, a suit to recover on the theory in quo was wholly unknown to the C吕. It was always held that the stat which gave it must be executed on. I confess I do not see the reason of it, tho I suspect it to be that the party must shew his ground of action.

When a statute extends an old remedy to a new case the general rule holds viz. that enacting upon the statute ipst self enacts the remedy. Thus the 1 B. 3 gave an executory action of troth & debt for goods of the debtor in hand is an act well known to the L. so the statute must be construed on. 4 Geo. 83. B. 35 at & b. 2 B. & C. 137. 1865. 105. 114. 115.

The result then of the distinctions of the reception is that, when a statute is a public statute not penal it is not necessary to count when it was passed there is a new sort of a time given by it, or unless there is a concurrent remedy at C吕. for the only two exceptions in civil cases. Thus if a statute merely creates a right or duty it inflicts no penalty but merely gives a remedy it is not necessary to count when the statute was passed when a statute not penal merely appoints a right or duty it does not itself give any remedy the statute must not be count when it became the remedy. 49 Geo. 352. 12th. 212.

I observe that in all instances found on penal statutes the complainant must count when it. Further when an act prohibits
an act and another inflicts a penalty the prosecution or complaint must count upon both for both together constitute the law or common law is not the entire law for one constitutes the offence the other provides the punishment. Plow. 206. 2 Bea. 656. 2 East. 233.

An offence may be laid in one indiction as being against the C. O. F. but this must be done in two distinct counts. To have both in one would constitute a complexity that would quash the indictment. After the prisoner is found guilty he may prosecute on both the two counts but I take it that he cannot in one

When part of the offence consists of committed acts against the State it counts as the C.L. it is only in a mere necessary to count upon the State, but the words criminal statutes will not refer to the part of the offence only which is prohibited by Stat. Thus it is by force on one hand is an offence at C.L. an attempt at it is an offence by Stat. Thus the word would refer to the attempt merely. Salt. 212. Comt. 382. — I note in this last can said that laying that C.L. limited in the Off. else is sufficient without the words criminal statutes.

If a temporary public statute having in mind is revived by a subsequent statute, and the circumstances are such as to require the state to be counted when it would be sufficient to count upon the former because that produces the law the latter only revive it, then it would do no harm to count upon both. 2 Pka. 186. 4 Bea. 138. 656.
If an indictment for an offence is to be concluded, it will contain from your statute this须要 may require a substance. This rule is laid down generally. I conclude, however, that they could not be thus required or special limb. This they might be on quite an important. For any manner is ill on special limb, however unimportant. 5 T. C Ex. 162. 9 Id. 362. 3. Comm. 26. Com. B. R. 16. 1. W. 1st & 2d Hawk. Ch. 25. sec. 115, 116.

Exception in the enacting clause of a statute must always be signed a deed or a complaint formed upon it. But enacting qualifications or provisos in a substantive clause must be made, unless indeed no notice must be taken of them.

1 B. & C. 163. 1 T. R. 141. 5 ib. 30. 7 ib. 27. 8 ib. 542. Doug. 331.

1 East. 626. 6 T. C. R. 257. 1 Banc. 2d & 3d. 46. 362. 1 Ch. P. 329.

The distinction may appear arbitrary at first impression, but it really is not so; the ground of it is, that when the exception is in the enacting clause it is a part of the description of the offence which cannot be properly described without reference to it, but when it is in a substantive part it does not constitute part of the offence, it is only to be noticed by itself, it being a part of the special provision in the statute. Thus, we have a statute enacting that no person shall be executed on the Sabbath, unless it be observed in the Sabbath, and every complaint that must bring upon the exception. The statute also contains a substantive clause enacting that all prosecution under it must be commenced within one month after the notification, this constitutes no part of the description of the offence, but must be used by itself in the defence of the case.

There already exists that when there are two acquitting
verdicts, one by J.D. and an accumulating one by E.L.
there may be pursued. Impute this rule here for the
first time of introducing another of the kind of not complying
with same required in may resort to
the E.L. Instead of the matter out his case at J.D. and the
rule holds as well in public as private prosecution, 1 Blk. 232.
2 Bb. 906. 1 Hawk. 231. 2 ib. 312. 356. 2 Rob. 138. 5 Tym. 2
W. McN. 493. to 495. 2 How. 191.

As to criminal from ejecting the
rule was formerly otherwise see 4 Cr. Erp. 231. 307. 697 560.
99. 2 State 11. 872.

If that which was no offence at J.D. is made one
by that and a particular mode of from ejecting for it
is prescribed by the stat. that more ours that only it is
said can be pursued. Hence if a stat create a new of
fense it provides that it is to be prosecuted by informa-
tion, no prosecution of another kind as by indictment
will lie. so if by indictment is the manner pro-
scribed. 4 Cr. 614. 2 Calk. 24. 1 Lea. 36a. 2 Bn. 803. 805.
834. 2 Bn. 23 23

The rule shown is to be taken with cer-
neal reception more even coming under its exception then
under the rule. indeed there are but two classes of
cases to which the rule applies. 1st. When the particular
mode of from ejecting is prescribed in the property
or an ejecting clause that more only is to be followed.
2nd. When there is no prohibiting clause for it, it is
 sued
But the statute mainly insists that this doing an act
not punishable unless, shall, for the future be punishable in such form or under such particular provisions, so that it is necessary to pursue such particular remedy. 1 B. & A. 544. 5. 2 Lib. 803 to 805. 2 T. & R. 205. 2 H. Ausk. 352. note.

This seems to be the true meaning of the words together, and no doubt that they cannot be separated in the prosecution, so that it is presumed that the legislature intended that the mode only should be punished.

If the particular mode of prosecution is prescribed in a substantive clause, the rule does not hold, and the of

Jones may be punished in any public or private manner. Suppose a statute makes a private misdemeanor a public offense

which by C.D. it is not and in a substantive clause

enacts that it shall direct a particular mode of

prosecution, now, this is in a substantive clause the

offense may be punished by indictment or any other

C.D. mode, for it does not suit the substantive remedy


said if that which is pro

hibited by that statute be for an offense at C.D. if the statute

remedy is only cumulative, it is plain from the former,

that the C.D. remedy may be followed. For there was

remedy before the statute was made, the one by C.D. is

not to be suited by implication. 2 B. & A. 803. 805. 834.


The statute creates a right

or an offense, & prescribes no remedy or sanction, the

C. D. will find its aid to enforce the right & to punish.
the offense. The prosecution is for a misdemeanor, such as the statute says only that no person shall be permitted to do such an act. The C.I. prescribe the remedy for the punishment, for it is a misdemeanor at C.I. to disobey a statute. 1 Burr. 524, 52 Law. 290, Doug. 226, 10 Co. 75. Cr. 8 Ch. 655, 6 Mod. 26.

If a civil remedy is not

acced to be sought, it is said to be an act "in the st

tue this appears to me in accord, the right is furnished by the statute, but the punishment or remedy is at C.I. there is no statute sanction in the case. 4 Burr. 363.

Obstructing the execu-
tion of laws vested in certain persons by statute, is an

offence at C.I. & the complaint must not be brought to court when the statute at all, the offence is against the C.I. but against the state's the provision that the persons shall execute certain powers, that involves dis

obedience or opposition to the laws, the prosecution there must be at C.I. Doug. 226.

The person who may prosecute an offense at

It is a general rule and indeed a first principle in jurispru

dence that when a wrong is done the remedy appertains to the party who is injured by it, therefore a public officer is not to be sued by an individual in his own

private right or capacity, for the remedy belongs to the public who are injured. 2 Bl. 247, 248.

It may be neces

sary here to observe, that a public officer may of

ten also, include a private injury, that is the act out of
which the public officer commits an injury to an individual. When it is said, therefore, that a public officer must be proceeded by an individual, it is not meant that an action will not lie against the offender for a private injury suffered, it only means that he cannot proceed for it as offense against the public, but can proceed for the civil injury.

But notwithstanding the great rule we find, that private persons do proceed in Eng. for the king, & in the king's name, to the wrong done him, no part of the penalty, but they always proceed in the name of the king, & the words used thereby. Thus, the king on the information of someone is B.D. & I find this practiced in Eng. even in cases of felony, that it is not so in Cas. For example 2 T. 10 B. 57, 19 B. 196, 205. Lushen v. Brown 231 3 El. 3 Bl. 505.

Thus in a mixed action of prosecution, where both the public and private accused quia tam from the Latin form of the complaint, is commenced & carried on by the way of an individual who proceeds as well in behalf of the king, or public as of himself, quia tam proced. non regis quam pro se, 2 B. 50 B. 193, 3 B. 37 3 B. 167. 6 B. 201, 205, 206, 207.

One remark I would here make of a fact which has not been quoted, attended to that the individual proceeds alone, the in behalf of the king, or state, or of himself. This too it may seem unimportant, is practically of great consequence. The king or state can not in such cases a party, tho' they may reap the benefit of the prosecution.
There is a great deal of confusion in the books arising from the fact that the proper distinction has not been made between qui tam actions and qui tam informations or prosecutions.

A qui tam information or complaint is accompanied with a oath and process or a proper criminal arrest. But a qui tam action is commenced with a writ of declaration by civil process and is indeed nothing but a civil action like that of arrest. 3 Bl. 161; 3 St. Tr. 908.

An action then brought by a person individually in his own right on a merit and not on a civil action being carried on by suit, that it does not follow that because the action is founded on a penal statute that the action itself is penal. The character of the action depends on the facts it arises out of its commencement. Thus an action is brought to recover the statute penalty against George, is holding an action of ejectment and a civil action. Comp. 382. 1 Mcle 126. 3 St. Tr. 126. 1 P. R. 176. 158. 7 T. R. 1257.

This distinction is not merely nominal for it is of great practical importance. The incidents of a qui tam action and of a qui tam prosecution or in other words of a civil action and of a criminal prosecution being very different. For instance in the case the defendant is entitled to 10 days notice, a criminal process is forthwith to be served in the form of process in abatement in the hands in proper persons, the matter in civil cases is answerable by the state of Arkansas.
in criminal cases it is not. In civil cases, the affirm-
ation of a breach is indispensable in bring, in criminal
it is not. In how, all criminal cases are appealable
from a single magistrate and only a particular class
of civil ones, from the county court, no criminal cases
are appealable, the many civil ones are, the jury are
judges of the law in criminal cases, in civil they are
not.

This term prosecution are founded on a feudal stat.
generally to recover a penalty or forfeiture of some kind,
due for inq. ten prosecution, within by action or informa-
tion as now understood, are considered and treated as
the creation of penal statutes, for a set time, ten years
aipply so called was a thing hardly known at C.L. they
is said to have been set but there are few or no
traces of them, they are to be considered then as the
creation of the statute. 2 Bli. 308. 2 Hawk. 377. 1 Roll.

A popular action is one given
to any person who will sue for a penalty incurred by
the violation of some penal statute. It is called popular
because it is given to the public at large. 3
Bli. 160. 2 Bli. 437. — In some cases the whole penalty
is given to him who wills prosecute the usually
it is that point. Com. Dig. Aet. St. Bli. 3 Bli. 161. 2 Hawk.
265.

A popular action is not necessarily a qui tena,
tion, the they are almost universally confused, for when
all the penalty is given to the person, that he may sue
in his own name solely, the it is said in some of the
chose that the suit may be brought quite as well, but I do not see the propriety of it in such. When the public has a right to it is undoubtedly proper from what is said in Bacon & Hawkins, it would seem that the qui tam form might be followed.

equi
tam action is not necessarily popular for thus our

cases in which the right of a qui tam action

clearly occurs to the party injured than the procedure

our qui tam win as the penalty is divided. On this

subject the books are very indistinct. Con. Dig.

2 Ro. H. C 2 3 Bl. 161. 1 Bac. 37. 2 Stansb. 37.

Having explained the nature of these two actions, it

is necessary to enquire in what cases an individual

may sue upon a penal statute in his own name.

And it is a general rule that if an individual is

really injured by an offence against the statute he

may have a private remedy on that. In other it does not

otherwise give him, yet it does implyly Con. Dig. At.

Stad. 21. 2 Bac. 653. 10 Co. 75. b and this although

the act is final.

This general rule is that when

the act is final. I have

enact or prohibit anything for the pro-

tection of individual rights, the individual injured

may have an action on the act for the injury,

by implication attah the act is final but remedy is

definitely given. This rule appears to be fully

accepted but I give them as I find them. 2 Stansb. 37.
When a statute inflicts a penalty on any one for the wrongful doing of another of his right without affording the party at all, he who is injured is not the king or public, is entitled to the penalty. Thus the statute prescribes a penalty for not setting out tithe. The penalty goes to the party injured who has a right to the tithe.

In an act upon the statute at 1 Ed., it is said, this literally implies an absurdity. I take it however to mean that the party has a remedy at law supra pellic to enforce the right afforded by the statute, and understood the rule is true. 3 Lev. 290. 1 Inst. 159. Com Dig. Act. 

In the latter rule, I have been considering how an individual can prosecute on a statute in any form. I shall now consider those cases in which one individual can himself prosecute quia tenet or sue in quia tenet Act. 

It is a general rule that if a statute gives a penalty or part of a penalty for an offence immediately injurious to the public, it is only to any person who shall sue or prosecute for the offence; any one may sue a quia tenet on the statute. What the reason is for making this act quia tenet when all the penalty goes to the prosecutor I do not see.

The rule is the same if a fine is given to the king or public. If a statute creates any of the person who holds out the fine as only a different mode of dividing the penalty. 1 B. & C. 37. 4 Co. 13. Dig. 95. Com Dig.
Now if the inquiry arises how these rules are reconcilable with the guilt, rule before laid down. That for an offence the public only can prosecute, it is to be observed that, that is a rule of the C. L. that this rule, introduced by statute, tends to derogation of it.

But if a penalty or part of a penalty or some benefit be not given to the person who shall prosecute, no individual can prosecute for an offence only injurious to the public, and it is of such offences you will observe that I am speaking. 1 B. & C. 1st. 2 H. & C. 265 or 377.

But on the other hand if a statute prohibits an offence injurious to individuals as well as to the public, and uniformly gives to him a penalty or part of the same or damages by way of a qui tam action. Thus one statute for preservation of the peace inflicts a fine when the offender and gives damages to the party injured, whereas in the instance in a qui tam action 1 B. & C. 267. 2 H. & C. 377. 2 Co. 13. c.

If a statute assigns a penalty to the party injured by the offence he may sue for it alone in his own name without giving into him the thing or public. There is no idea of punishing a qui tam some. Cor. Dig. 1st. 60. 1st. 7th.

In general when a fine or penalty of any sort is given to the public and a civil remedy to the party injured by the offender, the fine is inflicted of course upon conviction in a civil suit.
the the action was on the stat or an act of indecent
quit take. This is analogous to the old capitacion pro
fine. 4 Bl. 116. 515. 141. 193. 2 Bl. 126. 616. 617.
Curt. 390.

When my friend action is prescribed for the
recovery of statute penalties is most usual, as well as
most appropriate, as an action of debt. The theory of
the law is this, when a state provides that the transgressor
of its statute pay $100 to the individual who shall pros-
ecute, the commencement of the action is when it makes
the offender to act in consequence of the implied
engagement of the statute. cap. 53. 160. 161.

6 4

It has once been determined that
that in debt. He would like to recover this penalty but
it is 204. since no attempt of the kind has ever
been made. I think the decision opposed to the rule
of the United States; see 7. Curt. 92. 2 Dec. 252.

The penalty is given by statute, partly to the King, partly to the
prosecutor, the King or public may procure it from the
other. 3 Bl. 186. 515. 141. 193. 2 Bl. 126. 616. 617.

The reason is that the penalty given to the prosecutor is
to induce some individuals to procure it not by
reason of a claim he even have before action commenced.
On account of the public officer. Besides with
the King is prosecutor he may be said to take the
same in his own as King to prosecutor. It is not his
hate or from now in his. to give the public the whole
penalty when the state, with prosecutor it was itself,
in as much as this law remains as it was before
St Case. 207. 2. p. 164. 182.

A bona fide conviction or acquittal on a qui tam prosecution is a bar to any
other prosecution even public for the same offense or the offender might be twice tried and punished
for the same offense, so is a release from the party
appealed or a common informer after conviction of
the same crime holds as to convictions or acquittals
in public prosecution, they bar all subsequent
actions. 3 Bl. 261. 2. Cor. 1. 286. 2. 11 3d. 65. 6. 183.
2d. 2d. 2d. 2d. 2d. 3d. 2d. Conv. Dig. A. E. 126. 6. 2.

And

you presume, again, the conviction or acquittal of a
bona fide, this is a bar against shame prosecution
by the friends of the offender; this when the pros-
ecution is by the public there is no presumption
that it was not bona fide, then can be now.

The prudence of a qui tam prosecution may be
pleaded in abat of a subsequent public prosecution
for the same offense, for a man is not
to be prosecute twice for the same offense. It
is said that it may be pleaded in bar by Lord

does say, and I think correctly
that it must be pleaded in abatement. 2 2d. 2d.
173. 3d. 122. 2d. For 2d. 2d. see Cor. Dig. 261.
2d. 2d. 2d. 1 Roll. Rep. 29. 182.

a prima facie or some of money under a prudent.
has no rights attached in himself till such time as the
person, by commencing his suit, acquires an inherent
right to the penalty which is consequently by judgment
before us: but it is impossible, facing to which no in-
dividual has more right than another, after it the
person can be exclusive owner of the right of re-
covering. You will observe that I speak now of
penalties given by popular action: as to mis-
erial action, the rule is otherwise. 2 Hawk. 39.
2 New Bl. 310. 2 Bl. 137. 1 Lew. 141. 3 Burr. 1423.
2 Stew. 1169.

I meant that it is an essential part of this
rule that the penalty be given to any one who
will have done basis to the party aggrieved.
Since the King may totally deny a popular action by
a ransom or release before it is common known, but
after he can only release his part of the penalty.
So the state may, by a nulla poene quae pro
publico part of the penalty,

2 Hawk. 392. 275. 2 Bl. 137.
11 Cr. 656. Stull. 82.

It is said that Parliament can
release the whole penalty after act: but, it is in-
deed hard to say what can be fair. In case it do,
that I should think this beyond their power
for it is a thing directly ag. the first principle
of punishment. The only way an State in which
they can release the penalty is to refund the statute
2 Bl. 137.

The King cannot, even before action is

bar the suit of the party injured by the offense when the penalty or part of the penalty is given to him. For it is a main matter of justice that he has a right to the penalty even antecedent to the action commenced. It is a remedial act, and nothing but a refusal of the state will bar it. 2 Dowlak 345. Moore 58. May 107. 2 John 38. 311.

It seems that at Ed. the prosecutor on a petit vat in a popular action may release his part of the penalty after conviction, but if a petit convicted and where it would be of no avail even at Ed. as to the man in suit, to the offender for the prosecutor's right to the penalty is not consummated until conviction. 2 Dowlak 345. 2 Roll. R. 38.

By a stat. of 16 Hen. 7, it is enacted that no common assize, upon a popular action shall be a bar to a subsequent prosecution for the same offense. A no release pending the action is under this state of any sort. The regulation you will perceive is to prevent collusion between the offender and prosecutor to the detriment of public justice. 2 Dowlak 392 3 Bl. 162.

It might, however, be made a question how far the state was superior and when that is no such state or bond? It might be a question of some consequence to raise a question as to the nature of a fraction of fraud. The question also involves the nature and authority of records. 1 Barr. 395. 360. 7. Vin. Abg. 51. Steu's ed.
By statute. 15th Eliz. the prosecutor cannot compound the prosecution at all until in court or nisi prius without leave of Lin. In pain of pillory and other punishments, & it is matter of discretion with the court to grant or refuse leave. We have no such statute in 6th, & a question arises, open to the same just mention, might be here stated. 1 Bae. 43. 2 Hawsk 397. 1 Bk. 18. 5 T. R. 48. Stro. 167. 1 Wils. 74. Com. dig. 201 st. 81.

And where leave to compound is thus given the part of the penalty belonging to the King or public must be paid into court. This is always the condition. 4 Eliz. 1929.

But it seems that leave to compound is necessary to effect an end of the penalty. 2 T. R. 1929. Com. dig. 201 st. 81. Stro. 167. Barnes note 467.

And none of the fines receive would not at Ed. when made by the prosecutor. bar the King's right to part of the penalty, so if the prosecutor was paid. But a bona fide fine, even without leave of court would bar an action for the same offence made by any other individual. 2 Hawsk 275. 392. 11 Co. 65. 6.

If the publics in an action suit, release, withdraws or suffers a non suit, the public prosecutor may at his election proceed on the same complaint or commence a new prosecution. 2 Hawsk 392. 3. 11 Co. 65. 6. 693 Co. 28. 60. 3 Bk. 162.

But when the action is given to the party in suit the suit or release founding the
the suit or suffers no suit. The King cannot prove in the present suit for the Debt, for he cannot go to him, neither can he prove suit for the Debt. Representatives. 2 Smith 392, 3 all come 58; Roy 100.

Now in all cases, one convicted on a public prosecution, only on the suit is inflicted upon the whole for an offense, not on upon each.

But in several, as in convicted of an offense, against C.L., or a public statute, in a public prosecution the penalty is inflicted on each. I mean the words are present that present sense is inflicted on each. The reason is, as it is said, that the qui tam actions, the same as far suit and a recovery is a satisfaction, but in case of a public prosecution the penalty is by way of punishment. Now I take this theory in accounting for the distinction between a qui tam action and a public prosecution to be in general: for the penalty is not intended as a satisfaction since the action may be lost by one who is not injured at all by the offense. Nov. 60, Cr. Eliz. 28, 6th 182, 3d 12, 189. Co. Pl. 610. 25 B. 1826 2 C. 22.

The truth is this distinction is founded in the different forms of the prosecution, an action for the penalty sounds in debt. If then it is brought then they are charged as debtor to the amount of the penalty, and as the form is that of claiming a debt, the suit can be but one penalty recovered. When an upon information or indictment, the proceeding is in
Your and substances criminal one. founded upon
the offence only & expressly, it does not bring into
view anything in the nature of an implied con-
tact, it is the prosecution of a crime & criminal
acts such, not instituted for the recovery of an implied
duty arising out of it. If this is the true reason the
rule is entirely correct. Delhi, you will observe, one
point & criminal seizure, 2 East 569, 573, 4 Iml. 809 (N. Y. 245).

On the other hand, I would observe that several acts may constitute but one offence
the three cases in which one and the same act con-
stitutes several offences. From that there is but one of-
ference the penalty must be single. unless the prosecu-
tion is public. Thus in a prosecution before the Kings
Bench for a breach of the Sabbath laws, it was con-
tended that the several acts which were had done in
the course of the days were mere several offences but
the to send not, and inflicted but one penalty. In
Bartley the continued acts constitute but one offence. Coop.
640.

Indeed there is an essential difference between the acts,
complained of and the offence imputed to them, the phys-
ical act requiring no definition, it is the law transac-
tion, the offence is the character which the law at-
taches to it. Since it is said that one act constitutes
several offences, and several acts but one offence.

In Corp. the rift in a popular action is entitled to no
costs unless they are expressly given him by that.
But when the penalty is given to the party injured
he is entitled to costs upon conviction for what he recovers is in the nature of a satisfaction for the injury done him & he is as much entitled to costs in this case as in any civil action. But he who runs in a popular action is not supposed to have suffered any injury, and does not recover by way of satisfaction. 

1 Bale 2 2. 511. 519. 2 Vict. 781. 3 Alb. 20b. 1 Nis. 10b. 10. Stullcock's Law of Cost. 19 200. 201. 2 Hawk. 274.

In both the prosecutor always recovers costs when he recovers judgment and always pays them when judgment goes against him as in other civil cases.
Of Martin I, servant. — A servant is any one who is
subject to the personal authority of another, a master
is one who exercises that authority. To constitute the rela-
tion thus the authority exercised must be personal, as the
subjection to the civil authority is not servitude; wherein
subjection to a magistrate or civil officer, may more than
concur to the laws.

This authority of master over his
servant is generally found in compact; but not al-
ways. It may not always, with reference to a cer-
tain species of servitude, be found in the jurisdic-
tion of whose legislation is not compact but force by
the slavery in some parts of the U.S. and formerly in
C. In 1776 were the slaves of the creditor, if they
could lay in no other manner. At this number
all servitude is found in compact.

Three are Five

Species of servitude known in Court, and most of them
are: 1. Slaves, 2. Apprentices, 3. Marital debt,
4. Servant labourers, 5. That class of qualified men
who come under the general denomination of Agents, such
as Factor, Broker, Clerk, Vinegar master, Attorneys, Phy-
masters, Stewards, Bailiffs, and indeed whomever sustains
the quality of an Agent. 1 Bl. 423, 427; 1 Wash. 264, 269, A
in the first class they are strictly contained in C.
1 Bl. 423, 1 128, 2 268, Hall 666. A leading case in this
subject is in Cott. 4, only case I am aware of which
that book.
It has been decided by distinguished lawyers whether slavery has ever been legalized in law, the Judge's power could find room to doubt. This has been the case in England when the servant set the master at defiance, the struggle known as resistance by a companion. Slavery in order to be lawful must be grounded either in Natural law or Common law or Local regulations.

It is no longer a question whether slavery can be justified by natural law. The subject is very well discussed by Blackstone, but the case of Dizain on that subject is one of the most interesting.

In the second place it is perfectly plain that slavery was known by Ch. L. in the local laws of any foreign country, can never be enforced in England. Indeed it is a maxim of the English laws that a slave after becoming free by some means passed free, and is protected in the enjoyment of personal liberty and other privileges of freedom. loft. 1, sect. 21, 666. 1 Inst. 79 b not.

The case in S. F. is where a West Indian Quillaman took his slave on board ship in the harbor. A suit of habeas corpus but the slave before the S. F. when after sale was sold, and at the sale was set free.

This were indeed willing in Eng. that they can not absolutly states the London showing that authority over them as is now received in many countries. The vellines are the abhorrable of the bond, and parted with it. This slavery艰巨 in the term by which the velline had their land.
And when that schema of tenure was abolished by the 12th Ch. it is the slavery incident to it was annihilated of course with it. Indeed the character of villanous was barely known in Eng. in the age of Elizabeth, but it is said that at the measurement of 91st of Ch. there were but two villany in Eng. 23rd. 9d. 56. Left. 8. Cuthkin 16. 189. 194. 204. So also an excellent set of villany is in 3d. Thomas Eng. 307.

The only remaining question is whether slavery has been legalized by our own local regulations, and if this there is none to be no question. We have no statute directly establishing the relation of master slave, but it has always been known & practiced amongs. so that we have not only the long acquiescence of the legislature, but we have that sanctit. upon the existence of slavery, inflicting appro. private property upon slaves. obliging masters to maintain them; and what is most ominous we have an act that prescribes the manner of an master to maintain them so as to relieve the mas. from future liability as to their support. Now we have not half as much law to show that a master owes his own slave. 11. Cor. 625.6 Some of these are said it is true but that does not hurt the argument.

Our law, as has substantially recognized the existence of slavery. Th we have few or no reports except of this kind they are however within the memory of any middle aged man. 2. S. St. 364. 517.
It has indeed been decided that the master cannot
maintain troops for his slaves, for it is impossible
for the master to have that absolute authority which
is necessary to support that action. This, however,
proves nothing, and an act would be for entraining
away a slave as it would for entraining away an appren-
tice. It has been decided too, that they may hire
as also taken in execution talk 366. 2 May. 1794.

But strict slavery has now existe, eon practically
in form for the master owns has power over the life
of his slave. A slave might be disposed to try
for it by his own friends. He could even win his mas-
ter.

It has been determined by our chief, that the mar-
riage of a slave by his master, construed as an emar-
cipation, on the ground that the relations the slave
has contracted with the consent of his master are
not compatible with a state of slavery. M. finds
nothing in the King's books, precisely to this point
but there is something analogous in the emancipa-
tion of minors. 3 P.R. 356. 3 L. 511. 3 Bac. 527.

As to the marriage we find an analogy in the case
of minors, i.e., female villains. A villain it is said
is emancipated by marriage, a female villain. The
master's consent is not in the rule. If it had been, it would
probably have appeared. See 517. 2 B&I. 934.

But on
the other hand a villain is at e.d. emancipated durin-
countern if the master, a freeman, is master of the manumission. 1 Inst. 123, s. 3. 196. 1376, Perkins, sect. 514. How far this analogy will have operation when the question arising on the marriage of a slave will not misconduct us to say.

But it has been a question whether the illegitimate child of a slave is a slave. By the civil law it would undoubtedly be the case if the mother were a slave for the master of that law is praetor se quinque ventum. According, however, to the Feudal or Burg law, the child follows the condition of the father, as thus a bastard is born considered as father it follows that under the Feudal law a bastard could not be a villain by birth. In short, I suppose throughout the United States the civil law must in prevails 2 B. & F. 2d 187. 8.

Slavery is now nearly abolished for boys born between 1724-47 are free at 15. Those born since in 1777 at 21. At. Com. 625, 626.

The importation of slaves from foreign countries is now I believe prohibited by the state law of every state in the Union. The transportation from one state to another has not been prohibited until lately.

After dwindle be judicially condemned to slavery for the commission of crimes. A confinement to hard labour in Newgate. This however is a qualified civil slavery. the master is the organ of the law of the slave
Servants of the second class are called Apprentices. From the French word apprentir, to learn, because they are most usually born to learn some art or mystery of their master who is professed of the mechanical art. So they might be bound as manual servants or as apprentices to his lordship. 1 Bl. 426.

By the Eng. Stat. 5 Eliz any apprentice must be bound by deed and indenture to create the legal relation of master and servant. A penal contract under this statute is not binding. See 6 Eliz. 6 Mod. 132. 2 Bany. 1117. 4 B. & C. 558.

A defective instrument or contract of apprenticeship cannot be construed into a hiring by the year, not being void of itself. 8 & 9. Rp. 379.

It has been said that the relation cannot be created by statute unless the word apprentice is used, but it is not clear and if the intention is known it is sufficient. 4 B. & C. 557. 1 Burn. 17, 57. 8 & 9. Rp. 379. 1 Cen. 533. 4. All other contracts may be sustained by penal contracts. 4 B. & C. 546. 557.

Thus, one enters Eng. statute authorizing the overseers of the poor to bind out the children of paupers. Then it is not a statute for and one of no effect, except by analogy to statutes of that kind enacted by our legislature. 1 Bl. 426.
We have certain similar statutes, authorizing the select men with the justice to bind out the child of farming, males till 21, females till 18, 4th. Conv. 125. 2. 532.

All servants must be apprenticed one regularly in little or wages of course, unless there is an agreement to the contrary. In bond alleged they are settled by contract. This is the law in Eng. as in munia. It is the usage of those employed in husbandry is settled by the chief. We have nothing of that with us. 1 Bl. 242. 28.

Apprentices, one regular, and prime force entitled to no wages. They may be entitled to them by contract, the law human implies no contract of the kind. 8 T. Rep. 379.

By Stat. 5 Eliz. ch. 2. it is enacted that minors may bind themselves by indenture of apprenticeship. But with such strictness, caution has the court construed this statute with reference to the privileges of infancy, that it has no other effect, than when the relation exists, do facts to give to the parties respecting their relation rights they enjoy, but the minor is not at all bound by his contract and he may determine the relation when he pleases. If however he serves his time, he becomes free of his trade with every right to advantage of a regularly indenture, 4th. Cro Eliz. 179. 448. Cro. 4th. 179. 2 Bl. 21. 26. Doug. 301. 518. 5 T. Rep. 716.

We have no such statute as this but if the father or guardian joins with the infant in the indenture, he is bound by it.
and it is laid down generally that the father or guardian in such case is bound for the non-performance of what is stipulated to be performed by the app. 8 Med. 190. Doug. 501. 578.

In all cases it was determined that the father be is not thus bound when the instrument is in common form, to answer for the non-performance of the commands instructs into by the app. If however he be as himself by a receiving, clear or warrant specifically guaranteeing the performance he is bound.

2 Mcp. 5 Rep. 228.

This I am fop opposed a very questionable point. for I do not see the sense of them command with
the parent is bound by them — the minor is evidently not bound by them if then the parent is not the instrument is perfectly nugatory. I cannot in that case observe that the signature be of the guardian otherwise his consent only that the boy might bind himself.

The master for sixty six rights by abuse of the app. since it is laid down that misuse is good cause of departure. This rule is necessarily in definite and I do not know but it is as definite as it can well be. and each case must be determined by its own particular circumstances; such app. ought not to be bound to suffer gross misuses abuse without might be to be allowed to leave for a trivial cause. the issue
for the misuse of judge by the court 5 judge 18th 578
1 Bl. 42 b.

It is laid down in the book 7th of another
can be discharged no other way than by act. Law 1117. 3 Bac. 326. Salt. 68. 6 Mod. 187. which I construe as meaning that the contract is to be discharged in the same manner as was enacted to beguin
for litigation. It states that an agreement not expressly
will not amount to a discharge unless it is entered
by deed and if a past liceus was given to defeat
the morta might not be court before departure.
but if the applicant before taking he will
not be liable nor his grondian in the continu-
of the indenture, so that it that an app. might
be binding the by period. 8 T. Rep. 109. 18. Bur. 5th
inits. ear 542. 1 Day 133. 3 it. 126. 1 East. 619. 630
1 T. Rep. 638. 2 Brev. 131. 574.

Again con cillin the
indenture or culmining it up for that purpose
discharges the app. are act way in bet upon an
instrument when lost or destroyed accidentally but
when will survive even if it is inequa-
lly gone. 582. 2 Brev. 305. Brev. Et. 8a. 511. 974

It has been said that the intelli of the morta if
no fact discharge the app. it is not so the court
however which has authority in such a case
will give a discharge the app. in such case on
application. 532. 1 clth. 149. 48 Bac. 550.

The court which the power of discharging app. is
the 6th of Common Pleas. it is given there by our
stat. that 6th can discharge an app. for default of
the master & punish at discretion the bad conduct
of the app. 2 Co. 488. 294. The power of our
lot. of C. P is very like that of the 6th of defin
in Eng. 4 Att. 1 B. B. 56. 1 B. B. 426.

If an app. marries with
out master leave the master cannot for this term him
away but he may have his remedy on the covenant of
the indenture. The app. usuallly covenant not to marry
without leave. But I presume the rule would be
just the same if he did not. 2 Vent. 192. 4 B. B. 478.

A contract of apprenciship is what is called in
Law a fiduciary contract. that is one formed on
the lessees confidence of the principal owner in the
master for this reason the master account against
the app. under such fiduciary contracts generally a
not assignable. nor the right growing out of
them. By the customs of London an app. may be
assigned that I trust we have no such customs or
No. 194. 4 Selk. 12. Mod. 553. Doug. 1 Tal. 256. 3 Tal. 579.

An award of arbitrators that one
app. shall be assigned is void unless by consent of the
master or custom of London. Sir 1267.

But that as the
the apprenschip does not help the right of interest of
the master in the app. still it is a good contract between
the master and his apprensc. So if the app. cannot
serve the apprensc. the master is liable on the contract
The app. cannot be compelled to serve until he serves the

acquiring the same rights as he would have done by serving his
master or becoming part of his trade. The above
principle cannot maintain no action on the original inci-
dent: 1st day 693. 28th 68. 1 st 69 26. 30th 69.

When the same principle that the master cannot
assign, he is bound to keep him under his own
charge and not to transfer his authority or govern-
tory to another, nor even send him abroad even to
improve him in the art or trade unless the contract
so apppores it, or the nature of the business require
it, 1st day 134. 8 mod. 236. 12 Mod 141 4 Deb 577.

Upon the
same principle again, the representation of the
master cannot hold the app. for the contract
was fiduciary founded on personal trust or con-
fidence, the rights of which are not transmissible
1st day 693. 28th 69. 2 st 35. 28th 68.

Now as
the representation on the death of the master bound
to keep the app. according to the master's unders-
standing. It was once determined that the app. was the
bound. 1 Dec. 177. 28th 69. 2 st 216. but that decision was
contrary to the principles of fiduciary contract
and subsequently declared to be unsound.
2 st 2847
Wat. 2 Partnership 29. 28th 69.

Whether the master app.
be bound to furnish board, clothing, and
after master's death during the time for which he
was to serve is a question of facts, according to the
certain of authorities, he is liable. Now this corroboration may or may not strictly precede, but if app. gets them it is no matter how they are given as an equivalent for services if then app. can leave his master safe and happy, and be entitled to receive his support, he gets it plainly without giving anything for it. 3 1 Th. 41, 1 Tim. 161, 820. 1 13 216. 20 617. 553. So in Cap. 1. Day 30, in that case somewhere the master bound his master, 1 1 Bat. 579.

In Eng. the 67 of 67 has noted the premium to be restored where the master and servient indenture made the address equitable. But it would not if the 81 of the master were also bound to support the app. That court too ordered a large premium to be returned when the party had calculated for such contingency. I agreed on a much smaller sum. The app. was in a very remote state of power and matter more for life than making a new contract for the party. 1 1 Vinn 1860. French. 3 1 14.

Also if a master who has received a premium turns away an app. He may be compelled in Equity to restore a part of it, even tho' the app. was turned away for a good cause. I should suppose that the whole should be restored if the cause was an in proper one. 9 11 Vinn 61.

So also when the master who has made a premium become bankrupt, then the relation restored is out of the premium was
stood in Equity. 1 & the 1449 & B. c. 5667.

...and in England, when the parties at the superior discharge an app. they order a restitution of the premium as a part of it. This seems a great law for they have no equitable authority, general acquiescence however does make it law. Our courts do not interfere with the premium. 1 Bl. 326. 10th. 1 90. 1 Bank 314. 11 Med. 110.

Whatever an app. earns by his labour during the term of the apprenticeship belongs absolutely to the master, and even although the apprenticeship is merely as fact. 1 582. 1 Inst. 117. 12 Mod. 215. 1 63. 63. 6 Mod. 69. Salt. 69.

It follows then that property of any kind earned or acquired by an apprentice may be taken possession of by the master whenever he can find it as by any coram by proper course of law, and his wages are withheld. It even...

...and this not holds or will when the service was performed without or when with. whether it was in the immediate line of the master's business or not. As if a man making apprentices should work a few days for a trust or an honest man in harvest. 1 83. 582. 1 Inst. 117. 12 Mod. 415. There are.

This night however confines to such property as the servant acquires by labour and does not include that which he obtains by dower, purchase or gift, as a finding. The servant maintained an act of trover for a diamond ring he had found. The rule however as to the price...
of services applies to no other class of servants except slaves, for if any other sort of servant was guilty of insubordination, the master has no right to it, but a servant was not an article of real estate or property, or anything of that nature. If however such person left his master's service improperly, the master can sue him in his contract or the employ of a man of the sort, and the employee if he knows of

3 Howard, 587, 589. 1st 653. 2d 653.

If an employer or other person is

held from the service of his master an act in a court against the sort of service with a person's will. 9th 86. 3 Howard 567.

And it has been determined that a

journeyman is within the rule without the labour

by the way of price. 9th 56. 1st 380 2d 659. vol. 3 Vin.

30.

A law with regard to the form of the action states

the principle to be this, that of the sort is taken

away by force, that a service with a person's will is

bought up by initiating the action ought to be

borne. This is a case of bankruptcy for initiating in Comp. 53,

but I apprehend that it has been a mistake for

I cannot conceive on what principle this act

will lie. 9th Rep. 1032. 1117. 380.

2d 167. 1st 131d 131d. 123.

By the 4th of Eng. laws, which has been

copied by most of the states, one who may gain a

settlement this a minor in the person, is in the view

his master or another length of time. A minor

a mere cannot gain a settlement. This however,

minor states regulation. 1 185.
The rule of our law is directly the reverse for that.

We have a recent statute providing that all

Servants of the third class are nominal servants,
in short service or domestic service. I know of no

Christian note.

As to any laborer I know of no rule

of law exclusively applicable to them, except such as

Service of the third class are nominal servants,
in short service or domestic service. I know of no

rule of law exclusively applicable to them, except such as
binding him. They provide that all persons having no
visible effects may be compelled to labour at the
inspector's wages, and any one giving or receiving
money is subject to prosecution. 1 Bl. 286.

The last class

of servants is that part consisting of what are called
agents, including factors, brokers, &c.

Being agents in

a qualified sense the servant of his employer or principal
he is a servant indeed in relation to such acts as he
only as effects the property of his employer. 1 Mod. 69,
1 Bl. 287. cit. 252. 297.

In this case the principal is

by no means the same guilt exerted as the master has
been a common unit, but the agent is bound by law
to act according to his contract.

The first great rule that

can be laid down with regard to the rights & duties of agents
is that every agent, a factor, or broker, ought strictly to keep
his commission for his own security as well as for
the advantage of his master. For if he does not he is not
liable to his principal for casual losses if he does
not, he is 1 Mod. 69. Comm. Dig. Much. B.

A factor

or broker or even a good agent may retain the goods of
the principal in his own hands to satisfy a general
balance of account in his own favour. That is he has
a lien upon the goods. But by voluntarily surrendering
the protection to his master he loses his lien.

for lien in personal property is founded in protection
and in this case the law with the right upon which it was founded c. Juv. 2, 50. 1 Bux. 693. 2 Bl. Rep. 1194. 1 East 2. 335. 2 ib. 227. 523.

And a commercial agent

has the same lien upon the price of the goods sold in the hands of the vendor. Thus if the goods were sold upon and it, he can resign of the vendor to make the payment to him 1 if after this notice the vendor pays the principal, he may may be compelled to pay it over again. Comp. 251. 256.

But a commercial agent has no lien up on the goods of his principal unless they come into his possession for the principal may continue the assignment or stop the goods in transitum. 2 Vin 119. 1 Sel. 132. 5 T. R. Rep. 119.

The amount of the rule is this that the goods do not become a pledge until actually possessed for possession is necessary to the existence of a pledge. Com. Dig. Macht. — This rule you will observe are founded in the law mercatoria.

If a factor gives more or less than he then than his commission warrants the merchant is not bound, if he sells for less he must bear the loss. 1 Vig. 510. Com. Dig. Macht. 10.

If a factor has no right to have the goods of his principal for his own debt, if he does the principal may reclaim them from the customer. It was said that the principal must tender to the factor the debt due him but if it has been decided other wise it that the having of the goods by the factor was
may sell the goods of his principal; and that is his employment, for mankind trading consists in buying, selling, and the purchaser will hold the goods. The factors may sell in their own names and sue in their own name to recover the price. Now as a general rule the factors cannot sue in their own name and the reason of this distinction is said to be that the factors have a beneficial interest in the goods. I take it to be that as they sell, the principal makes bills of sale in their own names they can sue in their own names. Cowp. 256. 1 Kuse Bk. 82. 362. B. & R. 87. 130 1 T. R. 112. 2 Esp. R. 249. 7 T. R. 359. 1 Chit. 17. 5. 5.

The same rule holds as to brokers, bailors, shippers, etc. and all commercial agents in general. 1 Chit. 17. 5. Parks, Insurance 203. 1 Kuse Bk. 81. 2 Id. 591. 2.

In all this

involving cases knowing the act may be brought by the principal, but they can be brought in recovery, only, as in the case above the factor gives notice to the vendor that he pays the principal. 1 Kuse Bk. 81. 1 T. R. 359. 360 note a. 1 Chit. 17. 5.

An auctioneer is not liable for selling goods to the highest bidder the for a person than that directed by the owner. for the act of setting up goods is a contract to sell them to the highest bidder, the direction is void to other persons un-
If he makes it known to the buyer, if the decision is to set them up at a given price the auction is bound to do it. Comp. 395. If he must make it known the two modes of selling at auction bidding up asking do it on the day. And bidding down on the day of final. Also the latter has a lien upon the papers it judic. belonging to his client for his fees if may claim against it himself and if pay is made to the client it must be made again to the client. This rule does not hold on to common sellers as such. But the right of the seller is subject to the equitable claims of the adverse buyer who can make a set off. Doug. 100. 233. 2 Gt. Rep. 8 26 27. Rep. 1 23. 6 ib. 361. 456. 8 ib. 70. 571. 1 East. 462. 1 ib. 221. 122. 217. 657. 2 ib. 210. 587.

Infants' times, courts

be the incapable to bind themselves may be agents as

Attorney 13 Ill. 28. C. 22. An agent in carrying out the instruments for his client must sign as officials or to further rules on this subject see title of subject of the following authorities. 9 6 7 8 6. St. 705. 1 2. Roy. 1418 6. 5 177. 1 181. 1 131. 261. 24. 27. 56. 75. 2 East 142.

An agent cannot bind his principal by deed without an authority for that document given by deed

7 5. 207. 209. 4 ib. 313. 2 8. Conn. 27 1 27. C. 1. 5.

An agent for the public is contracting as such for the public is not personally liable on his contract the party must make his appeal to the justice of the government it is not to be presumed that he will
In disappointment, 1 T. Rep. 172. 67 D. 1 Car. 382. 1 Root. 416.

Then on the leading rules relative to the security of

servants, exclusively. We are now to examine

The rule relative to servants generally — and in
what cases the master bound by the acts of his
servant — in what cases he may avoid himself
of them —

It is a general principle that those acts which
are done by the servant, or in his name, in the
name of the master and in his name, act or in the performance of the business, in which
he is employed, are deemed to have been done by the
command of the master. 1 Bl. 429. 44 2. 49. 109.

It is a principle, for all purposes, whether the acts
are done by the servant, or in his name, the acts of the master and in the
business, or it is in the act of the master, and done by the
acts of the master. Since a
contract made by a servant is a contract made by the master himself,

of a third person

is made and held prune to one as a servant, the mas-
ter may take advantage of it, being an act done
by. 3 83. 55. 9. 2 1. 441. God. 3 60.

If a servant

is held to be of his master's property, the master may
accommodate himself by acting, or to the wrong done to
If he had but advantaged himself, Cro 3 229. Roll 98. 3 Bae. 559.

If a master is robbed of the goods of his servant in his master's absence, either the master or servant may have an action. The question is, what of him? 613. 3 Mod. 289. 2 Mod. 303. 11 St. 821. 12 St. 54. The reason usually assigned is, that the master is answerable even to his master. I do not take this to be the true reason, although it is laid down by respectable authority. For the master is not prima facie liable to his master, but the true reason is, that the goods of the master, while in the servant's hands, are considered the goods of the servant in relation to every body else. The master is chargeable as bailee. 1 Roll 105. Cro 3 265.

In cases of this kind, recovery by either seems the other's act, and the common act of the two by one is plaiible in state to an act by the other, for the second shall not defeat the indebted right acquired by the other. 17 St. 147.

When a servant in such case can sustain a possession as of his own goods, the master may recover, above given, the same form of the action shows it correct. 3 Mod. 289. 2 Sand 379. 613. 3 Bae. 69.

But if the property of the master is taken from the servant in the presence of the master, it is deemed to be taking from the possession of the master. 1 Daws 148. 14 St. 145. 613.

If the master, money is gained from the servant,...
when any illegal contract the master may procure to
back, but if being entered into he sign under
it, it even may be revealed back if that is no
found on the other side and it would be greatest
injuries if it could be for the master imposes the
sand to cheat the seller who partly considers himself
the best letter to money, the only remedy of the mas-
ter is ag to the servt. 3 Bae. 559. Then an
ascendency of rule relating to declarations servt. to
which I would refer you to the letter. Inst. Jur. 1 Bl.
430. 1 Roll 2. 8 to 32.

If the servt. does an unlawful
act by command of the master both one lia-
ble, for the servt. is under no obligation to obey
unlawful command, and the master is liable for
procuring an unlawful act to be done. Mil. 328
1 B Bl. 430. Esp. Dig. 580. 588. 3 Bae 563.

But it is
said that if a servt. in obedience to his master's
command is instrumental in doing a wrong of
which he himself is ignorant, he is not liable
being a mere machine, this however is not of your
application. bare. a master was guilty of false imprison-
mint in locking. Riff. v. 516. by your the king his
servant with orders to give it up to no one but him
self. the servant is barring, whoever in the
chamber was declared not to be liable, that
this rule cannot apply only to acts in themselves
heinous, and certain cannot hold as a mere gi-
acle, for if the fact is in itself unlawful or un
stated, a feasible injury the servant is liable for all the consequences. As to the first part where the act is unlawful it is an universal maxim that the actor is answerable for all the consequences. In the second where the injury is feasible att o the act, one cannot know that he is doing wrong or is liable. For in civil cases the law does not regard intention, and the actor is liable for every injury, however involuntary or unintentional. 2 Bl. Esp. 872.

Suppose it directed his servant to cut a tunch tree on his land, supposing it to be on his own land. He said: is doubtfully liable. The act was not known of him. In all that he suffers provided he cut unknowingly.

On the other hand these acts not done by the command of the master refused or implied are not in law deemed to be the acts of the master. So, as he is not liable for them, neither can he avail himself of them. Suppose the servant commits any asphyctical wrong not in the discharge of the business which he was put on specially ordered to do as if being at work by direction in a field he leaves it to commit a battery or make a contract. The master is not liable. 3 Day 382. 1 Bl. 431. 8 T. Esp. 335. Chin. 228. 8 B. & C. 562.

On this principle it was once decided that a servant employed in his master's business is liable for the wilful injury he commits if not done in furtherance of that business or the intention of the master.
master in his previous orders to affect the injury, for it not being in furtherance of the master's business, it was not done by his implied command.


I would now observe that where I first used this decision I thought it a decision of principle, for if one was liable for the negligence he certainly would be for willful injury, or misconduct of his servant, and indeed the decision was novel to this whole profession. An act was but for the willful injury done by the servant, declaring in Case 6 it would not sustain the act, saying that such was the proper remedy, an act of superseding afterwards, but I said no action would lie. In the former decision, the action was if the court consented, it for grants that some action would lie, the only question was, what it should be, Suppose or common. But I think you said no action would lie. Where the servant, done it negligently, the master would lie, because it was the carriage acting as the instrument of his passion or as a whole, stoned the, and he only ought to be liable.

I observed that if a servant while about his master unlawful business, willfully does an injury, then the master is not liable. But if the injury accrues from the negligence or want of skill of the servant, the master is liable, for he is bound to select out skilful and careful servants for he is liable for their acts.
test or in such a case in this duty, but he is not an insurer against the effects of his merely neglect in the one case the act is attributable to the master, but in the other it is solely the act of the servant and he alone is answerable. Thus if the master carelessly drives his master carriage so as to damage some on the servant alone is answerable to the master for the same. But on the other hand if damage arises from the negligence or misconduct of his driving the master is liable to the master for the same. 6 F. R. 125. 2 Me. Bl. 242. 1 Eust. 166. 1 Bl. 431. Hence when a cart was carelessly driven against another cart & bilged a horse of same, and in another case when a boy was injured the master was held liable. 2 Bibb. 441. 4th Rev. 709. 1 N. Y. 560. 465.

So where the ass of a surgeon injures a person while drafting his wound with the lancet or lancet as ignorance, the master was liable. 2000 where the ass of a blacksmith is killed a horse by throwing him. 2 Bibb. 693. 1 B. & C. 431. 5 B. C. E. 560.

As to the master's liability for injuries committed by the servant, this distinction between those committed willfully and those by mere negligence has been but lately established. It was taken for granted formerly by the court & counsel that the master was liable for both kinds of injury, but the history of this distinction is so little remarkable. The great question was what was the proper action to recover of the master for the injury.
trusts or cases, justice appears to have been done but the decision was singular. In 1794 an act was laid on the case for wilful injury in the use who show his master, carriage to or to do damage. It seems to have been agreed that the master was liable but the court determined that the driver was the proper action. 6 T. R. 178. About a year after an act was laid in Tregelles for negligence in the suit in driving the carriage, the court held the case the proper action. But in

Pep. D. Am. 18. 12 12. And in another case about 3 years later the court held that no action at all would lie against the master for the wilful injury committed by the servant. 1 E. B. 186.

A 1 B. K. 954 22.

When an action is laid for the injury occasioned by the negligence of the servant in driving I confess myself of the opinion that case is the proper action as decided in 2 H. Bl. 442. notwithstanding the opinion in 6 T. R. for in this last case the court do not seem to have adverted at all to circumstances of the distinction between wilful and negligent injuries on the part of the servant. The form of action was determined indeed entirely independent of it. The case of Schiff & Deputy Schiff may afford an analogy against mine, as decided 2 H. Bl. Rep. 383. 2 H. Bl. 382. But I should hold the action ought in both cases to lie in the same. Tregelles was then said to be the action to be laid, e.g. the Schiff for the acts of his bondiffs & deftiffs. I take it however that he is liable in the
character of master civilly. It is said that all and his officers constitute but one person in law. this, how- ever, is a mere legal fiction equally applicable to the case of master & servant.

But the ground of my opinion is this, that when the master is liable for any act of the servant, it is on the ground of his own negligence in selecting a bad servant and putting him in a situation to do mischief. If this is the ground of the master's liability (as it surely is) an action on the case & that only suits him. The servant is liable in trespass. 1 Vols. 432 n.

If a servant employs an innocent in performance of his master's business, the master is liable for the neglect of this innocent as in the servant himself, but the innocent, yet is not liable at all, for he is not personally engaged. master is master but has acting throughout as a servant, not a master. 1 B & O. 464. C T. Ref. 411

The act that the master is not liable for the wrongful acts of his servant is not universal; for there are cases in which the master is made liable in consequence of the wrongful act, at the instance of the injured person, for a tort of this kind or a tort. The rule appears to be this, that when the wrongful wrong amounts to a violation of the contract express or implied between the parties injured & the master, the master is liable. Thus, if in giving a horse the apprentice of a blacksmith wilfully disorders him, it is a breach of an implied engagement & the master is liable. For every one who
undertakes to do an act upon or about the property of another engages that it shall be done with skill & care; 3 Bl. 165. 6. D R. v. 910. 1 Black Bl. 158. Jones v. Baiden. 73. 4.

But even in this case, the masters liability is founded on the breach of the engagement and not on the tort as such. He truly becomes liable in consequence of the tort. This is not true in truth an application to the rule.

As to the liability of the ship for the acts of his officers I would refer you to the title of Stills.

It has been two or three times decided that the Post master is not liable for the defaults of his subordinate officers, ex 2d R. v. 64. 2d R. v. 64. 4 Co. 1st. 40. 6 Co. 1st. 40. but to individuals for employing unskilful capacity. If they not a mail he is not liable, for he is not a common carrier. He receiving no money or payment from individuals, who lodge letters in his office. His pay is from the government and its being a certain for custom on the amount received does not affect the question. He is under no engagement to individuals. 2d R. v. 64. 4 Co. 1st. 40. 6 Co. 1st. 40.

A post master is liable for his own actual defaults or neglect or the defaults and every member of society is. 3 M. 64. 243. Comp. 765. 2 Bl. R. v. 966.

And if he acts more than the law
allows, in substance, as will doubtless lie for the
intention. Comp. 182.

We have been examining the rules
pertaining to torts committed by the laws. With
regard to contracts, the rule is, that the master
is liable for such contracts as are made by his
servant, whenever the latter acts within the
scope of the authority delegated to him by his
master. The authority may be general or
special, express or implied. 2 Vaux 523. 6 Co. 3. Comt. 230
2 & Reg. 224. 3 Salt. 234. 3 T. R. 787. 6 ib. 331.
1 Bl. 237.

A general authority to contract is not
confined to any individual or specific contract
but extends to all contracts generally or to all of
a certain kind. Thus, if a man usually employs
a servant to purchase necessaries for his family, the
authority is general as to all contracts of this kind.
A specific authority is confined to one or more indi-
vidual, specific transactions, as to purchase a house.
It is of such kind as is not usually delegated to the
servant.

A general authority may be implied and often is
from the usual and frequent practice of the master in
employing the servant in business of that kind or
to buy necessaries. 1 Bl. 430. And a specific auth-
ority may be implied in such cases, one case, as if
a servant should make a contract in the presence
or hearing of his master, this would be seen
of implied specific authority to the master bound by it.
The consequence of a general authority is this: If the master has been accustomed to send the servant with money in any other way the master is not liable for what he takes upon errand. But when he has usually and frequently sent the servant to trade on errand, he is held for the future contracts on errand, which the servant makes in the first case if he had given no implied authority to the servant to purchase on errand. In the latter he has to the seller and to the public also, if facts ratified his contracts generally. 3 Coke 234. 1 Shew. 95. 1 Bl. 430.

And if the master has ever once paid debts contracted by the servant with being an authority, and did not express any such proposition, he will be liable for the debts the servant afterwards contracted, with that trademmon until he give notice or apply orders to him not to trust the servant, for by not disapproving he gives the trademmon confidence in the servant, so right he had to trust him. 1 Bl. 132. Ch. note.

And if a servant without a prior authority, either general or special, purchases goods for the master and they come to his use, he is liable for them, for by taking and using the goods he satisfies the contract by a subsequent act, which in most cases is as efectual as a prior one. 3 Coke 234. 1 Shew. 250. 3 Shew. 625. Chitty Bills 26.
And from hence, in the last case, the master
has sent his servant with money to the servant
had kept the money and purchased the goods on
credits of which the goods came into the possession
of one of the master he supposing them paid for
The case has not been judicially decided but I
think the master would not be liable. The master
must run his own risks for in the case sup-
posed there was no prior authority either express
or implied. The master letting it using cannot
be said to amount to a ratification of the contract
by way of subsequent ratification, for this would be
presuming an authority to use the goods which
he did not use owing to the in-
existence of the contract. Soz. Rep. 22d. 3 Tulk 282

The master
has permitted the servant to trade on credit having
assumed his own liability for subsequent contract,
by permitting the tradesman with whom the servant
got credit to trust him any more on his word,
that's private order to the tradesman has no effect upon
the tradesman. It would be the greatest injustice if
the servant had no private disputation of the relation
of master and servant.

The rule in all this case is that the
prohibitions or disputation should be made as public as
the contract before given to the master. 3 T. Rep. 760. 10 Web
109. Peak v. 182. 15 L. 12 Mod. 346. Chitty Billy
267.
If a servant in selling property which he is authorized to sell makes a warranty, the master is bound by it, unless he expressly forbids the servant to make any warranty, or brings on implied authority. 2 T. R. 177, 5 id. 757. Tho. 505, 653, 2 Dall. 289. 10 Mod. 109.

1 Esq. 1st. 3d.

But when the servant acts within the scope of a general authority, even an implied prohibition not to warrant, not made public if not known to the purchaser, will not exempt the master, as a minister at a long stable or a chink in a wall. 2 R. R. 289. 3 C. B. 653. 3 B. & C. 560. 3 T. R. 757, 2 id. 177.

Because, from the nature of the public faculty, persons in general authority, if it would be a plain fraud if a private prohibition was allowed to exempt the master. 3 T. R. 760. 10 Mod. 109.

According to these principles, I have been able to win, after a decision in favor in Co I. 169, 2 R. R. 103. 2 Dall. 267. It is in the keeping case of Brown v. Howard. But I don’t know that case was ever meant to be taken in connection with a counterfeit diamond which both his master knew to be counterfeit and both knew also that it could not be sold for any considerable price until its defects were concealed. I conclude that the master was not liable in as much as he did not expressly direct the servant to conceal its defects. I form this opinion on the direct contrary principle. The ground I go upon is that the mas-
the: would be liable unless he expressly forbids it in writing. And the willful concealment of defects amounts to a warranty. 2 Roll. Rep. 5 Exch. Dig. 629. 632. 2 Swift. 120. Bacon. Tit. Manum. 1 (K).

There is also an other strange rule could be shown in the same case if I mistake not, viz. that if the master sends a servant to sell an article to a particular person, as C., if the servant sells it to him, he conceals defects, the master is liable. But if the serv. was sent only with direction to sell to any one in particular and he sells it concealing the defects, the master is not liable. How in that case I could find no rule for I can find nothing ful when I cannot make a distinction. 1 Roll. 95. 108. 14 Jac. 5 Eliz. 3 Jac. 6 Eliz. 12 Mada. 51 (K).

The amount of the rule seems to be this: that if a master by virtue of an instrument of mischief intended to injure some one in particular as A., he is liable for the damage, but if without any intention with any individual one then to hurt another could he would not be liable.

The rule is regularly not liable on the contract which the master for his own use, furnishing the authority to contract. He may however subject himself personally in such contract by engaging in his own name or on his own responsibility, e.g., if the master be not named he will not be liable. 1 Roll. 60. 2 Roll. Rep. 240. 3 Jac. 56.
And immediately if the servant enters into a contract for the
master, without authority, the servant himself is personally
liable. For the master is not if the servant was 
not it would be found upon the stranger. 1 Pow. Civ. 128.

The rules relating to the power of servants to bind the
master apply to all cases in which one person employs
another to transact business for him, and the latter
is not ordinarily a servant. As in the case of a wife,
child, or friend, the acts of them or the acts of the
employer to all intents, as far as their authority
extends, whether it be general or special. In order
there to apply these rules, it is not necessary that
the agent should have been ordinarily employed as a such
it is sufficient if he was one from note 1031 1030

In some states has been introduced by statute which is un-
known to i. e. if it is this if a child or servant who
contracts by the master to contract or be done for him-
self (the servant) the master is bound and the master
not if the statute says that such contracts made without
the authority or consent of parent or master are void in
law. 1 Pow. Civ. 1031 1030

You know that these contracts
made by the servant or child for himself and in his
own name are here deemed the contracts of the master.
If then the master permits the servant to get credit when
he can the master is liable and the statute applies all
contracts generally. These have been instances where
the father permitted his infant son to take his premises
it is called and transmit burdens for himself as in much
and dying, the master is liable as the contracts of his son.
Now state it that the state as far as it relates to such
can extend no farther than to slaves and those serv
servant and domestics and minors of full age. I.e. those
are under the master's domestic government and capable
of contracting so as to bind themselves. for it is un
conceivable that it should apply to day labourers or
servants or those of the 5 clads. neither can it apply to such
or domestics or minors of full age. for some minor
servants are universally in the habit of contracting
for themselves. I think that the statute should
be construed with these limitations.

A master is
not liable as such for the injuries incurred by the
servants of his servants. to the rule is familiar
that to be otherwise. This rule however cannot apply
when the master is an individual liable. but as
to all. labourers by the day month or years minor
servants. the rule holds. It is usual for the master
to covenant for this in the indenture. if he does not
he is not holder. 1 Es 2. 7. 73. 3 13 4 227. Con-
ta. Butt. 2. 2a. 407 1 Es 270

We are now to inquire how far the servant is liable
for his acts and defaults to strangers to the master.

I learned that those acts which are not done by
the express or implied command of his master cannot
denie the acts of the master. in such cases
Thus far the servant only is liable if not the master, for the servant does not act as servant, 181. 181. Min. 229. & Bac. 382.

But this rule applies generally to all cases in which the acts of the servant amount to the discharge of any business or authority with which the master has entrusted him, as an instance here his master causes him to commit a battery, theft, or any unlawful injury the master would be liable, &c. 501. 501. Dig. 602. Com. 206. Salt. 18. Cro. 84. 175.

Then an other case in which the owner or servant injured by the act of the servant may sue the owner or servant, & his election, and the rule is that if the act through neglect, carelessness, ignorance or want of skill done an act in the performance of his master's business, which is injurious to another, he is liable, provided this the business in which the master was engaged for the master was not founded upon any contract, express or implied, between the master and the stranger. Thus if a servant thus negligent or want of skill causes his master's carriage against the person or carriage of another, that master must sue the other liable, the owner injured in such no obligation to look up the master, he may consider the act as he is in law and in fact the only actor and must not inquire into his claims the relations. 181. 181. Min. 328.
But it is otherwise. I conceive if the transaction in which the servant is engaged is founded upon a contract imposed between the master & the stranger in such case, I take it that the master only is liable: the act of the servant is the act of the master, in the furtherance of his business, in performance of his contract. The case exhibited by the party injured appears to be merely that of a breach of contract. As if when a tenant had undertaken to repair a greenhouse & his app. in attempting should injure it, the tenant only is liable: it is a breach of his contract. The bailment is violated. It is in law now that a party to a contract can violate it: a third person cannot breach a contract the he may subject himself by consenting to performance, that becomes his nothing to do with this question: the master only contracts with the app. the party injured has nothing to do with the app. The case is not here decided in the books, but you will find something applying to it in Confl. 106, 107, 231, 331, 332. 603. Esp. Dig. 586.

This is an exception to the rule in the case of a shipmaster who is himself the servant of the owner. If the master as an injured this his neglect or ignorance his liable to the contract is strictly with the owner. It is said that here it be considered as an officer was in than a serv. but I do not see the force of this.
The true reason is that he cannot, in point of fact, personally and directly enforce his public services in absentia. The contract is usually made in a foreign country, whereas the owner cannot be reached, and the only possible remedy is to sue the shipmaster. Labk. 24. 1 Writ. 170. 238. Tho. Ray 220. V. 5. T. Rep. 175, when the ship is laid down agrains.

If a servant commits a wilful tort upon a stranger, suppose he be liable at the hands of his master, the tort amounts to a breach of an implied contract between the master and stranger, for the act done was not the ignorance or mistake, nor was it in performance of the master's contract any more than any other wilful injury that had no relation to the immediate business, as if the ship of a shipowner should wilfully damage a boat by driving a nail into his roof— it would be a trespass as distinct from the performance of the master's contract as the driving a nail into the horse's head. And I take it that if the master thus wilfully damaged the horse he might bring for a breach of his contract as for trespass. 1 East 166. 12 Moore, Dem., 360.

I have assumed that a public agent contracting in such an instance is not personally liable. Upon this principle it has been determined that indeed it will not lie at all a public agent for one own his agent make to him by mistake. 55 Cr. 47.
In such case, the only remedy is by application to
governor mint.

But this action will lie for money un-
told on, when a foot must be taken more than by
how he is entitled to receive & applying it to his own
as it is not acting for the public, it is cheating
for himself. Conf. 182.

Thus the determination that when
an act of being a witness to a release from 18 to 13 and
afterwards brings an act of 18 to 13 notwithstanding the
release, the act is not liable to 18 for bringing the action
for his self as servant. 1 Ross 70. 1 M 229. 2 Dec. 575. 3 Ill.
68.

This rule seems to be wrong, but I am now fully con-
vinced that it is right in the case suppose, for it is to be
observed that the act is not bound to judge over his client
head, the client might intends to pledge friend, always on
something the act is known not of to the release, and if
the act is known of the fact, he might be mistaken as
to the law upon them.

But when an act is guilty of a
plain fraud in his own practice, he is liable, or who
the act is supposed a non suit. I think when the adverse
party was absent, instead of judge against him. Pent.
20. 25. Esp. 618.

The rule then far relates to the
ability of servant to stengthen, the servant is also liable
to his master for all wilful wrong or neglect of duty
by which the master is injured, as if a servant whilst
with the care of a horse suffer him to die. This rule,
and laid down with reference to servants of full age
with notice of the privileges of minors must be the words led me into many mis-
intended distinctions which come more appropriately
under parents and child 1 W. 3 26. 3 Br. 154.

Upon this principle it was determined that when a
slave had harmed his master's goods, before the slave
was paid, whereby the goods became forfeited by the
owner being, the debt was held liable to the mas-
ter for the life.触: 265. 10 Min. 193. 14 3 Br. 159.

 Actions

action will lie ag a servant for bare breach of his
master's order unless some damage is sustained, as
if a servant were to neglect his work. The propriety of
managing the household, should cause any duty
not to be an abrasive language. no action will
lie for it; *the power of coercion being considered
a sufficient remedy. 150 1 98. 3 3 Br. 154.

But if

a servant disobeys a neglect to perform an act command
by the master in consequence sustaining any
daughter an act. And the fact that the mas-
ter, being aware, demanded when he ought to
have been done is always sufficient damage. 150
298. 1 188. 2 706. 85. 2 Br. 155.

The rule is this:

when injury results from neglect of duty on the part
of the servant, although no injury or wrong was given
as if an estate should result to his client's owner.
A rule must be understood only for diligence and fidelity, not for strength or skill. This rule does not imply any other uncharacteristic of course, he is liable for such losses only on occasions by his want of diligence or fidelity. 3 Bae. 663. 10 Wisd. 160.

This rule however does not apply to cases in which the servant engages to do business professionally to his master service, for in such case he does not undertake to use all necessary skill, or an effort to take care of a man, for whom he is continually to do a thing in the line of his profession or business. The law presumes him to have sufficient skill if that he will use it.

Under the quoted rule I just mentioned the servant is not just liable for the loss of his master goods by robbery or for ordinary care and fidelity with not private mischief occasioned by force, which it may be deemed mischief. 4 Co. 84. 3 Bae. 563.

And it is a good rule that a servant is not liable for those losses occasioned by those accidents as which ordinary care and diligence is not a sufficient guard.
by the circumstances of each case. 13 Mod. 109, 2 B. 252.

But whenever the master has been unjustly to damages for injuries occasioned by his negligence or misconduct of the servant, the master must indemnify him in an act. 10 Mod. 109.

This rule however supposes the master to have been actually a party to the wrong committed by the servant, for if he was not the servant. He is in no claim to indemnify him for what he has suffered or any part of it, for between principal wrong doing the policy of the law will not

Of the master's authority over the servant.

is given as a general rule that a master may chastise his servant for any breach of duty as for disobedience, negligence in doing a duty as for breach of duty, as 1 Bl. 228, 1 T. E. 176, 7 Blis. 179. 1 Wmsk. 111, 130. 2 T. 622.

But this correction or chastisement must be reasonable or it will not be justified in the master. It. 7 Mod. 167, 8 ib. 120.

Above the grant, we first laid down our next apply to see the different classes of servants and those of the & 2d class are in grants not included.
would be a new upon to such servants as factotums

and I take it that the right of chas in

is derived to no servants except those who belong

even to the master family, and that it is founded on

the same principle as the right to correct a child. In

pardon as one of the prerogatives of domestic govern-

ment. Claro in a sect of servants of the 5th class are in


down your domestic government of the master.

The master has then a right to chastise for a reasonable

cause, his slaves or apprentices in some cases, from

and sons. He may chastise a slave or apprentice

of any age, but his servants of full age he may not

for it is said that if a master beats any other

servant of full age than an apprentice, it is a

good course of depreciation, and of his disinclining

by the court of competent authority. Tthe servant

holds as to beating by the master, with 1 Bl. 428

24th & 2d Ch. Harvey. 60(2) 168.

It is laid down in the books that

the master cannot exercise this right of correction.

justify the wounding of his servant, that is he cannot jus-

tify under the authority of master. The rule is that he

must correct moderately, and if the servant for a

battery and wounding, after the master may justify the

same if he battery and say that he did it by virtue of this

right to correct, yet this will not justify the wounding

the only available justification is such as would be good for

any other person. 2 Eld. 167, 8 Id 120 218 330.

(0) 168.
The question how far a master is liable for killing his servant in correcting him, comes more especially under the title of homicide. I would however just observe, that it may amount to justifiable homicide, manslaughter, or murder according to the circumstances of the case. 1 Stat. P. C. 252, 573, 4, 7 Stat. 111. 10 Mfrs. 262. 1 U.S. 167.

As to the master that the master may have against...
action for injuries done to the servit.

in a servit lies in the
first place in favor of the master against anyone who enters away his servit; the action must
be laid with a process. it is indisputable Coop. 56
1 Will. 469, 6 Will. 182. Talk 380. 2 Bay. 116.

As to the form
of the action I have remarked hitherto in the said
appretion that without doubt it should be ease.

If a
servit is driven by another without restitution, license
or just cause, it is employed by another who knows of
the former return, an action lies against the employer
and the action must be laid with a servant out of which
the gist of the action for the bond would not subjoin
on this if he did not Norris 2 Mac. 63, Bay. 10-106.
4 B.C. 593, 4.

But an insultment does not lie at L D for
entitling away another servit; it is only a private injury
and not regarded as a public offense Talk 380. 3 Talk
191. 2 Bay. 116. 4 B.C. 593

By a late statute of this state
however, the entitling away the app. of another what
so bound by indenture or not is made final the pres.
ently, not to exceed $100. the statute further provides that
the penalty shall not cost the master if his remedy
of satisfaction that he may recover his damages
in addition to the penalty, 4. Con. Lib. 2 15. 118.

If a servit is driven by another, he may have an action
The question arises, and if loss of service accrues to the master from the injury, the master may have his action for the loss of service. And a recovery by one is no bar to an action by the other for injuries of the head: rights of the master are altogether distinct. That of the servit is considerable, that of the master from injury being loss of service. 9 B. 1. 113. 10 B. 181. 2 Ball. 198. 1 Ch. 175.

In this case as in that of respondents, the master must allege with a fair and his right of action being founded on the consequence, loss of service, the battery of itself is not given as a cause of action. 2 Ch. 8 181. 1 B. 81 429. 9 Co. 113.

2 Ball. 562.

A minor, minor children are all his servants within these rules. This is him who is riding with his horse in his service, so is an adult child of himself with the father as a subordinate member of the family. Since arises the master of bringing an action with a bribe or reasonable amount in case of seduction, this is however merely nominal.

If a servant is beaten so that he dies, the master has no remedy at 1. 3. the civil injury, being merged in the public officer for it is a general rule of 1. 3. that no one can recover for a civil injury involved in a felony or a capital crime. 1 Bl. 89-90. 2 Ball. 568. R. 9. 399.

It has been determined that if a suitor who is employed to earn a rent of a wound inter-
finally injures the suit, so that a loss of service accrues thereby to the master, an action lies for the master, but I do not find it determined that it would lie unless the injury was intentional, but I see no reason why it would not if the injury and consequent loss of service was occasioned by neglect. The servant could doubtless recover for the tort in both cases. 1 Bell. 98; 2 Buck. 352; 3 Bl. 538; 2 Bl. 507; 2 Nils. 357; 3 Bl. 51; 2 Diz. 63.

Thus a suit who was written away or deserted without sufficient cause is sued by the master and a full satisfaction recovered. This recovery is a bar to an action at the party who entered, otherwise the master would recover a two full satisfaction 3 Bl. 538; 3 Bl. 599; 2 Bl. 587.

What acts the master may justify in and setting off his service.

A master may maintain or set his suit in an act against another without incurring the guilt of maintenance, which is setting a stranger in a lawsuit. 1 Bl. 429; 2 Bell 115.

But the books are not clear that a servant may justify an assaulted in defence of his master. But such acts as he could justify in his own defense, now he personally attacked, it is said to be the duty of the suit. 3 B. & C. 568; 3 Bl. 51; 2 Bl. 587; 2 Bell. 516; 2 Bell 207.

But a suit cannot justify an assaulted
in defense of his master, son or any other part of the
family, for he is not sent to them the right grow
out of his relation as sent to his master. 4 Barc. 594
By this it means that he cannot justify as servant
or as he could in defense of himself, for any strange
may justify violence in defense of another in cer-
tain circumstances.

It is said that a master cannot
justify violence in defense of his master goods
as appears to me very strange if when the goods
of the master are about to be taken from his
house, the master may not resist them and use
violence if necessary. If the goods were in the pos-
session of the master, he certainly could justify it.
The rule as it is laid down appears to me to be too
general. 4 Barc. 594

On the other hand whether
a master can justify an assault in defense of his
son has been an unsettled question. By some it is
said that he cannot. Because if any right of his
is endangered by the beating, he has his remedy
by action. Now it appears to me that a master can
justify an assault in defense of his son: it seems
very unreasonable that a master should be bound
to stand by and see his son beaten because he had
no remedy by action. So far as this reasoning goes, no one
would have a right to commit an assault in defense
of himself unless his life was endangered. Besides the
author of this injury may be wholly irresponsible
and in some cases this is a prevalent reason. When
the whole I take the better opinion to be that a mas-
tee may justify an assault in defense of his serv

Laws. 3 Bl. 124. 5. 6. 4 Bar. 54. 2 & Ray 52. 50 Be. 15.

1 Bl. 229.

It is a rule of law that an individual may
avoid a deed obtained by dungs. But a serv-ant cannot
avoid a deed obtained from him by dungs of his
master, as if the master were falsely imprisoned and
would not be released until his serv-ant assents to it.

1 Roll 687. 4 Bar. 544

The relation between master
servant is not so intimate as to void such deed.
But as it was obtained by violation of good con-
science I think a court of equity would relieve
against it. But it would not be void in law.
Baron and Feme.

Alimony is regulated by the C. L. and also by reason born as a contract purely civil, and it is regulated by the municipal laws of every country at least by every Protestant country.

Thus it is known an incident derived from the divine law, which is adopted by the Mosaic Law, viz. that husband and wife for many purposes are regarded in law as one person. 13 Bat. 145.

433

By marriage the parties respectively acquire certain rights in the property of each other. The general principle in regard to the husband right to the property of the wife, is found in upon the husband duty to maintain and protect the wife, hence his estate is so far his as to enable him to discharge this duty.

The rights which he acquires by marriage is different in relation to different species of property, and the first species is personal chattel in possession, or to those the gift and is that it rests in the husband absolutely by the marriage. Hence he may dispose of them at pleasure even against them. This is an exception to the idea of a certain kind of financial marriage, which I should by my notice, and the gift and is that he may dispose of them by act resile or by wuth. 2 B. C. 235. 1 Bac. 269. 1 Inst. 357.

By Reason.
At chattels in possession is meant personal property or
and distinguished from personal property in action
or choses in action. This shows how firm this
and absolute. But choses in action as notes
bills of Exchange or any evidence of right
to things and real thing itself are a sort
of property of a different cast. If the husband
die intestate these chattels in possession can transmit
to his representatives but the wife cannot receive
them, because

But the husband has no beneficial
interest in the property which she holds in the right
of another at the time of her marriage as if she
were 6¾ or 8½ indeed the beneficial is not in
the wife she bring on man this is it one

The

husband is also entitled to all the personal prop-
erty or chattels acquired by the wife during
her lifetime. This is an interest given to the wife dur-
ing her lifetime it belongs to the husband. If a gift
is made to her of a horse or carriage. So if she coins
anything by her labour then can as much the prop-
erty of the husband as if she owned them before marriage.

Talk 114. 115. 1 Brev. 178. 292. Esp. Dig. 127.

As to the wife,

personal property in action or choses in action though
it is that the husband may dispose of them at pleasure
during their joint lives, but she must not use the
into possession of some act of ownership, equivalent to that in order to give himself the absolute ownership or disposition of them. Otherwise if he dies, they will survive to him. Thus if a wife outlives her husband at the time of her marriage. 1 Chit. 957. 1 Stn. 516. 3 Mil. 55. 12 Rolls.

... placed by C. H. if the husband had not reduced the chain of his wife into his possession before his death. that is during cohabitation or their joint lives, all property in them would go to his representative. In Eng. however the state 19 Ch. 14. has altered the law in this respect. 1 Bl. 615. 2 Bae. 478. 1 ib. 289. 1 Chit. 61. 2 Bbl. 435. Com. Dig. 4 Bc. 1. P. 8. 3.

But after the husband in such case by C. H. comes all title to the property as husband. got by Act. 31 Bcd. 3. 19 Ch. 14. the husband in such case will take as A.D. to the wife, for in the first mentioned state. A.D. is ordered to be given to the most friend, who is the husband. But the other is relieved from the necessity of accounting with her representative or distributing his effects. 2 Bbl. 435. 1 Chit. 61. 1 Ball. 910. 1 Bae. 289.

Under our law the husbands as A.D. has no such right. for in C. H. A.D. goes in all cases to the most of him and this is no special provision made in case of intestacy of the wife. neither is there any at common law. And in our state completely distributed without any insistion in favour of the husband. He is as
much bound to distribute as any other administra-

But the husband cannot even
upon these principles, and still less by our laws, be
responsible for his wife's debts in any case; for the rule is,
that he must reduce them into possession during coverture,
and, if the estate does not take effect until after
his death, the coverture determined. 1 Inst. 357
1 Dec. 28.

But although the husband is not bound by
the Eng. statute to contribute, yet he must pay the debt
of wife contracted before marriage out of such estate,
and if he can hold them from his wife after inten-
tion, he cannot from her creditors. You will re-
member that the husband is only liable for the
debt of the wife contracted before marriage, during
coverture, after that determined he is not liable for
such debts as husband; that if he has debt he
may be as 28. 1 Inst. 357.

And it has been deter-
minded in Eng. that if the husband refuses to act
as debtor, and another is appointed, the husband is
entitled to the residue of the debtor paid as joint tenant.
This appears to me to be carrying the rule very far,
and much to an unwarrantable length. It is
plain that this law was made by men not by wom-
men. You will remember that all 28. want, husband
are bound to contribute to the rest of their. 3 Met.
526. 1 Mils. 168. 1 P.M. 381.

And it has also been statu-
mind, that the right of the husband is traced
implied in the word of him on his discretion and not
to those of the wife or his representation. It appears
now both the rules appear to me directly refer- 
gent to the rule before mentioned that the choses
go to the wife representing and that there are virtua-
lly authorities to suppress that rule. They appear to
me to be founded upon a false construction of the
words "word of him." [Bro. 63.

But although the husband does not
by the marriage also partly acquire a title to the choses in action of the wife, yet it is said if he has made
a settlement upon her they become absolutely his &
if he dies first they go to his representation, indeed
the settlement is considered as a purchase. Phil.
Ch. 63 312 412. 2 Vern. 591.

However according to
other authorities this rule does not hold unless there
is an express or implied agreement to that effect, and
is implied to be in consideration of the choses, or words
which show that to have been the understanding.
The old rule was qualified, but it is the law now to be
that a settlement is not necessary a purchase, and will not amount to one unless some
thing is said from which it can be inferred that
that was the understanding. [Bro. 69 2 3 R. M.
199 note. Phil. Ch. 209. 1 Vern. 20. 2 Vern. 61.

If the set-
lement be made after marriage it is never con-
sicnt as a purchase of the choses, certainly
note of all of these, unless it be otherwise in the opinion of the Chancellor, our assignee, to you, the hearer, a great deal to the discretion of the court, 2 Ed. 2 7th Rob. 3rd Com. 3rd.

Arms of wife due to the wife when sole or some absolutely the husband, by marriage, this thin is an exception to the great rule. it is not however C. 8. it is a mere positive regulation derived from the construction of the statute of 32 Ann. 3, and plainly varying from the C. 2. 1 Chit. 37, 21, 2 Dec. 47, 3 St. 2 St. 5. 1 Com. Dig. 556. 3 Chit. 351, 1st. 3st. 37th. 2.

If a debtor of the husband or wife is sued & judge obtained, the husband to, one joint tenant of that judge, it belongs exclusively to neither, the judge is subject to the state of the rights before judge existed on all such above 45. but the judge is by in the name of lady 1 Dec. 293. 1 Wil 306. 3st. 237. 1 Mod. 149. 3 ib. 189. 1 Com. Dig. 555. 15th. 27.

If either dies before the judge is collected or satisfied, the whole in EQV. survives to the survivor. by virtue of the gen. cession, etc. st. 3 Mod. 189. 2nd. 1 Chit. 1st. 21. 1st. sec. in Cor. this gen. cession is wholly unexplained, and on the death of one joint tenant, the right is transmitted to his representation. so in this case. let us suppose that one half of the amount of the judge would go to the representation of the deceased, the other half to the survivor. under these rules to say I do not know how that he will come, that this whole would go to the wife.
In Eng. it would go to the survivor by the prece-crew.

But in Con. the same rule applies to points but not to trust in commeneration, and one man for another; no exception in this case.

But in Con., as well as in Eng. if the wife die, the entire right of collection survives to the husband, unless the prece remains unsatisfied. The rule is the same in to strangers. But having collected, they are entitled to a receipt within the wife, representing for all his debts. More is right for half of the estate.

The husband may sue out £4 by joint facias, a being in part, and he may have £4 without a joint facias, for he having the entire right ought to have all the necessary means. 1 Dec. 293.

Cod. Ch. 208. 1 Chit. Pl. 21. 305. 1 Star. 105.

Con. 215. 1 Com. Dig. 135. 1 Mod. 179. 3 Mod. 198. 162. 137.

The husband may bring the covenant sell or assign his wife's choses in action for a valuable consideration, but a gratuitous assignor of choses is not good against the wife. The reason is that the assignor of choses conveys only an equitable interest, the assignee not having the legal title, cannot receive in a suit of law. And Chit will not enforce an inequitable unconsenting clause against the wife.

3 T.P. Pl. 194. 2 T.P. 208. 220. 170. 3 P.M. 199. 136.

Ch. 114. 1 R. 2 Com. 295.

It has already been admitted.
that such voluntary agreement, that word as to apigren was such an act of ownership as charged the property so as to vest it in the husband. But it has since been determined that it is not law for if it were the other rule would avail nothing. 1 Pet. 380. 4 cox till 2 et al. 208. 1 Rev. Ch. 271, 304. Rob. D. 295.

The husband however may discharge that in which his wife choses without consideration. 2 et al. 208. 1 Pet. 308. — This may appear an arbitrary distinction from the rule above, but it is not so. for a husband is a legal instrument when he can agree is not so. and the hus-

band having the legal title to the choses of his wife can release them, and the release may be plighted at law and C.W. cannot set it aside so they carry a voluntary agreement.

When the husband is obliged to resort to Eq. to recover the wife choses as well as any in the hands of a husband, the court in good will not interfere unless he will make a reasonable provision for the wife, for the court will not enforce any equitable right in his favor against a strange equitable right against him.

1 F. N. 7. 258. 258. 3 Vg. Inv. 15. 506. 4 Rev. Ch. 326.

And if the husband apigen for as valuable consideration. The apigen is under the same obligation, and is liable in 20. 4 to make provision in the same manner as the husband is if the court will not interfere without. for it is supposed that he knew.
what equity requires when he bought them he
must have known that they belonged to them
so that there is no friends but his, his at least
in right. Than the husband. [Act. 10:6. 25. 1382;

Again the slo-

or in action of the wife are not liable to be taken
for the husband's debt when his death. If she sur-

vives, unless indeed they were purchased by settle-

ment or benefaction. 1 Inst. 367. 1 Bae. 289.

If they could the rule that subjects there would
instead a former rule, that is chosen can be
taken away. unless he restored them into whole-

Nor can they be taken in 86. by his execu-
tors during that part lives. for they have not be-

come his. and besides, no chose in action can
be taken in 86. 

If at the time of the marriage the goods
of the wife are in the present of a third person by bail-
mort or finding, the right of the husband to them is
as absolute as if they were in the wife's actual posses-

sion at the time of the marriage, and he must sue alone
for them— for they are specific chattels and settle in
manorial suit of bailor or finder, yet not being com-

verted they are considered as in the wife's possession.
111. 646. 1 Vint. 261. 1 Nib. 644. 1 Bae. 289. 45 S. 1. Deo. 167.

But otherwise

if his goods had been taken and converted before mar-
riage, or on injury or a theft, for which a claim was to be made, in
such case the husband cannot sue alone. for thought of the wife is converted into a chattel in actions the wife must be joined. 3 T. R. p. 631.

It has been much questioned whether the goods were bought or found before and not converted until after marriage, the husband in an action of trover must marry or can pass to join the wife. I conceive that it can never be left to his option, the rule must be positive that the wife must or must not. you will see the different opinions, 1 Vid. 174. 3 T. R. p. 631. 1 F. T. 261. 1 Chw. 107.

A contract by which one is bound to pay money to the wife is subject to the control of the husband and not to that of the wife. The legal right is in him. He only can discharge it. The wife is no party but she can receive the money and pay it to him would be good, but she cannot discharge the contract. The reason is that the form by the contract is to be made to her that being no party it not having the legal title she cannot discharge it. 3 Ex. 331.

If husband sets title to his wife chattily real

Then one such personal property as is none of the real in personal property annexed to an arising out of real estate, as tenants for years or mortgages. Why are not real become not personal for whatever is not personal is chattel and is called chattel and is some
traced into the chattels personal, 1 Bl. 338.

Once the spouse, if proper, who perishes in the wife, the husband has a more extensive power, than over her choses in action. This a term for years belonging to the wife is subject to the husband's estate during coverture. It may be taken in Eq. but he chooses interposition or not thus liable. 1 Just 26. 357. 1 Hurlb. 344.


Again, the husband has a right to dispose of them absolutely during coverture, and even without a valuable consideration, because his conveyance confers the legal title. But if he does not dispose of them during coverture, and the surviving spouse, they go to him. So that during their joint tenancy, they are considered quasirentants of the chattels.

Pam. Ch. 418. 1 Bl. 434. 1 Just 357. 1 Hurlb. 316.

And on the other hand, if they are vested in both of during coverture and she dies first, they remain to their bane. That is, they remain to the survivor. It has been determined in Cor. that if the wife dispossesses the chattels, it did go to her representatives, but it is on departure from the C. L. 2 Day 338.

By C. L. sni the husband or wife can devise such chattels for the right of the survivor is prior and paramount to that of a devise. and besides, by C. L. a wife could not devise at all. Pam. 418.

2 Vin. 270. 2 Bl. 434. 1 Just. 351. 2.

The husband's may
by and vested during coverture, dispose of his
wife's chattels real, to wit in proprie after coverture,
for the right of future enjoyment into chev
ing, their joint lives and the conveyance was
within the description of disposing during coverture
and the he cannot dispose of them by will, yet
the may by grant to take effect in proprie
after his own death. 1& 3 Eliz. 28 & 33 H.8.
Bac. 16. Co. 6. 287 Co. 155
But
the chattels real of the wife are not liable for the debt
of the husband after his death if she survives him,
for her right intestnasy and it prior to any right of
the creditor, and as he could not by will subject them
to his debts nor does the creditor shall. 1 Rol. 327.
Lit. 28. 1 Inst. 184 & 3 Bac. 209. 10

For by B. lanches
chattels real liable for the debts when she dies first
for the husband's right by survivorship intestnasy be
fore that of the creditor, as before, it is one.
But according to the doctrine holden in Cont.
the rule must be different, the chattels must survive
to the wife representotive and be subject to her
debits.

If a firm sole joint tenant of a chattels real, marriage
survives and dies, the whole intestnasy goes to the other joint
from of it to the husband, for he had her anterior in
chevate right, which will of course it include the hus
bands. 3 Will 141. Co. 85. 1 Bac. 287.

But the husband
in this case has the same power to save the joint ten.
away by an actual disposition of the wife's moiety as she had when sole, and in this manner he can prevent the survivorship. It are.

The husband during coventry may assign even in Eq. the wife, chattel real and without consideration, because the legal title of them is in the husband, not so of the choses in action therefore he cannot assign them in that manner. 1 Vern. 7. 18. 3 Il. 270. 3 P. Wm. 39. Rob. Tr. Co. 297 to 301. For you will observe that Ch. 1. follows on and do not contravene the law.

**Husband's rights to the wife real estate.**

Of this the husband has the sole use, fruit or the right to ascend and occupy but he cannot by his sole act alienate the wife's inheritance. This power is not given him by the law it not being considered necessary to make him to support and protect the wife. 12 Co. Litt. 14 Ed. I1.

1 B. C. 286. 300.

Now can they by their joint act alien the except by matter of need or by fines or recovery, for no other act is considered sufficient to enable the wife to alienate her inheritance. The reason is that it estips her to plead her coverture in avoidance. 1 B. 464. Est. 669. 670. 1 B. C. 301.

In Co. however the joint deed of both will convey the inheritance of the wife by construction of the state and that is now the established mode of conveyance. Stat. Co. 464.
If the husband during coverture grants a larger estate out of his wife's inheritance than for his own life, this is no forfeiture as in other cases of tenant for life, for this coverture prevents the wife from taking advantage of the forfeiture, and that she knows nothing of rights which it does not involve.

Lit. 415, 574, 1 Inst. 326 9 Co. 140 2 Bl. 274.

Such conveyance however will only amount to a grant for the husband's life at most, and only finally, for if he is not entitled to the coverture, and the wife dies first, the grantee will not hold even during the husband's life, for it devolves on the death of the wife; 1 Bac. 301, 1 Inst. 326.

If the wife survives the husband, her real estate vests solely in herself, and her coverture is the issue of his marriage. If he survives his wife and has had a child by her, being alive and capable of bearing children, he has an estate for life as tenant by the curtesy of all the real estate of which the wife died seised.

Lit. 415, 574, 9 Co. 140 2 Bl. 274, 1 Bac. 301.

Such a former sole mortgagees in fur marris end dies, her husband has the same title to her estate by the curtesy in the equity of redemption, provided he could have had a coverture if the wife had not died first; and yet the wife in several cases is not required to alimony, as I shall notice hereafter, 1st Bl. 683, 2nd Mortgage, 112 to 115.
In those places where the goodwill custom prevails, the husband is entitled to the estate without having had children by the wife. By our charter, the lands in Ch. are held in goodwill and yet entry is never allowed but without the C.L. request. 1 Phil. 2 Bl. 128. Stat. Con. 5, 132. 1665.

But then can be wont to be the entry in a remarriage or reversion for the wife does not divest the husband to the entry. The seize of the wife must have been actual, and this cannot be of a remarriage or reversion. 2 Bl. 127. 1 Stat. 129.

A husband may have an estate by the entry in an inchoate habitation belonging to the wife at the time the wife did not divest the husband for actual seize is impossible in the nature of things (might it not be said that she has all possible seize)? But when the subject is capable of or the thing is such as that there can be actual seize, the husband is not entitled to the entry until it was an actual seize. 2 Bl. 130. 1 Stat. 29.

But in Con. it has been determin'd that actual seize was not necessary to entitle the husband to the entry; and that it is sufficient if the wife at the time of her death had the legal title to the right of seize. 4 Dog 298.

To entitle the husband to the entry, the marriage must have been lawful. A marriage de facto is
is not sufficient for this purpose, and the child must have been born alive during the life of the mother. 8 Co. 35. Plow. 263. 2 Bl. 127. 1 Inst. 29. 30.

But by the birth of a living child the husband is entitled to the curtesy initiated in the manner of a chattel heir as the law goes as they go. 1 Inst. 351. 4 Co. 57. 1 Roll. 350. 1 Amb. 695. 2 Bacc. 17. 31.

Rent accruing out of the wife's real property, during coverture goes by C.L. to the survivor. 'This is in the nature of a chattel heir, it goes as they go.' 1 Inst. 351. 4 Co. 57. 1 Roll. 350. 1 Amb. 695. 2 Bac. 17. 31.

By C.L. the wife can hold no separate property or property to her own sole and separate use that is property over which the husband has no control. This arises from the strict principle of the C.L. by which husband and wife are identified.

But now, a gift to the wife of separate use of the wife is protected in C.L. against the claiming of the husband and the claim of any rights to it either by the curtesy or otherwise. 1 Pow. 92. 5 1 B. 270. 1 Pow. Com. 103. 444. 2 Viz. 179. 365. 4 2 P. Wm. 79. 316. 1 B. 126. 31.

In C.L. then the main effect of limiting property to the sole separate use of the wife is to make all portions of the hus
beyond over it by virtue of the married wife. But the wife may recover as absolute an authority over it as if the same be from sale, except that she cannot devise being absolute of this right by stat. 34-25, 1885. This rule however is completely executed by means of uses & trusts, yet a free court cannot devise co-nomine. 2 T. & R. 695. 1 Pow. 444. 1 Tom. 87. 91. 98. 102. 3. 1 & 39. 3 191. 39s. 695. 247. 191. 663. 1 Pow. 215. 165. 5.

The husband by virtue of his power over the real property of his wife has no authority to defect by his outright a gift to the sole & separate use of the wife, his right is absolute of his to cancel same without the execution than he can the use. If however it is a purchase or gifts not to his sole & separate use, he can defect & defect it. 1 Inst. 3a. 356. 1 Bac. 303.

Now come the husband, settle or permit one estate from a selling to the wife by will, as where one estate accrues to her as being her law exists it when she and the husband cannot prevent its value; 1 Inst. 3a. 356. 1 Bac. 303. 2 Bac. 292.


But the wife herself may defect for or satisfy any purchase made by the during her time, and the gift is absolutely absolute of the wife or of the husband. 1 Code 342. Long, 293. Com. Dig. Bar & Penn. 2. Inst. 614. 615.

It has once supposed that the

wife could not dispose property in her own name. but
And such property may now be given directly to the wife by the husband as well as by a stranger, and she will hold it during her own life. Whether given before or after marriage, and if a husband makes a gift to his wife for her sole and separate use, or is considered as trust, the wife may in Chy. enforce the trust against him. 1 P. W. 126. 2 id. 397. 2 P.M. 79. 316. 1 P. O. 41. 5 P. C. 665. 3 T. Rep. 618. 5 T. Rep. 434.

It has been distinctly decided if a person holds property of a trust, that for years for the sole and separate use, marry that the interest vests in the husband. But this has been a later decision that overrules this and I think even at this day, I do not how it can hold if the principle is allowed which is strongly established viz. that a wife can hold property to her sole and separate use. 1 V. N. 18. 2 id. 270. 3 id. 521. 2 Sc. Chas. 345. 1 Mort. 3d. not 31 112.

Voluntary conveyance by a woman before marriage have been sometimes adjudged fraudulent, but void as to the husband. In equity as when a woman on the use of marriage unknown to the husband con-
And as to the real estate, the widow is by C.L. entitled to a life estate in one-third of all the inheritable property of which the husband was seised at any time during the coverture, and which any firm she might have had could have inherited. Sec. 36. 2 Bl. 129. 131

By C.L. the husband could not by any alienation of his own or the wife of this right. The wife may bar her own right by consent of her own, but it must be ajudicial consent.
tu of need. By C.I., his own and wife would bind
her more with the point and of husband's wife,
1 Brev. 139, 140, 10 Co. 149, Plow. 515.

In the state of New
York & al., the wife may bar her right of
claiming down by joining the husband in a suit. This pow-
er is given by state. If then she has not this bond
herself, she is entitled to claim if any show that she
might have had could have induced this estate,
but in law could not have induced she is not
entitled to claim in that estate, as when an estate,
limited in special title. 2 Bl. 131, 226, 53.

Thus the person
claiming down must have been the actual wife
of the other party at the time of his death. Even
at C.I., if there had been a divorce or venial
simony, this could be no claim, for the woman
must be wife at the time of death. 7 Co. 7, 5 Co. 98.
1 Rev. 601.

But a partial divorce exists and it
is no show not depriving the wife of down for it does
not destroy the relation, it is a mere personal restric-
tion and does not dissolve the contract. 1 Bot. 32.3

And if the husband
at the time of marriage was under the age of con-
sent and did before attaining that age, the
wife is still entitled to down. For the marriage
is only voidable and not having been voided it is
ruining good. 1 Bot. 33. 402.
What no female can be divorced unless above the age of 16 years, the she may be bated at 16th ear. It is not material how old she is, the law not recognizing importance arising from age. 3 Bbl. 131. St. 36. 180 L. 673. Co. Lit. 33. 40.

It was formerly determined that the wife of an idiot could be divorced, but it is now settled that she cannot, and it was always settled that the husband of an idiot cannot insist on the validity. It is plain that in these cases there can be no valid marriage. 2 Bbl. 173. 1 Ins. 31. 1 Cow. 41. Boro. et al. 136. 8 St. 125.

A widow's right of dower is paramount to the claims of a devisee, unless a new mortgage provides the mortgage was made after marriage. The reason is that his right to dower is prior in its commencement to such claims. The title as dower commenced at the marriage or at the first rising in acquisition of the husband or acquired afterwards. 5 Bbl. 102. 2 Bbl. 679. 626. 466. 10 Co. 22.

That the wife's right to the personal property is paramount to all other claims and the reason of the distinction is, that her title to the personal property does not arise until the husband's death. Of course all these claims will be preferred to hers.

A right in law or a constructive estate by the husband is sufficient to entitle the widow to dower, or if not to dower, it is enough
But to reduce the unwieldy to the convey this must
have been an actual seizure. The reason of the
distinction is that if there had been no actual seizure
the children of the husband, if at his death, could not have
been entitled for the ancestor was not living. Besides
"it is not in the wife known to bring the husband's
"title to an actual seizure, but it is in the husband's
"known to do this with regard to the wife's hand.
[Inst. 31. 26. 13].

The Cor. the wife is entitled to dower
in that inheritable estate only of which the husband
also seized. This rule was introduced by Stat. 11 & 12
P. & M. 3. Statute 3. & 4. 13. The words of the statute are that she shall be in possession of
the inheritance of which the husband died possessed,
and the word "possessed" has been construed to signify
the same thing as "owned," so that our rule grants
her the same as the Eng. rule. And it has
been further determined in cases that the widow is entitled
to dower in the inheritance which the husband
owned at the time of his death, though he died
actually disposed. Now as the widow is entitled to dower
in such property only as the husband owned at the time
of his death, he may create his title by actual convey-
ance in his lifetime, yet in cannot dispose of
his dower by a quitclaim or conveyance of dower by
a devise.

In Eng. if a mortgage is for an annuity
and dies, his widow is not entitled to dower because
it is said the Equity of redemption is in some extent

able and not a legal estate, and yet if a farm so
mortgaged remains undisturbed, the husband is entitled
to the continuance. It should seem that if there were to be
any distinction it ought to be in favour of the widow.
From analogy of reasoning as to prises to entitle to
succession, modern chancellors have shown dis-
agreement. This distinction that it is too firmly estab-
lished by repeated decisions to be removed by anything
but the power of the legislature. 2 Litt. 526. 1 W. 606

Then is a solita-
tory case to the contrary in which Sir J. T. Holy had the
courage to depart from precedent, but it was soon o-
verruled. 2 N. W. M. 795.

But if a man has mortgaged
for years out of his inheritable property, remains to
his widow is entitled to remain in the remainder
restituted on the determination of the mortgage.
This you will observe is a reason in the mortgag-
ment in the 89 of redemption. 100. Mort. 319.

In this it has been determined that the wife is entitled
to remain in the 89 of redemption of the estate of
her husband mortgaged in part, if that the right
is paramount to that of deviser and executrix.

E. F. Thome. 1106. 1 Kent 247.
By C. L. a wife forfeited her rights of dower by a
divorce a vinculo, and by virtue of St. Matt. 2
by an instrument. 1 Sild. 34. 2 B. C. 130. 137. 1 Rob. 680
3 P. W. M. 276. with an adult or... 1 Currie 174.
An alien wife cannot be undueled, or if a citizen of a different nation or race, it must be done by a special act of the legislature.

By C.L. treason in the blood, that is, the widow of her down and the reason is that her children cannot have in her title.

If the widow retains the title and for the heir the right of descent is not hindered until she marries again and if an act is not to recover then she claims the fact and it is found against her, her right of descent is forever barred and to punish her for false pleading. Per. sec. 356, 360. 5 Co. 75. 2 Bl. 136.

And if a tenant in common claims the land in fee or for the life of strangers, the property on estate by will or gift. 6 El. 1st. I do not see the use of this provision for by C.L. every tenant for life is the estate of the husband who holds in right of his wife before marriage and for his wife's estate. 2 Bl. 136. 7 B. 230. 2 Co. 483. 2 Bl. 276. 5 Litt. 415. Co. Litt. 257.

The wife can have her right of descent by a settlement of a gratification before marriage, it being intended as a substitute for the dowry. Of this 4 B. 173, 16 B. 174. 2 B. 120.

She may also bar
her down, by joining with her husband in a firm or in suffering in common memory of his indescribable estate. This rule was before mentioned, but it is just requisite that its efficiency for the purpose is derived from this, that she is stopped by themanda to aw at a future time, that she was evicted. 2 Boc. 139, 139, 140 Co. 49.

In Cor. a divorce a vinculo does not bar the right of dowry unless the wife was the party partly in connivance the act which occasioned the divorce. Or in other words, if the wife obtained the divorce on her own application it does not bar her right. At Cor. 147, 349. And indeed our statute seems to imply from its phraseology that a woman living abroad from her husband with out his consent and without just cause is bound of her own. St. Cor. 349, 1 Swift. 235.

Paraphernalia. The wife is also entitled to certain article of personal property called paraphernalia, by which is meant something over and above the dowry it consists of apparel bedding and accommod, it is sometimes described as including only the bed but bedding is a part. It is sometimes sufficient to distinguish between this species of property and others; this kind of personal property which the wife holds to her own use and separate use.

With respect to the effects of these two kinds of property I would observe that

...
the husband is an entire stranger. But as to some part of the paraphernalia, the rule does not hold, for the husband has a qualified control over it.

Again property to rest in the wife to her sole and separate use shall be given to her sole and separate use, the intention to give for this purpose must be apparent, 1 Pet. 3:9c.

But the wife’s paraphernalia can not be given to her sole and separate use, for if they were to be a matter not to be paraphernalia, being beyond the control of the husband, yet the specific articles in that class which constitute paraphernalia.

The intention may be inferred not only from the terms of the gift or conveyance, but also from the nature of the property in some cases, the circumstances or context under which it is given. Thus diamonds that belong by the husband’s father to the wife on the day of the marriage have been held to be property and in law to her sole and separate use, tho the diamonds were property which she might have claimed as paraphernalia. 1 Pet. 3:9b. 3 Pet. 3:9b.

So transfer of ownership given by the husband in his lifetime was considered as property to her sole and separate use, but as paraphernalia. But it is not easy to fix a rule by which it can be determined which is separate property and which is not. The right an income subject different. 3 Pet. 3:9b.

But if a husband begett,
ommunicate to his wife, they are not to be considered as property, but only as articles of fiction, for she takes them as legacies, which goes on the supposition that they are his trust, and of course they may be subject to his disposal.

Property given by the husband to the wife in his lifetime, for the purpose of being worn as ornaments of her person, are not regarded as her sole property, but of course she will not hold them against extortion 3 Coth 294. to they are to be regarded as paraphernalia.

That species of property which is called paraphernalia is of two kinds. The first is necessary apparel, such as bedding, the second consists of ornamental articles worn by the wife, such as jewels, and trinkets, in general. 1 Rob. 91; 2 Bl. 235. 6 Camp. Dig. Bar. 1 Park. 343.

During the husband's life the power of the second class are at his disposal, but he has no right to them, which are considered as absolute rights, to those of the first kind, which are mere personal things of the wife, and he may sell them for any debts, but they are not extor(12)tions, but he cannot extort them. 2 Coth. 178. 3 Bl. 298. 2 Bl. 231. 1 P. W. 436. 

The above cut, in the subject are not regarded.

But the wife, paraphernalia of the first kind cannot be taken by the husband, and that, even in his lifetime, sell them. We have a case in the book of "A husband's being indicted for selling the necessary
Now the question is, to what is my property appurtenant and incident to my quality and estate, to be determined by the circumstances of each case; and what might be just and reasonable in one case might be preposterous in another. It is left to the discretion of the court and it may be a matter of consequence for the holder in possession of entail a, to be allowance of certain interest. It is however so far settled that the widow is entitled to one half at least, whatever her condition may be. Con. Dig. Barb. Pen. P. 3 1Roll. 911

Paraphrasmia of the 2d cl. 4th vgl. omens, until half to the estate of the husband, on his death, not known until after the personal property is exhausted. For the wife, right to them is from amount to that of his representation or legacy. 2 c. 101. 3 ib. 369. 395. 3 P. W. 739

And if the husband, especially creditor, take the wife, paraphrasmia of this kind; she with considered as a creditor of the heir at law for so much in amount as they look, provided he has an estate of inheritance or real estate to that amount, for the creditor had a right to the land; but it may be that the rights of the widow to even this second kind is from amount to that of the heir at law to his inheritance. 1 P. W. 739. 2 c. 101. 104. 3 c. 369. 211

A settlement or position given to the wife before marriage if referred to be in bar of all claims on the part of the state, has been right to the estate.
And a settlement made after marriage of in full
presence of parties entered into before marriage t
expressed to be in full of all claims as before by the same effect.
So in either case she cannot
claim the second kind, but it does not deprive
her of the right to those of the first. 2 Esd. 1
10 V M. 83, 29.

If the husband estate a trust estate in land
for the pay of his debts, and the simple contract cred
its even, to the paraphernalia. the wife can
come upon the trust estate for them in Eqy. 2 Esd.
16 V M. 348, 430. Con. Dig. Bus. & Fam. 33

And in
all this case when the widow paraphernalia
thereafter for the pay of debts, his claim in Equity is
the same against the claim of the husband as
against the him at hour if there had been no
will. For his claim is preferable to that of all the
volunteers. 3 Esd. 395, 1 396, 373.

If the husband ded-
ges the paraphernalia of the 3rd degree (of which I
now speaking) the wife on his death, it not his
8 V M. has the right of redemption. If there is a
surplus of personal property after pay of debts
she is entitled to that surplus to enable her to retain
of this right she has even to the valuation of legates.
3 Esd. 395.

The wife right to claim property as paraph-
ernalia against a disposition of it by the husband
is strictly personal and not transmissible to him.

representation. Suppose he bequeaths them to the acquirees; his representation acquires absolute title, the benefit is lost to his creditors. upon the subject a device, as representation cannot set it aside.

2 Vesc. 2167. Ern. Ch. 340 to 346. 1 Boll. 911

In C. v. all

the equity of a deceased debtor is liable for pay,

of all his debts, both by reason of equitable contol it would seem that one with could not take the widow's power to pay debts, unless both the real and personal estate had been previously sold. It also that if one takes the power to pay debts to be immediately become liable, unless he had before it

had it, that one can have many cases for adjudication. But the rule appears to be, that the fund of both personal and real estate has the same relation to the wife's right of pauper in C. v. that the personal estate mainly has in Eng.

The case of the

make our additional provision in favour of the

unknown to the C. v. for besides the usual one with the state of distribution the judge of Probate can to allot to her a reasonable amount in how not good when the estate is insolvent and the provision not been extended to case of solvent estates and the

limitation is to allow in any kind of goods beside houses hold goods, or horses, carriages etc. 4 Con. 2756. 280
Of the husband's liability on the wife's estate.

Second, her name is that the husband and wife are jointly liable in their ways, first, for the debt, 2nd, for his debts, and 3rd, sometimes for her errors.

As to how debts, for the debts of the wife contracts, while sole, the husband and wife are jointly liable during continuance; the husband's liability in this case, however, ceases on his death only, where the debt has been owed against them during their joint lives. 1 Bl. 243. 1 Btot. 293. 307. 1 Nott. 357. Cornt. 30. 7 T. Rep. 318.

The reason why it ceases with the covenant is that it grows out of the relation in which the husband stands to the wife, and it ceases of course with that relation. But if the debt has been incurred against them during continuance, the husband's continuance liable, for the husband after the debt by converting the wife's estate, one against the husband, it once.

When the wife died first and no judgment has been obtained, the creditor must now his debt, unless she has left a joint liability of the husband in such case. 1 Inst. 357. 1 Bl. 443. Chit. note. 1 Plow. 268. 3 ib. 209. Esp. Dig. 122.

But if the husband died first and no judgment was obtained, the debt surviving exclusively against the wife, the husband's estate is not liable, for the husband's liability as before above the same as though of his representation, for such debt, arose into
The principle of the husband's liability, as shown to be that of his personal
property and all contracts over the net. She cannot be discharged by
her own acts, and save herself from punishment and it is the rights,
and that effect.

And when this principle it is that she cannot
be taken alone in a civil action or means upon the
surety, nor a surety to be discharged on common that is nominal bail
in the security. 1 K. 186. 3 C. 124. 3 C. 124. 3 C. 124. 3 C. 124. 3 C. 124.

If however an action is brought agst.
the surety & the marriage from dinte bate, she continu-
ous liable to be held only for the breach committed
lawfully and the law will not suffer the Blend
into default of his action by the acts of the dft.,
the suit in such case must go on precisely as if she
were still a surety, 4. 5. 6. 2. 5. 6. 2. 5. 6. 2. 5. 6. 2. 5. 6. 2.

In this case however the
Plff may have $ against her alone, or he may at
his election, having a court, judge, have a new
facing on that judge, and have $ against both
Contts. 30 3 3 Mod. 179. 1 179. 1 179.
on some process for the debt of the wife. She is dis-
charged on common bail, and the husband remains
in custody until he puts in bail for both. The
reason of her discharge is the same as when she
is arrested alone, viz. that she cannot, in density
the bail and this in consequence of the nonis-
tesque right. 2 Bl. Rep. 720. Sta. 1272. 1 Vint. 49. flio-
57, 216. - I think this rule is contradicted in one of the
authorities, but it is firmly established. 1 Bl. Diz. 30.
A woman will
not be discharged in a summary way as upon mo-
tion, as she is when arrested alone unless the conviction
is notorious, indeed if it is, the stuff is entitled to discharge
her immediately. If it is not notorious as in case
of secret marriages, she is left to plead her case
further.
Still her is the entitled to discharge when she
is as sure as she is when arrested upon stuff by petition-
ing to be set free. For the application for discharge
is to the discretion of the court. I stay will not
grant it in such case. 2 Bl. Rep. 720. 903.
To con-

a wife when arrested as a sure shall be then discharged
if her husband is an alien living without the rest
of proof, then she may in such case have a conviction
and finally avow himself of it. Poth 64. 6. 146.
1 Tr. 515. 3 Et Rep. 81. 2 id. 580.
But if a sure court
is arrested alone in final process or by mesne, the same
against himself & husband she can in no way
husband's liability for the torts committed by the wife.

The general rule is that the husband is liable jointly with wife for the torts committed by her alone or by her with another during marriage.
Her husband, for he is not content or knowing committed it in either case, and he must be put with her during coverture, namely because she is not liable to be sued alone. Psalm. 313. Cor. Ch. 366. 519.

about the husband's liability for her tort, even with the coverture, i.e. when she has committed a tort for which they are jointly liable during coverture, and for this reason that I gave yesterday of his liability for her debt, coming with the relation that produced it. Cor. Ch. 372.

As to crimes committed by the wife the husband is in some case liable alone in other jointly with the wife.

In cases of base theft committed by the wife that his concurrence in his presence or alone with the act being done with the concurrence viewing her. 1 Stal. 90. Cor. 65. 25. 1 Chalm. 4. 1 Brol. 28.

Yet if the wife commits such an offence voluntarily or in the husband's absence by his command she is liable alone for it is a public offence. 1 Black. 28. 51. 28. 29. 1 Dall. 65. in case of burglary.

And the same statute time is said to hold in the case of burglary, breaking alone liable if the act was done in his presence or by his concurrence, but if it was voluntarily done or by his command in his absence she is liable alone, namely as in the case of theft. The rule is diffe-
But for more misdemeanors, that is, offenses falling short of felony, committed by both, both are jointly liable. (1 Ed. 33, 335; 1 Exch. 9, 14; 1 Bl. 209)

It may seem strange that the presence or absence of the husband should mean the wife in the commission of theft or burglary and not in the commission of a misdemeanor. It may remain open left until accountable. If we refer to the C 4 rules as to the benefit of clergy. For if both were convicted of theft or burglary, the wife would be excused. The husband was also with burning in the hand for the O.C. a woman is never allowed the benefit of clergy. It might have been thought that the distinction was adopted to avoid the incongruity of this C 4 rule. 4 Bl. 25. Ch. note.

Set for higher felonies or treason, murder, robbery committed by them jointly, both are liable. But the husband should have no actual concurrence for concurrence will not excuse such enormous offenses. So that the wife's liability for the higher sort of felonies and for misdemeanors is humorous. The same. 1 Lord 69. 4 Exch. 4. 12 Bac. 29. Ch. 1170. and if the common any of those offenses alone she alone is liable. 12 Bac. R.C. 47.
But if the wife by her own sex act, in some, the
privacy of a personal statute, the husband is bound
to pray it, the the wife commits the offence
alone and without his privity, in such case
the husband is liable jointly with the wife.
She must be made a party to the action or infor-
mation. But in case of misdemeanor or felony,
she is to prosecute alone, for by the principles of crim-
nal law the punishment can not be upon her alone.
When however the punishment is necessary,
the husband must be joined because he
is to pay the fine; during the wife inac-
sorable by means of her own by
Indeed the
husband is considered in the nature of a subordi-
nate to that of the wife, whereas the husband
must be joined. 1 Samuel 5. 2 B.C. 294.

If a wife marries, in course, her husband, who has
committed a felony, she is guilty of no offence, is
not an accessory after the fact as a stranger
would have been. This exception is said to be found
to upon the authority of support over some of the hus-
band. I apprehend however that it arises from
the indulgence which the law shows to the
relation of husband and wife. 1 Thess. 4. 2 Thess.
216. 1 Cor. 7. 10. 10. 43. 38.

Just in all cases to which
the exceptions as stated above do not apply or
extend, the wife is liable for crime committed
by herself, precisely as if she were sole. 9 Co. 92. 35. 93.
Of the power of the wife to bind her husband by her contract made during coverture.

This power of the wife is said to be founded in his specific defect or infirmity, and this defect is implied from his duty in certain cases. 1 Bl. 642. 6 M. & K. 239. 1 Bl. 430.

This principle in certain cases is perhaps rather too narrow for the husband is sometimes bound when he is simply refuses to be bound, and it seems strange to say that his obligation is founded in spirit when there is an express deficiency, nor may it not be said that this deficiency is nothing more than an attempt to invoke a form of duty? Thus, if he has refused to provide the wife with necessaries, she may prosecute and he is bound to pay for them, but he would not be bound to pay for anything but necessaries in such case. 1 Bl. 442. 1 Chit. 120. 1 T. 118. 1 J. & G. 114. 1 Bl. 438.

It is clear then that his actual spirit is not necessary in all cases to his liability on his contract, and it is equally clear that his defect will not in all cases avail him. The more obvious thing is principle on which to account for his liability seems to be that he is bound as husband to provide her with necessaries suitable to her rank and condi-
tion. The rule however remains the same, that what
will have been the origin of it and it may be said that from his duty as an agent which he is not at liberty to deny
or in other words the implication is not re
but able. It is no reason for resorting to the law of
Baron's liable on the ground of duty.

1 P. M. 183, Vol. 118, 2 Com. 4. Est. Dig. 147, 142.


In particular cases in which the wife may
benefit the husband on the ground of actual

1. Where there is an express agent
before the contract. 2. Where his agent
is fully given afterwards. 3. Where the wife
usually provides certain articles for the family
his has been in the habit of paying for
them, and realizing this contract this giving
us one instance of an implied agent ante
esse fact. 

4. When the article purchased by
the wife for his family, which is an instance of implied
agent subsequent.

In these cases it may be fair
ly said that the husband has agents and
there is no merit of technical meaning or fiction
to explain that liability. 1 Bl. 129, 1 Roll 350
1 Edw. 120, 128, 3 G. 33.

It may therefore be
stated as an instance of ratifying the
in these cases the wife acts strictly as a servant or
account of the husband, who appears in the character of master or employer; for in truth any other person might bind the husband in this way. So it is not from the relation of husband and wife that this liability arises. It will be found that this is the case, because the law says that no contract of the husband is binding upon his wife, except in cases of necessity. And when a person has a right to bind the husband, it cannot be determined by a private will; but it will not bind his liability. The contract is only to be binding by such notice as is consistent with the contract. For otherwise third persons would be injured. If a wife not having given such notice purchases goods, and a third person has notice, the husband is not liable for them, but if she had notice, he is liable. It is evidence that he knew of and agreed to the husband as the goods came to his use. But if they come to his use, which is his use, he is not bound. His liability depends on his notice. If he was upon the fact of her having worn the goods, she shall recover. But the same grounds of distinction if and with the hus
bands previous to passing before a stock weather and borrow money to redeem them their husband is not bound to pay it for borrowing money is not a contract for marriage the law never suffers the wife to borrow money without husband's consent even in such a claim is enforced against him 2 How 252 1 Pom 183
1 Roll 362

If a husband turns away his wife he is liable at all events for her necessities until she is guilty of adultery that divorce is a sufficient cause for turning her away and in such case he is more afterwards liable for her necessities 6 T R 606 2 Anm 2148 Salt 119 Thr 575 1 Pawt Con 139 1 B D P 226 note 339 144 D 188

But if he turns her away without such cause no justification whatever however gained or especial will avail him to excuse his liability for her necessities 2 & 3 Hott says that it is his opinion in such case that binds him that is no inconsistency in such a theory but this fact is that it is the husband's duty and he cannot by a wrongful act of his own avoid a liability that he has voluntarily taken upon himself Salt 118 Stra 1214 Esp 124 1 Esp 141 1 Sw D 34

If a man lives with a woman as his wife allowing her to assume his name and appear as his wife according to the distinction already taken he is liable for her
merchants. So a plea of "more carefully married" to an act of perjury against them is no bar if they were married in fact. 1 C.P. 411, 14 Misc. 136, 64 N.Y. 81.

To allow the husband to void himself of this plea would be a gross fraud upon the public, for he has induced the public to believe her his wife. It is as much fraud as if he had gone directly to the trader and said that she was his wife. 1 C.P. 376, 1 B.C. 347.

And this rule is the same in case of one act of perjury by husband to wife to recover a debt due to her. The debt cannot be said that they were more carefully married, indeed their plea can never be good in any civil action except in an act for divorce. 1 C.P. 376, 1 B.C. 347, 1 C.P. 411, 14 Misc. 136.

When a husband and wife part by agreement and the husband allows her a separate maintenance, he is not afterward bound for the separation, i.e., after the fact becomes known to the place where he resides. For such a known separation is a revocation of the act of which the relation gives the wife an act of the husband and those who bring the act after the defect of his wife. And before the facts become known there is a twofold void by marriage. 1 C.P. 444, 15 B.C. 116, 64 N.Y. 81.

But when the wife lives separate from
the husband under such agreement, but has no
separate maintenance allowed her, he is still liable,
for if the main and wife could by agreement discharge
of his duty, they would be guilty of a plain fraud
upon the public. The wife not having any
right to charge the duty.
1 Brow. 207; 6 T. R. 604.
Exk. Leg. 1267. 9 T. R. 1492.

If the wife desert a husband, the husband
is clearly not liable after the desertion becomes noti-
cious; and the authorities say that he is not liable
even if it is not notorious. But this I think ques-
tionable upon principle. For the public ought to be
informed of the desertion; it is
however law. Salt 118. T. R. 127; 1 Brow. 1031. 442. 3
T. R. 1608. 1 Brow. 1003; 2 N. R. 348. 1 T. R. 244. 1 Ed. 10. 289. 90.

The principle of this rule
is that by such act the rights of the wife are fore-
feited if she can more easily elude a monito-
riousness so that the husband is from discharge
of course if she should refuse to return. He is not liable after refusal
or absence, for he is under no obligation to return.
1 Brow. 339; 1 T. R. 603. 2 T. R. 875. 3 Ed. 10.
289. 90. 93.

But it
seems to make no difference whether the deserted
be absented, or not if it is notorious; for if she
is guilty of no offence but the desertion which
is not liable for her necessities. 1 Brow. 339; 1 Ed.
5; 2 T. R. 875. Salt 118. 92. 239.

If after an elopement settled
tenours she offers to return, and he refuses, he is liable for her misconduct as he is bound to support her afterwards, for such an cohortant is not a perpetual forfeiture of her rights. Ex. Dig. 125, 89, 1 Buc. 299, 300. Talk 119, 2 Buc. 243, 4.

In this case there is a general prohibition to all persons not to trust him or her co-wit Count will not avail him, that a special prohibition to one individual will, for the he is bound to support her yet of she has been guilty of such an offence, she is not at liberty to choose his creditor for him. 1 Tho. 4. 1 Tho. 109. 4 Buc. 217, 1 Buc. 296, 165, 294.

If a husband have his wife and children at his own house, not having procured for them, he is liable for his misconduct, as to the he has committed adultery provided the party furnishing did not know of the adultery nor by that having him in this situation he gives his primary voice a credit, this how sure is obliged by the party, knowing the fact of adultery. 1 Buc. 226, 107, 706, 6 T. Rep. 613, 53, 171, 2 L. 44, 2 Buc. 296.

But the husband is not liable for his misconduct during cohortation, neither is the wife liable, and has indeed been flexible: determined that if it was adultery, she is liable, this however is questionable that it is shown that if it is not adultery she is not liable, and the reason is that it does not bear the husband rights. 2 Buc. Rep. 107. 1 Pow. Com. 96, 8 T. Rep. 547, 875, note. Ex. Dig. 125.
Although the husband is bound to provide necessaries for the wife, yet if he does provide them at his own discretion, he has a right to prohibit the public as well as any individual to trust him at all. He may thus secure himself, for if he provides the law is supposed to accord the same terminus a quo that he has already given him either with the public or an individual. It is only when he refuses to provide the necessaries that he is liable on his contract for the means made by his direction. 1 Lew. 5. 1 St. 109. Let. Reg. 141. 1006. Salk. 118.

But on the other hand, if he refuses to furnish necessaries, she may proceed against him for failure to pay for them for he cannot deliver one of them. 1 Bl. 144. 6 Th. Dig. 127. Salk. 118.

If a husband turns away his wife without sufficient cause, he is bound for her necessaries furnished against any special prohibitions, for his liability remains if she may procure them where she pleases, except that such suit must be the same as if she leaves him for any cause that will justify a separation, or which makes it improper for him to remain with her. 2 Saund. 124. 12 Mod. 244. Salk. 118. 19. St. 241.

I observed yesterday that the husband is not bound to always supply moneys by the wife. The law having it at her election to employ them in such business as suit her pleasure. But if she does borrow money and actually spends it to purchase necessaries, he may be liable to su-
I have observed that if husband & wife, of the wife have separate maintenance, he is not liable for the necessities after separation becomes notorious. But if, in this case, he does not keep the stipulated allowance, she is liable upon the subsequent contract for necessities, for the condition on which she is to be exempted is broken of course he is entirely liable the same as if there had been no such renegotiation. 2 N.P. 148. d. 290. 12.

Now for the wife can bind herself or her property by her own contract,

The general rule of Ch. is that a wife cannot make herself liable upon any of her contracts, until she can bind her husband. Her contracts being regularly consider'd. as void. The reason usually given for this rule is, that an estoppel is not
that of her husband, that she has no will of her own separate from his or that she is incapable of giving. 10 Co. 242. 1 Pau. 347. 1 Bl. 442.

The true and more obvious reason appears to be, that as the law has deprived her of her property, or of all control over it, it is her privilege not to subject herself or be bound by her contract. The original reason is found in her disability, now it is not so much her incapacity as her privilege, for her incapacity is occasioned by the want of right of the husband. If she could bind herself by her own contracts, she might subject her person to suit. 1 Pau. 347. 1 Bl. 336. 325. 6. 1 Pow. Cor. 101.

The general rule the contract of a person (260) is not only invalid at C.L. but it is actually void, and the distinction between void and voidable is very uncertain--a void contract cannot be ratified. A voidable one may be. Any one that is affected by a contract that is void may set it aside, but one merely voidable can only be taken advantage of by the party or his representatives. 1 Bl. 293.

2 Pau. 124. 1 Pow. Cor. 90. 97.

At the followon
as a general rule, that if a firm court makes a contract and when one of its parts at or attempts to satisfy it, it is still void for that which is void ab initio cannot be made valid by any thing post facto.

But consistently with this rule, if firm court deliver a deed, and then after the husband's death, redeliver it, it will be valid taking effect like a new deed from the second delivery, it is

It is an exception to the rule, for it is a new intention and it be comes from that moment a new deed. For any court taking effect from the delivery that is the legal delivery. It does not operate as a satisfaction for the deed does not take effect from the first but from the second delivery. It gives title only from that time. the first delivery being considered as mere nullity. Con. 201. 2 Coh. 378. 20

Yet this thing is, that if an contractor can

And if the court of law by a firm court can

in question to it. For the lease, an deed cannot be made to the assignment of agriculture.

She may avoid the loss of the mill it is time for this line the life of a tenant, which has

not for entering under such leases. Con. 203.

Doug. 59. 2 T. Rep. 776. 7th. 2178. V.P. W. 127. 1 Fm. 131.

It follows then that if she makes a lease de-
death by him about solely or by doing any act that recognizes the relation as by accepting rent and the covenant afterward void it. And the rule is thrown if the husband and wife join in a lease of the wife's land for life or for years at C.L. By the former husband and wife are allowed to make valid leases of the wife's land for 21 years. 2 Samuel 18o, note 9. 1 Keb. 225. 1 Roll 349. Cro. 15563. Chit. 34 43. 1 Bac 30 2.

If their after the death of the husband thereby that lease, she then becomes liable upon all the covenants that can contain in the lease, as to her. 1 Macc. 291. Cro. 25563. 4. 2 Samuel 180. note 9.

And if a lease is made to a husband and wife, and after the death of the husband the agent to it, the firm that closed become liable for such covenants to run with the land as rent, but not such as are collateral or personal, as to build a house or a wall. 1 Chit. 34 42. 1 Roll 349. 2 Samuel 189.

When a lease is made to a firm agent, it is good only as the by her conveyance, entered into by her son in quit wise. Those in her favor are only voidable. For these are not mere taking effect by the relation to her husband, they being conditioned good for her advantage, and after her husband's death she may waive or ratify, and if she waives the suit with some to her husband's representatives, as one to him alone would. Comm. Dig. Bar & Fin. 34. 1 Roll 349.

If husband
and wife as made tenants in common, she may dis
sign after his death, and then the whole estate will go
to his heirs or representatives as in the case before referred
to above. 3 Co. 27. 8. 1 Roll. 349

For if the conveyance to the
husband and wife is of a fee simple, the conveyance must
be made in a court of record, to be effectual. This is
required from the high regard the law has for a
feesimple. No such solemnity, however, is required to
confirm his title. A mere entry is sufficient. 3 Co. 26

If an estate be limited to a husband or wife or to a stranger
the husband or wife take but one moiety, the stranger
the other; whereas, if all were strangers each would take
equally. This rule is a consequence of the legal identity
of husband and wife who form but one person. 1 Co. Lit. 197.
Co. Lit. 187. 8. 329.

And if real estate is conveyed to hus-
band and wife by words that in other quarters as
strangers would create a joint tenancy, they hold
an estate that is inconsistent in the law for
they do not take as joint tenants or tenants in com-
mon. They hold by certainties and not by moi-
teys; and hence the husband cannot by his own act
de aliens part with his own, nor can he save the joint
interest, for the law will not allow him to deprive
of the chance of taking the whole by survivorship.
3 R. 29. 1 Inst. 187. 9 Co. 140. 2 Vern. 120. 5 T. 147. 652

Or this rule is founded on the legal identity of the hus-
dand and the woman as one.
at from court can make a valid conveyance of land in performance of these conditions under which the said
rest in her, and this is to prevent mischief that she
be not injured by her privilege. As if lands are given
to her provided the conveyance is half to her son, a conveyance
by her would be unnecessary to prevent a forfeiture of the land.

And since

Ch. 36. 1 He to hold separate property in
now by his contract bind the property thus holden
during her term and even while she lives with her
husband. For this authority does not affect the husband's
right. He has no control over the property, and be-
sidektd it would be absolutely unreasonable if she could
not dispose of it. 1 Ton. 90. 117. 1 Web. Chs. 16. 65. Eds
Bar Co. 175.

The contract in relation to this property does not bind
her in her act of earning her purse will not be liable to suit
and imprisonment for the breach of them, so that the husband's
rights will not be violated. The separate property only is bound
to that only in S 3 and her term is no change to her
privileges or the rights of the husband for Ch. acts
in her and not when she personally at all. 1279
170 B. 182. 180. 1 P.M. 344. 1 He. 31. 344
26. 169.

And even all the property is vested in trus-
tee for her separate use, she may dispose of it in S 3
without their intervention, unless the instrument by
which she holds makes it necessary, for she acquires
the equitable interest in all her own. 1179. 115. 517. 1 Dow.
If the husband is banished by law or has abandoned the orderly or is taken host
for an officer or is an alien enemy, he is considered an eviscerating master and his wife as a free son,
then being no sufficient reason for or occasioning his
being in the servant, when the year of her own marriage
as that of the husband's right. This is a Christian
and it may be necessary for the very subsistence.
Hence the rules bind themselves, by her own contract,
may sue and be sued alone precisely like a freeman.
1 Bov. 25. 77. 2 Bov. Ray. 147. 1 Inst. 18. 4 B. 133. 1 Ch.
2 D. 257. 1 Inst. 38. 318. 1 Dall. 116. 62. 6. 2 Bov. 183.
2 B. 1. Ref. 55. 4. 587. Ref. 55. 297.

The rule has been holden to be
the same when the husband is a foreigner who
remains abroad for years without returning,
be being considered as having expired the rule
therein is however that one ancestor to this extent.
1 Bov. 38. 7. 1 Bov. 30. 11 Inst. 30. 4. note. 3 Bov.
2 33. 2 Bov. Ref. 55. 4. 587. Ref. 297.

To also in case of a divorce
a causa et thoro. for by C. T. she can bind herself by the contract. she is to be sued alone precisely as if the husband been married. 1 Bov. 75.

Moore 666.

The question however as to what
limits the rule regarding the wife of free
son as to his wife, has occurred in a vast
suit dealing of litigation in the courts at Midst.
The following was a case in which the wife by agreement had been separated from her husband, on a separate maintenance, regularly held.

Pellatt v. Barts: in this case it was determined that the wife might bind herself at law, although the husband was within the realm. 1 Pau. & Ca. 791. In Lady Fanshaw, case, the wife lived in Eng. the husband in Ireland, the wife was held to be personally liable. Both these actions were for default in furnishing. 2 Pau. & Ca. 802. 2 Cor. & Ca. 385.

In the case of Casset v. Pocock, it was determined that the wife might by C.P. bind herself to the contract of her husband, whether they might be, whether for necessaries or not, binding the wife as to the second donee of contracting, precisely in the situation of a firm sole. 1 Pau. & Ca. 5. 1 Pau. & Ca. 81. In the case of de Gaillou v. L'Obier, when there was no express aton atonat a general succession, the wife was held to be liable, because the husband was abroad and the wife trusted as a firm sole. 1 Bov. & Pau. 357.

Of this case, that of Casset v. Pocock, goes the farthest, but it is overruled by the case of Mopsnake v. Batten. 8 T. Rep. 525. Judge Riner does not think that the latter can supersede, annul, or the former.

The reason that the reasoning of the judges do.

It is abundantly shown that they intended to over
This latter case was decided after full adverse
view and examination of the underlying cases by the
nine judges—F. Tis. Rep. 682. 2bit. 76. 6 bit. 605.
1 Bev. Ch. 377. 1 Petn. 18. 635. Le. 334. 34. 8. 350. 208.
A quick examination of all three cases, and the circumstances of
each would be inadmissible, and it must be in
wholly unnecessary for it. It is the opinion of the
several cases, and each would be inadmissible, and it must be in
the point at issue, and it cannot now be considered as an
issue for discussion. F. Tis. Rep. 545. 2 Bev. & Rep. 226. 9 East
471. 11 East 301. 2 N. Rep. 163. 1 Pet. 297.

For myself, I think that
a prior court cannot bind itself on its contract
for an accurately settled as to the lives, interests, and
for maintenance. And the real estate is not
liable even in Equity rights by virtue of an agree-
ment on the part to subject it. 2 A. Rep. 163. 1 Rep.
517. 1 Bev. Ch. 16. 859. 230.

But the separate personal property and
the profits of the separate real estate may be applied in
Equity to discharge the general personal contracts. I am not
sure whether this is not done in planning a right to
act upon the wife personally as by way of instance it
acts upon the husband, but more upon the person. Bev.
Ch. 21. 2 N. Rep. 163.

I state them as the result of all
these cases, that while there is a separation and a
separate maintenance allowed the only remedy
of the creditor of the wife is in Equity. For that
event can give a remedy against the particular
husband.

Whether in Equity or at law is the agreement of
separation considered as perpetual, the interests of
community require that they should be considered
as irrevocable, and as to it may be said that the
woman is a "wife " and "de facto" and that the husband
has voluntarily surrendered his rights, state the policy
of the law will not suffer him to render himself
personally liable. This is the reason why a creditor must
suit to equity for recovery when a former court can be
served as a person sol. For as the law does not recognize
the subject matter to be affected, 1 P. C. 109, 8 P. C. 126.

If a person without a separate maintenance had not
been considered liable either at law or in equity, they
would have determined that the wife is, if she lives in a
state of adultery, that having the offense out of the
question, that is no doubt as to the rule. 1 P. C. 766.
5 ib. 682. 6 ib. 604. 103 T. 338.

If a person alone,

lives a person, or as the case, it of adultery, it is suffering
removing of her estate, she is bound by it. The time has
been of many of years and decept to it if she is in title to
the custom. This is by C. L. and the reason of the
validity is that she is helpless by the need to plead
her own cause. Hence the title hapas by way of settled
on the subject see 2 Biv. Ch. 386 1 Pow. Can. 22 2d
704. 78. 10 16 2d 1 Chir Ac. 341. 1 Biv. Ac. 801. 2d. It has
come here to consider whether the wife shall have part of her
husband's property, as by law, i.e. by will or by marriage, because of the difficulty
of making a trust for the husband, but the prevailing
opinion is that it will stick fast 1 Biv. Ac. 341 1 Biv. 300
1 Or. 326

And if the wife dies before a fine, she is liable
on the warrant of it, after the husband's death, before
that the estate defeat it if his pleasure 1 Ed. 2 66
1 Biv. 312 1 Or. 423

But if the joins with his wife it is
holding what both and their usufruct at ab initio
for both and parties to the land, and an estate to own
anything against st. 10 Co. 22 1 Biv. 302 2 Biv. 345

Thus it stands, viz. by fine or recovery, even the only
estate, which a person could obtain him in spite of,
by which it could be obtained by Ch. But now
she can do it by executing a fine over a use
of her own as well as in Eq. and in Eq. she
may also do it by declaration of trust, which I
shall speak of hereafter. The wife may
execute more before marriage for settling the estate in trust
subject to his appointment, then it is not absolutely more
advantage than another way to qualify the rule,
3 T. 70 695 1 Pow. 300 1. Pow. 165. 1 Biv. 165 2 T. 695
2 N. 190 191 6 Biv. Car. Co. 155. 163. 2d. 180

If a fine can
having separate estate permits, the husband to take the
court cannot divest his real estate under the Eng. 
statute of wills 3 1/2 4 8 9. 10. 11. The 1st of the 2nd 
estates of wills gives power to "all persons" holding 
certain estates to divest them. The last while 
would not an estate be divested, all persons 
do not include farm mortgages. The statute 
was made out of absum de custo. it having 
been determined by the court in the same way 
to give the same estates of the two statutes 
Ley 3 1/2 6. 1 1/2 7 8 9 10. 11. Co. 61 1 1/2. Dow. 1 4 6 8. 1/2 6. 
3 Mil. 2. 2 East 55.

I would have obversed that at to

I would have obversed that at to

I would have obversed that at to

I would have obversed that at to

I would have obversed that at to
By our statute all persons of full age of right understanding and not otherwise legally incapable have power to devise their real estate. It may be otherwise. 4th Co. 143.

As to the meaning of the word "otherwise legally incapable," the construction of the statute of 34 Geo. & 3. Pumeys. I think the true rule of construction. The words of that statute, "all persons" include only those who could before division of real estate by other modes and can always hold out to include from court any more than idiots or lunatics. Const. 141.

It was decided by the court of Errors in Co. 34 Geo. 33 years since, that a firm court could devise real estate, but that decision has been since reversed by another and I think correctly. Judge Pumeys, however, differs from me on this point and I believe from most of the professions. Kirby 195. 238. 2 Dig. 163. We have however now a rule that it is not on trying firms courts having real estate to devise it 4th Co. Book 2. 141. 15.

In general both in Eq. and in Co. a firm court cannot make or inquest of husband or property if she court the consequences would be to deprive the husband of his rights, in addition to the argument of presumed coercion. 2 Bl. 475. 4 Co. 51. Co. Ch. 376. Tho. 871. 2 East 572. Off of Eq. Wm. 196.

It has been said in error however, that she may inquest the property she holds in right of her other or where she in execution of Judge Pumeys, chimneys, but I take it to be incorrect. The precise rule is that she may inherit under 29 B. M. 476 because she is not to take the good and this even without her husband.
content, but she cannot devise a beneficinal intent in them even with his consent. She has mainly an executory power and can only continue the succession. 2 Bl. 498. 2 East. 552. Godl. 301. 110. 111.

In 575 a free covert may be quit.

personal property held due to the sole (earlier she uses for she is then considered as to this property as a free sole.

2 Bl. 495 ch. 1 Tim. 98. 1 Ky. 583. 518. 3 Ky. 190. 1 Bot. ch. 16

On the other hand a she may with his consent

beguinst soe kind of personal property whether it

originally belonged to him or her but here it resides

remaining known in the wife. She sits merely as the agent

of the husband, who has it in his power to authorize in any body to beguinst it. His consent is the decisive

act. T. the hagist tells this the wife was aginst

1 Neb. 211. 2 Bl. 298. 1 Bl. 227. 3 e. the 675. 27?

2 Bl. 316.

But the husband's agent to a devise by the wife

of property that may advance to her after his death

will be of no avail, and the beguinst is void it goes

when the ground that the wife has no right herself and

the husband has none nor even con't have any. 2 East. 552.

If a free covert makes will marry into this before the death

his wife is not to by the marriage for it is essential that

then be a power to rove in the estate and his power

being suspended by the marriage he has no right to use.

2 Bl. 552. 2 Co. 64. 2 Bl. 675. 2 Bl. 299.

But sundone
the will in this case not how the husband it is not well settled whether the will is revoked or not, the prize an exception. The question is whether at the renouncing revoked the death of the husband a revised it. Goodl. 39 2 T. Rep. 689 More 381. Dov. 172. 2 B. L. 299. Ch. N. 2 U. Rep. 692. What is the

I will make during coverture is not validated by the husband's death, for if not good at any
or at its inception, it cannot be validated, and it was void from the making it must be had from
this rule is well settled. Dov. 172. 3 C. S. 350. Salk. 388. Plow. 343. 1 Rep. 171.

But a person may execute a trust without an express authority, taking a mere agency or power of will to dispose of another's land

Or suppose a devise of pro.

ut to a person even in trust a an execution that she conveys it to another in a part of it she would be able to execute this trust on the last supposition it would be
unreasonable to prevent a perpetuity its own.

But if a devise is made to a person even to her own use and that of her heir
ance a power to convey it she cannot dispose of it for the
person giving cannot dispose the power to dispose of her
her inheritance this if it has been given to be not to
separate use she might dispose of it in 57 understand
She may however retain
a power or authority retained by himself to convey a new de-
vice his inheritance if settled by way of trust or trust
over a use, and then in two ways by which she may vir-
tually dispose of her inheritance by will or a writing in
the nature of a will. Pow. 1 Petv 150. 1 Petv. 387.

Thus by

way of power over a use. if the estate of a farm shall be
coupled to the use of himself for life with remainder
to the use of such persons as she shall appoint by a dor-
wise, or writing in the nature of a will, her appoint-
ment or limitation shall be valid in Chil and at law
under the statute of uses. 2 Viz. 75 I 191. 610. 3 1 Petv 69. 638
Pai. Ca. 156. 1 New Bl. 314.

Another method by which a

farmer can virtually devise his inheritance is, when

the estate is conveyed to trustees for the use of such use de-
ningcourt and otherwise in trust to the use of such persons
as she shall appoint or and or will or writing in the na-
ture of a will. This writing is a valid appointment under
location of a trust, and is effectual as if it were a she

execute. This is good only in 60% of courts of law about
nothing of trust. It can only be valid if a

enomis. This is good only in 60% of courts of law about
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enomis. This is good only in 60% of courts of law about
got title for his use in Eq. 1 at & 13 have given before in their covenants to dispose of the use, and they will execute all necessary instruments to effect her conveyance. So that she does not in the theory of the laws dispose of it at all. In court of Eq. consider the trustees to inform them thereof. This reasoning is technical & artificial but it certainly is very obvious.

And if the estate has not been settled into particular have been entered into before marriage it will be equally affected in Eq. 6 Brow. Bank. Ca. 156. 5 Term. 695.

A junior court may determine how personal property under a lease agreement of the husband made before marriage, such as may obtain it, for upon the marriage the property is absolutely his and Chit will enforce the act until it can be enforced only through the court. As the wife cannot hold a personal right of property. Brow. Dec. 166. 2 B. & C. 191. 2 B. & C. 298 note.

But upon to convey by deed the property of another may be conveyed by a junior court without the intervention of any use or trust, for being the same agent or instrument the appraiser is considered as having by virtue of the instrument which goes from him the power that the person executing it. Brow. on Con. 312. Nov. 80. Latet. 11. 135. 139. Talk 239.

The effect of agreements between husband and tenant made with during correction or before
It is a good rule of C.I.L. that all contracts made between husband and wife are void and all contracts made before marriage, post nuptial, as if voided by the marriage, 1 Bl. 442. 2 Lev. 47. 2 Bl. 254. 2 Co. Ch. 597.

The rule is excepted.

by alleging that the wife is the legal wife of the husband. The true reason seems to be 1. That by virtue of this legal union, the right of obligation must in the same sense so suit to that the law allows of no contractual obligation between them 2. Discovery of fraud in one of the cases would be unjust if notgation by reason of the husband's right to the wife's property it must be for him to receive what was already his own, or what he might make his own by his own act. And if the court would come to this, the same also in prison but the court must believe himself. On the other hand it she should be permitted to receive of him, the husband would be his immediately on the marriage. And that, lastly to satisfy of the law will not allow of one action between them.

As a consequence it this rule of the C.I.L. If the wife of a 120.

in an action becomes &c. He is to the 22d in the action, the suit itself is destroyed or discharged from for the only legal right is in &c. to carry on the suit, 8 Tyr. 407.
If a husband having obtained goods, says 2 Ki. has taken and committed them. 1 Ki. of these having made the wife his &c., I must in order not to injure him for his own wife is not a creditor. I will account for him in prison. Besides she being &c. this legal right arising from that capacity accounts to him. In clear evidence all the right she has to pursue the absconding of the goods continued to keep himself in prison. Being both debtor & creditor. 8 T. Co. 67.

For this great rule of 2 Ki. there are several exceptions which I will all mention to you how often a wife, a husband with a contract, made during conviction, by 2 Ki. no con.
tracts between husband and wife are to judicial authority are valid. For reasons which I am not able to give. And also 2 Ki. does not require
me to make separate personal security. 1 Coyn. Coyn. 62. 1 T. &c. & 15 in Coyn. 136. 325. 6.

And a second being from the husband directly to the wife is void.
out. Law and authority are in Coyn. and this is
the reason of the exception being already in him, because of the ignorance of any concern with
believe for I think the law knows no right
which it cannot remedy. 1 Pet. 3. and notes. 112.
1 Coyn. Coyn. 62. 2 Coyn. 49.

But it is now settled in Coyn.
that the husband's money belons belong to the sole and
involuntary of his wife during conviction, but not the declaration of trusts, and that he

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agreement was with the husband respecting it may be binding. I say "may," that is the situation. Bar & Dunn does not prevail in Eq. For Ch. can act where the husband still enjoys without objecting his personal rights of another party, which amount of view consists of 2 Vyp. 669. 2 Vyp. 414. 2 Rev. 123. 184. 1 Vyp. 168. 517. 2 Vyp. 191. note. 1. In the 16th section of it not acting is very familiar. 1 Rev. 28. 158.

In that case, even if it were held that a wife could not hold upon its property to her not to a parent or to her own use, but in the view can amount to, I think correctly. 1 Day 221. 235.

The court of Ch. infers this contract, between husband and wife. This may be drawn in the same manner by the wife, suitor Howell's note alone. 1 Vyp. 478. 1 Vyp. 87. 99. 1 Vyp. 496. 2 Vyp. 163. 168.

And it has been determined that it is a husband to encourage his wife in undertaking serving. It allows her the service of any part of the family of their labour: the agreement is binding it may be enforced in Ch. 39. W. 937. 1 Vyp. 122.

An application may go to the other suit, the wife is good in 474, and I suppose also in law, because it is a testamentary clap, but I am sure even without this that it would support a quick
city to his wife. It is truly received in his life time but it is of no avail unless he dies.
1 Curt. 3 a. n. 1.

If a husband and confederate with his wife wills to mudlark with her estate he is con-
tituted to do it by the conveyance. But he is not left to a hint on that but the may
have an injunction in Eq. 2 Bov. Ch. 37.
1 Nef. Bl. 334. 341. 351

But entirely to him refer-
rites one inferred in haw and Eq. 1 and if the
husband and should attempt to violate that agree-
ment she may be discharged by them, carrying
1 Bov. 54. 2. 2 Bov. Ch. 37. 2 Curt. 283. St. 478

The man having said
however by such an agreement only to the extent of
the terms of it. If there were after a new agree-
ment to him other than any property belongs
to the wife it will be as much hid as if there
had been no separation and be the contrary is
expressly stipulated in the agreement for a man
no 2 of this kind is not necessarily an au-
ternation of his right to the husband. Bov.
1 Bov. 2 Vem. 59. or. 290. 1 Vem. 2 61.

The other class of contracts are those made before co-
venant or those made by persons who afterwards in-
marry. The general rule is that of a man is indebted
to a woman or she to him. the marriage extinguishes.
The contract or obligation. 1 Bl. 444. Cow. Ch. 551.

The reason of this rule has been explained. If the husband is indicted by bond before marriage, or when the bond is cancelled, it will not arrive. For a personal contract once suspended is forever extinguished. 1 Bl. 444. Cow. Ch. 551. 7 Cow. Ch. 254. 1 Bl. 136. 10?

And if an obligee marries one of several creditors, the whole debt is discharged or extinguished for each being liable to pay the whole or discharge to one discharges the whole. 1 Tom. 93. Cow. Ch. 551. Cow. Big. 21. 22. 31. 43.

Under the general rule a distinction is taken between a contract that creates a duty in the husband during cor
tinent and one that does not, for a creditor or promise
to leave his intended wife, assure of money after his
death the promise being made before marriage, is good
for sake of 22. 24. for here it is not that inequity is for
notice that is no right that cannot be enforce no
claim arising until the relation existing. 1 Cow. 325. 6
Pench. 93.

But a final bond issued before coronet and
conditioned to leave the wife a term of years after his
death, this has been much contradicted and diversity
of opinion. the question is whether it is discharged by
the marriage or not. It was said that the bond was
perpetual creating a debt in perpetuity and dischar
ged. If this opinion was the right, but it was not.
ruled. It is now settled by 1st Bryan. 1 Bing. Bench.
was good in Ch. as evidence of an agreement has never been doubted but in those very cases the Chancellor, within its consideration, has declared void at law: it has been settled however that they are not so. 8 Pitt. 243. 2 Term. 480. 2 S. T. 97. Per cur. 237. 2 Vint. 349.

That a promise to this effect made before marriage regarded at law was determined as early as the time of 2 Eliz. act. 1 Cranes. Robert however entertained against it that his opinion was overruled. The law is now well established. 20 Eliz. 2 Cr. 571.

The wife by accepting a jointure before marriage may bar her right of dowry being an agreement made in contemplation of marriage the subsequent marriage was never considered as extinguishing it. 1 Inst. 38. 2 Co. 1 22. 2 Bl. 157. 8. 1 Bl. 173.

The law regulating jointures is prescribed by Stat. 17 Eliz. c. 28 and the 38 of Wm. The requisites of a good jointure by that statute are: 1st. That the estate be so limited as to take effect in possession immediately on the death of the husband.

2nd. It must be for the life of the wife at least, and not the life of another. 3rd. It must be given to herself and not to another in trust for her.

It must be in satisfaction of her whole dowry. Otherwise it will not bar her rights of dower. It is said that it must be imperfect to be in bar or satisfaction of dower. The better opinion...
From Page 194

The pharmacology of our state is such that it has been doubted whether there might not be some of personal property in England. It must be of personal, in our state, after the word personal comes, or "some other estate," my opinion is that there need not mean to include an estate, but the law of personal, one has been determined in the case of Smith v. Deeds, that a jointure must be of a personal estate under the statute.

But att it must be of a personal estate and have the requisites above specified, yet an executory agreement before marriage is a part of personal property, any man will in 267 have been done the reason why on the agreement are not good at law as that courts of law have no discretionary power. They have only to inquire whether personal estate will continue a jointure to be done. But Ch. 2 can take care that the wife does not suffer injury, so that she is perfectly safe 259. 1 Penn. 35. 1 Inst. 57, 6.

If a jointure is settled after marriage, the wife can have businesses, but may not retit it, or when it runs through marriage. It does not bind her. She can not however take (letter) 2 Rob. 138. 1 Phil. 47. 58. 883

And in this case by bringing a suit of divorce she wins the jointure into facts. 3 Co. 27 a. 1 Ch. 56.

And if a wife
agree to accept a gift by way of dower in stead of dower
she may after determination of causes and under
the dower, for being made during marriage does not bind
and if made before she would not in quittance. And
in such cases the gift which is that she may take both as
for the dower is refused to be in bar of dower, and the
reason is that no legal proof could be admitted to prove that
it was so intended, for that would be directly in
the title of the Act of Franchise. It was decided that
it might be admitted, but that decision was reversed
and the reversal affirmed in the house of Lords.
Pay 238, 283. 18, Co. 219. 2 Vin. 366.

But the law

dower is not refused to be in bar of dower, yet she can
not take both if the husband has devised away all
his other property, this being a proof that he intended
the dower to be in satisfaction of dower. To suppose
otherwise would be to suppose that he intended only
part of his will to go into effect. 1st Pay 4, 38. 28, 34, 128.

And in relation to this agreement, it is said a gift
that a marriage settlement, as it is called, is binding
in England, both parties being previous made for the
family, in contemplation of marriage. 1 Pow. Co. 404
Dib. 255. Vin. 480, 498. 2 Esth 97. 1 Pow. 37. 93, 95.

Of Husband's rights and power over the person of
his wife.

Of the wife is injunction on her person by the way
full acts of another and the husband sustains consequential damage, as by battery, slander, false imprisonment &c. He may sustain an action in his own name alone which is the only way for the special damage, laying it with a fair ground for an action. Wherein he sustains the action is best for the fraudulent injury or for the battery, both must join. 1502, 316, 43, 511, 155, 152, 618, 252, 186, 140, 14, 50, 3, 10, 12, 8.

So also the husband is entitled to an action against any one for criminal conversation with his wife, in this case there must be proof of an actual marriage, and that it was lawful, a marriage in fact will not support the action. 51, 15, 20, 3, 7, 278, 162, 122, 93, 39, 330.

But if the husband consents to the acts he cannot maintain that a claim for an action against his wife into a commodity and then sue others for easing the same by 15, 20, 3, 7, 162, 122, 93, 39, 330.

It has been once determined that if he himself lives in sin in continuing he cannot recover, but it has been lately decided to go only in mitigation of damages. 15, 7, 33, 15, 162, 122, 93, 39, 330, 15, 162, 122, 93, 39.

It has been said that this action cannot be maintained after separation by mutual agreement, but this has since been doubted. 51, 15, 20, 3, 7, 122, 93, 39, 330, 144.

If a marriage woman is allowed by her husband to
But if she was in this state without his knowlege, the fact would go only in mitigation of damages. It does not bar the action because it does not amount to consent on his part, 4 T. 525.

In aggravation of damages, 4 T. 549.

If her conduct was such as to show that he lived with her before, also any thing which would show the turpitude of her conduct as breach of trust, & his necessity, and his poverty. Bull v. C. 37. 2 Esp. Dig. 311; 1 Sail. 386.

In mitigation of damages, 4 T. 549.

If her conduct was such as to show that she was in accordance with her character toward him at home, that he turned her away, refused to maintain her, &c. the wife's previous bad character, either by misconduct, or elopement, indicent circumstances, or even in continuance before marriage. 1 Esp. 657; 2 Esp. 562; 2 id. 16; 1 Salk. 33; 31. Th. 24.

But it cannot give in evidence, any misconduct of hers after the act complained of, for the seduction. 4 T. 552.
According to the old C.L. the husband might give his wife moderate correction as he was liable for her misconduct, but if he beat her most brutally or threatened her, he could not justify it. He might bind him to his peace or obtain a divorce. [Note: This text seems to be incomplete or contains errors.]

It seems to be the latter opinion that he can correct personal vices with him by way of retribution or chastisement; any more than he can with a stranger. If he does, she may bind him to his peace or she by the same relief against him, and in harm corrup.*

She may however impose restraint upon her liberty in case of gross misbehaviour or to prevent her doing mischief and may in all necessary vicissitude for this purpose both and other. [Note: This text seems to be incomplete or contains errors.]

But if he2 excites her without good reason with unreasonable threatenings or severity she may be discharged by habeas corpus. [Note: This text seems to be incomplete or contains errors.]

He may justify a battery in defence of his wife as she may in his defence; i.e. each can justify similarly as in self defence. [Note: This text seems to be incomplete or contains errors.]
Of the mutual inability of the husband & wife to testify for or against each other.

The great rule is that they cannot testify either for or against each other. The union of interest and the policy of the law seem to be the foundation of the rule. 1 Stat 567. 1 Cal 243. Bullitt 123. 2 T. Rep 168. 178. Dec. 173-5.

Since the husband cannot testify when the wife is concerned one against his own interest. Thus when an estate was settled the rule of evidence is of the wife, that she may be taken in 124 for the estate of the husband and the trustee both as for against the wife. She could not be admitted to testify that it was the wife who held separate property. 2 T. Rep 278. 3 T. Rep 268. Dig. 720. Phil. 314.

Neither the husband nor wife is admitted to give evidence in any case between strangers, which tends to criminate the other. Thus in settlement cases, a marriage being in question the former wife was not admitted to prove the husband was formerly married to her or it would be accusing him of bigamy. Even after he was remarried to the estate. Deed 80, 1725. 1 McKnelly 161. 2 T. Rep 268. Ray 1. 2d Rep 752.

1 Val WHAT 637. 720.

A wife who an answer to a suit filed matrimonial cannot be a witness against her former husband to prove any fact that she knew before the divorce is ruling evidence rather because it might lead to impair the confidence during divorce by a showing that one would betray the other. Deed 80, 1725. 2d Rep 752.

But after such
divorce she is a competent witness to prove facts that took place after the divorce for the above reason do not apply to case.

It is a general rule of evidence that a person may testify against himself by consent of the adverse party for himself. But it is not so when the relation of husband to wife intervenes. For if the wife's consent should amount that she might testify, the court would not admit it, for the evidence might be against him on the guilt remaining, and the third day of the law will not allow. Pictor. Ev. 173. Ray. 182. Inst. 6 b. Hard. temp. Ca. 294.

But to the general rule on some occasions it has been said since considered as usual, that when the husband is indicted of treason the wife may testify against him. Because it is, that the duty of allegiance is paramount to all private obligations. Ray. 1. Dall. R. C. 260. Bull. 10. C. 256. 2 Neib. 293. This has been doubted and the rule is wrested. Tit. 1 Dall. 381. 4 Haw. 608. Tho. 684.

2 When the husband is a complainant to bind him to his promise or good behaviour she may be a witness against him and conversely this evidence is allowed from necessity. D. Haw. 432. Bull. 9. C. 287. 1 Bev. 542. 110. 2d 130. Tho. 633. Ray. 1. Pictor. Ev. 173 Phil. 68.

To when the husband is prosecuted by the public for personal abuse offered to the wife, she is said to be a competent witness; this has been denied, but it seems to be a true rule, for if there is a case in which to
timony is to be admitted from inculpity, this old way to be seen. The rule holds equally in converse. Act 115. 1 McNelly 145, 172. 443. Ball. 36 P. 287. 2Dawsh. 338. Page 173. 183. 243. Ch. not. (Contr. Pay. 1. 1 McNelly 141. Phil. 188. 1 East P.C. 154)

Again when a woman is forcibly carried away and married. She is a rebuttable witness against her husband. All facts to prove the fact. Since the rule is always thus made such crimes a felony. This is made no exception to the rule for the marriage having been forcible it is void by C.J. in such case is inadmissible. By the rule 60th Ito Th. 200 Ch. 181. 1 Bl. 28b. 2Dawsh. 608. Page 149. 110. 443. 170. 178. Phil. 174.

Further if a man marries having a former wife living the second wife may testify against him and for the same reason. The second marriage being void and even as an inadmissible in bigamy she may testify to her own marriage after the first first marriage is proved by strangers. Bull. 157. D. 155. Ch. Dig. 721. 1 Bl. 163. Page 174.

And in an action between other persons the wife has been admitted to give such evidence as would indirectly change her husband's civility but not criminality. As in an action against the bridegroom for brids' wedding clothes. The bride another was admitted to prove the clothes to have been procured on the credit of her husband. 18th 58. Bull. 157. 1 Bl. 287. Ch. Dig. 721
The question now to inquire, when the husband dies, must join in a suit, and when the husband must sue alone. If, when he may join his wife or not at his election. For that has been decided of this.

It is a general rule that when the right of action survives to the wife on her husband's death, she must be joined with him as plaintiff in the action. 1 Bl. 327; 1 Milt. L. 222; 3 T. & Pau. 531; 1 H. 324.

The reason why the wife must join is because the husband by commencing the action alone would attach a set-off of wrong in himself. Thus, notwithstanding the wife of the legal right as the case may be, and she cannot sue alone, not only because of the right to the amount of the money, but she cannot of herself make an attorney. Besides, if she should sue alone, she might in such a suit be imprisoned which would infringe the right of the husband. 1 Bl. 327.

In pursuance of this principle if a real action is not to recover the wife, and she must join in the action, because the right would survive to her. 1 Bl. 21; 1 Bl. 327; 1 H. 324.

So in the same to
mean the wife, bound. The act strictly a real action, both must join it for the same reason. 3 Wils. 232.

32. 18 Eliz. 3. 3 T. 62. 2 Etcb. 2. 1st. 6 Ch. 8. 2 Hil. 325. Contra 2 Eliz. 133 when it is said he may sue at
or join at his election. 3 Som. 203. 1 Tn. 376. I came in
of Viz. 1st. 678. it seems to be decided. the law woman
for certainty. 6 Eliz. 224. 1 H. 5. 124.

The rule is the same in an act for debt due
to the wife while sole it for the same reason. 1 H. 318.
327. 8. 2 Eliz. 705. 1st. 75. 1st. 1st. 75. 1st. 75. 1st. 75.

The rule is the same in an action for debt
whence

hurried by hand made to the wife while sole it for the
same reason. 1 Som. 25. 1st. 75.

To alter in action, down to the wife during custom, as batting. Shand.

So that the husband is. These claims, being such
that the husband cannot make their own or become
a slave in action. For the youngest in effect for
joining. 2 1st. 120. 1 Viz. 328. 1st. 1st. 75. 522. 608.
1st. 75. 2 Eliz. 1st. 316. 1st. 75. 1st. 75. 301 to 301.

In an action for tress

...ence committed on the wife, and both must join, as

than can be defined upon the same principle. Com. Dig.
Bar. 1 1st. 1st. 301.

Since it seems the rule to be

that in an act of theft for stealing the wife's

during custom, the must join, with the
carry

is said by Pollio in a note. "As said by Comyn, with
affirmation, for it is well known to the

Bar. 1 H. 127. A Mon. 6 28. 2 H. 5th. 1st. 28.
in an action for destroying common embankment
that is such crops as are raised by annual bees
bound the land and may destroy our same corn
the right of setts would not survive to the wife and
it he should sue the embankment would go to his
representation. It seems to me that it cannot
be at his option whether to sue alone or join
the wife, for either than an entire case get the
decision upon entirely different principles, from

Or also in cases of destroying or injuring the grasping
when the wife suitorance during a suit, he
is no suitor but he may join the wife. I think he
must for the actions would survive, grasping being of
the colony as much as trees. Brels. 274. Com. Dig. Burd.
Finn. 1. Co. Eliz. 96. 2 Will. 2d.

In those for the wife
husband if the conveyance was before marriage, this
must join because his right at the time of con-
servate was a cause in action 3 T. Eliz. 631. If the
conveyance was after the marriage I state it that
the husband must sue alone because neither the
goods were conveyance after the licentious the wife
her constructive possession, neither was their cause of
action title there see misfortune. 1 Alb. 114. 1 Bosc. 287
( Vict. 261. 2 Eliz. 109. 1 Eliz. 102. 3 T. Eliz. 631. 2
may versus
So also in cases where the husband may sue alone, 
join the wife or his election. Thus, if the 
suit is for rents due to wife, while public 
rents join, but not if the husband seeks 
rent and the goods are not in his 
name, he may sue alone 
or join the wife, for he may either 
treat as done to himself as he has the 
goods in 
possession, or he may consider the husband 
throughout the suit, him as the means of 
forbearing the wife's rights of action. Ex. 82. 139 
Mark. 534. 222. Com. Dig. 169; 1 Peter 5.

If an action 
commences on suit accruing out of wife's debt 
during coveting, he may sue alone or join the 
couple, for the claim accruing during coveting the 
husband may either object to his interest in it and 
join him or dismiss himself alone. Ps. 76. 7 Bar. 
2 Pet. 4 Co. 51; 18. 292. Tenth must join for its 

If a breach is given to the 
husband or wife during coveting, he may either 
join alone or join the wife for the same reason. 
Fra. 12, 9; 18. 296; 1 13. 232. 361, 267.

Children become the husband's heirs during coveting 
when not actually absent or disjoint to the wife.
intend to it. Can we, having its own and collect

2 0 9.

could or maintain our action when it? Mist. Rep.

11.4.2.309.10

I would to you that if a bond is given to husband

and wife during coverture, the husband may sue alone or

join his wife. The rule is the same if a bond is
given to husband and wife as executors to another

through the bond without double service. The reason of

the rule is this: having the legal title to receive

it as his own for the purposes of collection subject

to account for the proceeds as agent of tate. 1 Ed.

Rep. 616. Same.

And when the bond is thus given if the hus-

band now alone, he may declare upon it as a bond

or obligation to himself alone and it will be no

variance, because it is in legal effect his only if he

chooses to make it so. It and 1 Pille 309, why is

given to otherwise.

And if a bond or the personal obli-
gation is given to wife alone during coverture, he may sue

alone or join his wife in an action on it at his election.

The reason is that the bond is considered as the gift

of any specific article to the wife would be, and

he may treat it as his own if he pleases without

every reference to the interest of the wife. 3 Civo. 403.

6dr. 396. D. Vige. 676. 1 Lebe. 232 8 61. 266

If a leg-

acy is given to the wife during coverture, the husband

may either join the wife or sue alone as before and

for the same reason 1 Pille. 128. 1 Mod. 179 2 bell. 134.
find a diversity as to the question whether the legacy would survive to the wife. The better opinion seems to be that it vests in the husband and will not survive to the wife unless the husband designates to the wife interest.

When the wife is the malicious cause of the action, and an insepulchral reversion is made to her the husband may either join the wife or sue alone in the cause of action, and it will not survive to her. Thus in actions rendered by himself, there being no insepulchral reversion, the heirs belong to him, yet he can assume his right by joining her in the action as he has a right to do. But if the reversion is implied by law, it must be in the husband only. Co. Litt. 77. 205. East. 251. 285. 12 R. Co. 89. 61. 3 Bark. 174. 2 Nils. 434. 321.

This is a contradiction to whether the action would survive the wife. The better opinion is that it would not, but the husband may affirm the promise as made to her. 3 Bl. 83. 1239. It is in that case said that the wife cannot join without a statement of the wife's interest. 2 Bl. 1236. 2 Nils. 535. 1 Bean. 255. 285. 320. 321.

When must the husband sue alone?

When the wife is merely the suffering cause of action and the husband sues for damages merely consequent that he must sue alone as the action not being for the personal action. Per 1 Edw. 140. 1 Edw. 546. 3 Bark. 268. Co. Litt. 557. 528. 1 W. 256. 426. 2 W. 321.
et al. in the case the action must be brought with a quasi assault and battery, which is the gist of the action. It is called trespass in the king, but I don't think it more properly case. The king, actions are founded on precedent which seem to run in con- cidence contrary to principle. 2 Diz. 167. 0 Brot. 49, 6 East. 587. Est. Dig. 6 6 5. 1 Ed. 9. 11. 13.

If a battery is committed upon husband and wife at the same time, they cannot join for the injury to the husband, but for the injury done to the wife they must join. The injury done to the husband is considered as done to him alone, so it is with the injury to the wife except as to the consequent damages, but she cannot sue alone. Co. 1 7 8 8. 7 8 5. 3 8 5. 7 6. 8 9. Co. Ch. 3. 9 2.

But if they should join for the injury to both and separate damages given, the husband might release his own damages, and to the sum for the damages on the injury to the wife, for they had a right to join to recover them. 1 Vent. 9 2 8. 2 1 6 9. Co. Ch. 2. 6 5 5. 6 4. 1 6 6. 7 8. 5 3 2. 5.

And if in the case last stated, both supposed not guilty and the battery of the husband, but guilty as to the other, the wife may take into the credit with Stants. Co. Ch. 6 5 6. 2 1 6 9. 2 9. 1 6 6.

If a wife is made to the husband in consideration of delaying to collect a debt due to the wife when due the mount.
You alone cannot join the wife for the wrong was made to him and the right creating by it is exclusively his. Besides, this would be a novation if he joined the wife. The former being made to himself. 

[Inaudible text]

To also an act for silencing the wife must be hot by him alone the injury being done to him alone. 

I have observed that when an action is brought in a married inquiry, the wife must be joined. But a deed in the hand of the husband alone for breaching of trust. Off his hand its beating his wife is good for the breaching in the grammar and the beating is merely aggravation as in cases of beating servants. 

[Inaudible text]

It is a good rule that if there were alone when he ought to join the wife or joining them when he ought to sue alone; the mistake is in.
If husband and wife join in a suit which shows no interest of the wife, it is ill advised to sue in such a way as to allow the wife to be litigant, especially where the husband is sued for debt without stating the wife's interest. This rule is that the wife should not join unless the bond was sued upon if it were it should be so stated, and if it has been joined to be ill advised. But according to authorities I think it can be joined by verdict. 2 Chit. 605 207 8. Clev. 1646. Ball. N. P. 59. 1 Feb. 311 12.

It may be said because the wife may have an interest and the court will not presume that she has not after verdict.

When must husband and wife be joined as debt. When not.

Since the first rule is in the counter part of the one which regulates their joinder as debtors. If the cause of action would survive against the wife she must be joined otherwise the husband representing might be injured. As in an action for debt sham from
the wife solely. The husband being only liable during
conviction for such debt. 1 Bl. 448. 1 Cist. 351. 1 Wmb. 281
440. 4 T. Abk. 348. 3 Med. 186.

If an action was brought
to recover the bonds he owed by her husband and wife as heirs
she must be joined as defendant. 17 J. Dig. 184.

Also an
action brought for acts committed by wife before conviction she
must be joined as defendant for the same reason. 1 Cist. 333. 351. 6 Cm.
Dig. 192. Still the same when action is not to recover
some sum before conviction from her. And so in every
case a joint issue is made whether he be liable while sole or
not. 1 Bac. 367.

Same rule holds of all actions for acts
committed by her alone without husband's joint
conviction. for you will remember that there
service against her. 16 Cm. 301. 1 M. McC. 149. 6 Cm. 1437.
1 Roll. 6. 1 Silw. 312.

If a lease is made to husband
wife or a suit for rent accruing during conviction
cannot be brought against her, for you will recollect that the
wife's joint issue cannot be divisible. It cannot yield the
lessor during conviction since it is good until the voided
botts for him and against her. 1 Roll 348. 1 Bac. 397
Cm. Dig. Bar & Finny.

But on the other hand when the
cause of action would not survive against the wife the
action must be lost against the husband alone.
Then if a sum were before marriage and not accruing
during conviction the action must be lost against her.
alone but in an action for the rent that accrued before the
must be joined; for occurring after would not serve
against her for she could not pay it and he is supposed to
have all the advantage of it and it would remain against
him. May 6. Con Dig. 18. 11. 18. 11.

If a promise is made by a husband and wife jointly the husband alone must be
paid, the wife cannot be joined for in the lease it is void. This case you know is different from that of
the lease of which I have spoken, the lease being
only reasonable as it is supposed to be for the advantage.
Psalm 31. 3.

If a battery or other tort has been committed
by them jointly he must be sued alone. The wife can
not be joined. The rule is the same if it was com-
mitted by her alone this is his coercion as in his presence
or by his command for it is considered
to be the act of the husband and the wife being ac-
used according to a former rule. Co. 5, 18. 11. 355 253.
is 101. Com Dig. B. 180 & Fin. Y. Phaedr. 27. 4.

Especially,

is the guilt. As to torts committed by both together jointly
by his alone or by husband's coercion during cohabitation it never.
1 Trol. 3 25. 165.

If the wife is joined as defendant
the wrong must be as general when she ought to be joined
the suit may be abated. And if it is not pleaded in abate it
is error and will sustain a motion in arrest of
non est iste or a verdict of non est quae. As for one act of
falsehood in words alleged to have been spoken by the
Husband alone. So if an action was brought against
him alone for a debt due from the wife while sold,
C. R. 213. R. 19. 73. 116. 32. 32. 31. 3.

If a fine count bring sued alone for the covenant and
privity she may have $20 for costs in her own name
for 500 having but his act against her alone con-
not subject to such $20. Or by a true facias may be
sued in the name of himself and husband along.

But the wife when sued with the husband cannot plead
alone. Husband must join her. She can not plead in her
own name because of her disability. As by estat.
for by reason of her disability she cannot in her own
the husband must abate one for both. While the
wife is sued alone she must plead alone or should
not plead at all. C. R. 2. 31. 3. 3. 31. 31.

The relative rights and duties of husband joining his
wife first. We are now to enquire with regard to the
celebration and annulment of marriages; and for
this purpose we are to consider first what marital
marriage. What void and what void all
only.

Marriage is a contract purely civil and the ma-
rine of solemnization can be cured by will in Eng-
l. Con. Stat. 15. only. And previous publication be-
ing generally required to be made in some religious
assemblies in some public place. 11. 23. 4. 44.

When either of the parties,
a minor or such requires the consent of the parents or
guardian as well as publication.

The persons authorized
are those to marry others or Govt. or Govt. 
who have power throughout the state
and clergyman who are settled and portion of the
people within their respective counties. 
Chapter 188. 8. Gen. 498.

If a clergyman or the qualified power marries a
without publication or consent, the marriage is valid
but the officier incurs a penalty. 8. Gen. 498.

been a matter of some speculation whether a marriage
by an individual or the pastor himself would be
It is not clear whether or not it is a civil or
valid and governed by the municipal law. I should
think it would be valid only celebrated according
to the law. This seems to be the prevailing opinion. 
159. St. Law 458 120.

Marriages not valid are either void or voidable
and to determine which we must turn to the in-
vestigation. There are two kinds. Canonical
and civil. The first are derived from the divine
from the divine law, and the other from the con-
secrated or civil, the marriage or the latter, the
latter, the former. The law of the land. 8. Gen. 32
3. 1 Bl. 134. 5.

The sin being derived from the divine
law are in Eng. recognized only in the spiritual courts, 1 Bl. 434. 5. They are principally sanctioned by 32 Am 8 which declares that nothing God has declared shall make void a marriage without the concurrence of 2 B. & 8. 5. 15.

The principal degrees are the standard as to consanguinity and affinity. I will here observe that the canonical law forbids marriage under the marriage only of children of the first degree only, and no question can be raised after the death of either party as to the legitimacy of the issue, in the legitimacy of the marriage, or the ground of canonical impediment for the object proposed by such enquiring is strictly pro salutic omnium sani, 1 Inst. 33. 1 Bl. 434 434. 4 41. Galk. 548.

As to the question who are those who are proscribed by law to intimacy, I would just mention those who are literally related by consanguinity or affinity, a man may not marry his daughter or his son's widow, Le. 1 Bl. 435; Inst. 7 Ch. note 3 B. & 8. 571; Vang. 203.

Among collateral all relative in the third degree are forbidden to marry, Le. unless some serious cause shall make it necessary, such being the most distant relative who can forbid all those in the first degree, and many on first cousins who are the nearest not forbidden B. & 8. 228. 1 Inst. 235. 48 181.

This has been much controversy before the
legislation, the courts, and the churches. Within a man might lawfully marry his deceased brother's widow, the affinity in this case is of the second degree. Such marriage can not be common and they are made lawful by statute in Can. Book 5, 478.

But unless the parties were within the prohibited degrees, by the Can code, if no divorce takes place during the life of the parties, the issue is legitimate. As before observed, no inquiry can be made after the death of one of the parties. Deilh. 121, 548. Can. 271. 1 Bk. 360.

In Can. on the contrary, a marriage within the prohibited degrees is declared by statute null and void and the issue illegitimate. And the parties are ignominiously punished as for incest. 7 Can. 479. In Eng., however, it is no civil or temporal offense, incest being then a spiritual offense only. 1 Bl. 435, 4 Bk. 64. 5 Deilh. 548.

The other class of disabilities is called civil and are 1. A prior existing marriage between one of the parties and another. 2. Want of age. 3. Want of consent of parent or guardian. 4. Want of reason. These disabilities in Eng. render the marriage void ab initio so that no divorce is necessary to set it aside. This does not seem practicable, as to the disability of age, which may be set fixed and then could not be if the marriage was absolutely void. It is most intimate, such marriage is void.

1 Bk. 435, 6.
In case of a prior existing marriage, the marriage is not only void, but it remains to be dissolved which by st. 13. 1, is made felony 1 164. St. Cor. 480.

When the

wants of age, the parties after coming of age may, or up to the contract without a subsequent solemnization and either party may revoke it, without divorce. The age of consent is by C.L. sec. stat. 14 in men and 17 in women. 1 Stat. 79. 1 63. 436.

While if either party is under age, either party may at once to it if it is not is ratified for it to binding it must be mutually so, once. In contracts of service or service. It is that the adult is bound, the service not that it is sufficient in relation to the marriage contract. Still however on a contract to something in future, this one of full age might be made liable to the other could not. 1 63. 436. Ch. 11.

41 out of consent is not an impediment at C.L. Sec. is made one by Stat. i.e. of parent or guardian) does not bind in every state as it is in Eng. 1 63. 437.

41 out of reason, the wife of an idiot or lunatic it is void for such persons can make no valid contract what- ever. 1 Roll 357, 1 63. 438. — Our law is different from the Eng. in many respects, with regard to the effect of these impediments. By our law a marriage within this legal age, the husband is absolutely void not so in Eng. St. Cor. 279. and 271 out of con.
out, that does not make void the marriage
the marriage is void but, the one solemnizing
it is subject. In Eng. it is void unless
was published. 1 Bl. 437. 8

The compulsion of personal
fact was never known in this country. There has
been some speculations whether a marriage between
persons belonging in this state, who to avoid one law
fly to another and get married, is here valid
since there not being compliance with. I take that
rule to be, that it is there valid the contract having
been executed. If however two persons can't go into
another state when there was no law against un-
ny to make such a marriage contract I would say our
law's would not enforce it. 2 Dav. 1089.
Bull AR 114. 2 Bl. 147. 412. 1 Swedish. 79. 80 note.

Divorce.
The mode of dissolving marriages is by divorce.
Divorce is one of two kinds, first is by vinculum
matrimonii, which is total and is a complete
relation of the marriage contract. The second is
called a divorce convict, it being a legal
divorce or separation of the parties, which
the relation of husband and wife continues. 1 Bl. 440

In Eng. the first kind is to be obtained for conun
improvement only and then existing prior mar-
riage i not for a superior interest, otherwise the
of course except, 11 Statute acts by one divorce
any cause. 1 Bl. 440. 1 Bl. 434.
When a total divorce is granted the issue is illegit.

imate. for the divorce annuls the marriage for

beginning by relation to its inception. 1 Pet. 2:35. 1 Thes.

3:5. 360.

The cause of partial divorce in Eng. are

incontinency, cruelty, and will grounded from

wedlock by theft. If late years however it has be

come common for Parliament to grant total

divorces for these causes, and especially for the

first. More 683. 1 Bl. 241.

In partial divorces the husband

is generally entitled to alimony to be paid at the discre

tion of the E.c. court, with if it is not paid the

wife may maintain an act. at L.t. to recover it. But

if the husband dies in contemplation, the於 falls, in right

to the alimony. 1 Bl. 1 Bl. 124. 2.

Upon born after a

partial divorce are presumed to be illegitimate and

thereafter, the parents to live together and they are

presumed to play to this presumption however may be

invalid. Salt 123. 4 T. 2d. 356. 7 Co. 2 1 Bac. 311.

1 Bl. 257.

But if born after a voluntary separation by ef

or presumed to be legitimated until the contrary of

years, in the birth of wife are not required by least


The difference then is that at the divorce the

presumption in the former case is against, in the

latter in favour of the issue, but it is rebuttable

in both cases.
In Con. the sup. Court may by stet grant di
vorce for the following causes. 1. Fraud but con
tract meaning probably to include in brevity what
is unknown to Cl or civil law 2. deserting. 3. un
years wilful desertion into total neglect of duty 4.
in years since a marriage of or any by elusion of
the death of the party 5. When years above on a very age usually pursuant in that month on
enforcement of death 6. Con. 236. 280.

In the two last
cases the absent party is presumed to be dead and
the other more as the fact that the party
appealing is single. There is a similar presumption
allowed in Eng. on trusts for bigamy under 1 D. 1
when if the party has been seven years absent un-
heard of the other cannot be convicted but
the same presumption holds in case of being for life
or lives. 6 Part. 85. 1 B. 164.

All divorce granted by the
Sup. Con total. the legislature can grant uti
et question in suin whether the party against wha
a total divorce is obtained may carry on an
custom has decided this in the affirmative the
193. Con. a total divorce does not affect the
legitimacy of the issue because granted for
improvement causes. The case of precedent
contract is difficult but that becomes no issue
In Eng. in case of a total divorce the wife by no means nor any other allowance, because at the time of the husband's death she is not his wife. 2 Bl. 130. 3. 3. 5 Co. 238. 7. Co. 70.

But as a partial divorce does not deprive her of dowry except in case of adultery & seduction only then is there any offense if not the divorce that has been done. 9 Co. 19, Ch. 2. 63. 1 5th 33. 3. 3 Pi. 746. 2 6th 142.

In Cent. even in case of total divorce the wife is entitled to dowry provided she was not the guilty party or when she obtains the divorce by virtue of the statute. And the statute allows the Court to grant her not exceeding 3/2 part of her husband's estate by way of present alimony. 6th. 239. 279. 1 Swift 172.

And by our Stat. when the marriage is within the lifetime of the parent this the marriage child and void of the same illegitimate yet the Court may assign the wife a reasonable share of husband's estate not exceeding one third part. According to the best construction that I can put on it. 9th. 277.

A wife after a divorce a nuncup is not entitled to demands nor to her disbursement share of husband's personal profit. 11th. 1210 2 5th 252. 11th. 349. 7th. 8 Co. 11. 2 136. 91. 5. As to divorce the 20th 2nd only reaches adultery & seduction but the 8th can now say that adultery merely. hard case. —
Parent & Child, including guardian, is bound or at the time of infancy, 
and immediately of the rights privilege 
and disabilities of infants.

By Eng. C.1. 1st Art. as our own

When an infant is every person under or first over
the age of 16, sometime called a minor. 1 Bar. 162; 12
s. £12. 25. I would have observed that a popular as-
so is furnished in Act. that females over the age
at 18, but this is no such law.

By C.1. full age is
completes on the day preceding the 21st annivers-
ary of one birth. need not the minor in that there is no
practice of a thing the party is of full age the first
month of that day so that he may be of full age may
25 hours before he is strictly 21 years old. Talk 20. 363
2d Reg. 286. 1096. Pou 14. 18. 685 Reg. 83. Accor-
ding to the civil law which prevails pretty much on
the continent. full age is not completes the 25.
3 Dec. 118.

Of the privilege & disabilities of infants
in relation to crimes, civil acts & contracts. .

1st. Crime. No person is punishable under the Eng.
law in our own, for any unlawful offense until
is considered capable of committing it under the age
of sixteens, years. persons infants have not the four
to will, and one on with the punishment for a crime
until he will consent to in his own proper. T
The presumption in this case cannot be rebutted.

At 14 a minor becomes capable of committing crimes and is punishable for them so far as relates to age, and even absolutely. 1 Bl. 46, 46; 21 S. 25, 61, 64.

The age then of which an infant is considered as capable of committing crimes is 14. Between 7 & 14, the infant is punishable if found to be delinquent, capable of distinguishing right from wrong or of legal judgment. It is said in some books, that the presumption is in favour of the infant until 10 and 12, but the opinion has been overcome, and the presumption is now in his favour from 7 to 12, and the same verdict must lie when the prosecution. 1 Bl. 634, 22; 4 Bl. 131; 1 Bl. 464, 21, 22, 23.

There are some cases in which infants above 12 are privileged as circumstances and offence at capital, but there is no rule to determine the precise case, and even an

infant to think that it refers to manslaughter only, it certainly does not include acts of breach of the peace, 1 Bl. 101, 20, 22; 3 Bl. 150, 12 Bl. 42.

But it is a rule of practice in criminal law that an infant is not to

be convicted upon his own confession without great caution. The law senators have not to have discretion. Cre. 15, 166. 21, 22, 23, and if he pleads guilty, he shall

with utterity, guilty. I found a jury.
The prosecution in favour of infancy under 7 cannot be rebutted and the prosecutor is never allowed to prove such an one did act as an adult of criminal intention. (Nov. 19, Conv. 2434, Post C. L. 239. 1 Bl. 264. 4 Bl. 337.)

generally inflicting care to punish some time inconsiderable points, the act is truly named in another not the bosom confers on this subject that the rule applies to one the act of this that the offence is made of such kind as is corporally punished by C. L. infants are within it punished under it the act included in the statute not. But if it fails the act is not corporally punished by C. L. infant if not named are not within. As the case of possible entity 1 statute which must bring the act of the offense is the bringing under such an one as is punished under statute by C. L. it infants are not named they are not included. In this case however the infant will be punished or at C. L. 1 Bl. 1. 217 3 Bl. 131. 8 Bl. 357. 1 Hawk 1. 40 Pa. 174. Do 1 342.

e to torts. In torts an civic in injury infants are in general liable at any age. By torts are generally meant such injuries as are committed with force. By the civil law of trust of the intent of the act is not regarded so that a harm at may be sued for trespass for the right that the left rather than the innocent on injury such there is an instance of a remedy against an infant for putting out one eye. It has been supposed in Co. that infancy was no much burdens in civil suit as in crime, that it is a very erroneous
supposition. Suppose at in defending himself sup
23 accidentally hits C who stood behind him, he
is liable to C. C attt he was doing this duty in the
not by which C is a hit for the law does outrage
the innocent at all. 1 Port. 81. 1 Lewk. 3. 2 Role. 547.
1 Lew. 395.

This seems to have been an opinion prevailing to some extent that an infant was not liable for slander under 17. An infant in my opinion is liable for slander when he is capable of making the same words, not only where an infant of 14 may be held in slander, but at that age he may be punished for
following, May. 129. 3 Bac. 132.

The infant is held to be punished as a common client, after 14, his age, much is of no avail to him. In fact, however, the prosecution in his favour, his capacity is rebuttal in both cases. It is that he is not liable in a civil action for slander or deceit
3 Bac. 132. 1 Lew. 129. 7 55. 1 Port. 71. Reb. 778. 908. 913.

This doctrine has been disposed of by Mansfield & Tyngam & it appears to me to depend upon the fact whether he is capable of a fraudulent intention. Thus suppose a child in a store should un-log the goods or a sport in doing it. I know no idea that his age would screen him. He would be liable after 14. Perhaps before. 3 Bars. 1842. Pake. 2. 23.

When the ground of action in contract, cannot act
series in contract, in fact, the infant cannot break
vold by a trick of pleading making it sound intest.
us in an act his age was inst for abusing a boy that was hired to him. the act was made to bind in that test at the time of act was a breach of an implicit contract the judge would not suffer the act to be that made. & 3 & 10 El 33.

Then it is a brace custom attributed to

Pater & Piper that if a person takes away to act and

leads as if he was of age when he is not so he shall not be allowed to keep his age but the State not to

be held. 11 & 12 Vic 303.

Then see some cases in which Chit

will refuse a contract against an infant on the

ground of fraud that is to prevent fraud I would

observe that the Chancellor is the paramount guar
dian of all the wards in the kingdom and it is in

this capacity that he acts while offering relief

against fraud in such cases. 1 For 701. 9 Mcq. 38 &

Bol. Ca. 439 & 1 Bol. Ch. 303 358.

In relation to the contracts of an infant and

certain other transactions of a similar nature

I would observe that in Eng. Inf. have different

capacities at diff. ages. by C. L. both male & female

have the power of choosing guardians at 14. Inf.

male infants have the same power at 14 & females

at 12. 1 Bl. 463. 4 & Ca. 12.

The infants of any

age may be by & but he cannot act as to bind

himself until 17 and in the mean time an & 38;

must be absolute elements remain at. cura et

amor est.
answer. and the infant when he attains at the age of 17, is to finish: what remains undone, the right of the 28. ending at that time. The reason of this particular age being preferred is said to be because an infant at that age can make a will, but he can make a will much earlier. I concur in this rule as a position one. 3 C. 20. Ch. 64. 307, 316. 30. 66. 3 Bac. 121. Cart. 466. 78.

But no person can be admitted until he attains the full age of 21, because one 20. is bound to give bonds; whereas one 21. is not of course to give bonds. In Cont. both are to give bonds, since it often comes for a question whether one 20. can act in Cont. until he is 21. 5 C. 29. Cont. 475. Cart. 446. 7. 5 Mod. 395. 16. 268.

Things of consent for marriage to be valid is, by C. L. 140. 12. But as I have before observed if one is of the age of consent and the other not within may object before ratification. 1 Bk. 436. 263. 1 Inst. 79. 14. 93.

It is said that a person may be betrothed at 7 and if the husband dies she is above 7 or according to some auth. 1 year of age, she is entitled to divorce. But see 36. 2 Bk. 181. 1 it. 2 Bk. 183.

By C. L. the age of disposing of personal property by will, by sex is relieved to be 14 in males 17 in females if of sufficient discretion, there is however a great diversity of opinion on this subject others supposing that 15. 17. or 18 on the higher ages. It is
the unwary lier's caution however that 14 - 17 are the
highest age. And bring the rule of the civil law
which prevails in the spiritual courts. 1 Sam. 21.
By that of Cor. the majority age is better for terms
to a sale of personal property is 17. Hi. Cor. 42.

In judgment

from under the age of 17 can bind himself by con-
tract. The contracts, those of all infants, are iniqu-
ious. i.e. they are either void or voidable. 1 B1. 365.
But if an infant adult join in an act in a contract
the adult is bound, the infant is not. Derny. 570. 5. Mod. 170.
1 Post. 58.

So again if an adult contracts with an infant
the former is bound, the latter is not. For the prin-
ciple of an infant is personal and the adult should
not profit by it, as if it infant should act in an
act in all cases where the contract is not voidable the a-
adult is bound. 1 Esor. 33. 10. Mod. 25. Co. Ch. 77. 197.
197. 9. 937.

But the rule is the same in Civ. in a
case requiring specific performance. If it is no objection
that the infant is not bound. But Civ. will made offer
an infant such an if the privilege to cheat an a-
dult, and having extraordinary power they can
impose such terms as to complete justice. 1
1. 393. 1 394. 3 39. 40.

But the rule that can is not
and the other not does not hold where the contract is
strictly void, it applies only when the contract is valid or


only voidable, for when the contract is void there is no consideration. The adult is not her executor because of the infancy of the other party, but because of the want of legal consideration to support his promise. This is the legal consequence of the infancy. As if a man should engage to do certain things promised an infant executory for a price of $100. The adult could not be bound for the price of $100, it is absolutely void.

Tha. 925. 1 Bow. 35.

I observe that if an adult and a minor make a contract the former is bound and the latter not. And it is said that if the infant has not the amount of the consideration owing to him, afterwards awards the engagement he is not bound to restore, but it shall be considered as a gift to him.


Now for this rule may be subject to qualification or restriction if we do not find in the books. On principle, however, it seems to me that this contract is voidable, in which the infant who has discharged his engagement might be compelled to restore the consideration, as when the specific article remains in his hand or if it was a house. It appears to me that he might be sued in tort in principle in this case.

Although the general rule is that an infant is not liable on his contract, yet an infant may in some cases bind himself on his contracts for necessities. Those articles which the
law deems necessary: an food, apparel, lodging, 

washing, medicines. The instruction, such as 

the says truly, he may profit himself after 

words. 1 Bc. 266. 1 Spur. 713. 1 Wil. 723. 3c. 494 

& J. 576. 578.

Not an infant is not bound of course 
in all cases for these articles. They must not only 
come within the local definition or description of 
necessaries, but they must have been necessary 
for him at that time. His circumstances 

Po. 861.

The articles coming within the legal defini 
tion the question whether they were or were not 
necessary for the infant is a question of fact for the 
jury. And to a state of infancy or general reduction 
that the contract was for necessaries furnished is sufficient 
it not raising a question of law. 11th. 110. Cko. 884 
Cant. 110. 111. 1 Tade. 128. S. T. 81. 876. Cko. 87. 560. 41 Dec. 577

adapted to 

the same principle that an infant may bind himself 
for his own necessities, he may bind himself for mone 

day for his wife and children, for being of age to enter 

into the principal contract he must be liable for those 
that arise out of its relation. 3 Boc. 198. 161. 

3 Boc. 193.

An infant is bound during coverture for 
the debts of the wife contracted before coverture, whether 
necessaries or not is immaterial, provided she had the 
power to contract for them. For a reason similar to
that of the last rule. To take, the wife can only give 

an infant cannot bind himself even for

misdemeanor. If he is under the care of a husband, guar-
dian or master; provided for. As the rule is stated from necessity that the infant may not suffer and

when there is no necessity the rule does not apply. 1 P. n. 

Y. 1835, c. 35. 2 c. 35. 3 e. pass. 4 e. 35.

and when the

infant is thus under the care of a parent to whom

he is to be provided for him, the care must be a very

strong one indeed in which he will be bound by

his contract, for the law will not allow even princes
to interfere between husband and children. for it tends to

waste voluntary authority.

The cases then in which

an infant may bind himself are as follows:

in circumstances of this kind: 1. If he has no par-
tent, guardian or master. 2. If his care is

of the care. 3. If when under their care he is

not only provided for. In the two last cases, however

the parent is bound as well as the infant, as is

every one whose duty it is to provide for him. Par-

ents are bound by law to provide for their chil-
dren. Guardians, as such, are not bound. 3. The

obligation of a master defined upon his con-

tract. The rule subjecting the infant to

the benefit of relief and not for a discharge

to the parent. 1 P. n. 1836.

We have a statute in Car.
enacting that if a parent guardian or master hav-
ing an infant under his care allows him to
contract in his own name, the parent is
bound on such contracts, and the child not.
This is I conceive does not vary the C.L. rule as to
the infant, power to bind himself for necessities
St. 8. 58. 187. 41. 37.

If the circumstances
of the infant are such as would enable him to contract
for necessities at C.L. he may do it. It hath with-
standing the statute, for it cannot be supposed to have
been the intention of the legislature to put it out of his
power to go and suit, that they make him suffer. In one
aspect however the statute does introduce a new-law
that of allowing the infant by contracts in his
own name to bind the parent &c. for by C.L. the
parent is bound only, in this bound. Under the stat-
of C.L. it has been determined that he would be. 21. 37.
41. 85.

The statute however the infant is not bound
at C.L. even for necessities when his eign contract
for he is bound to pay only the true value of the
necessities which is not of course the extent of the
contracts, as if she should agree to pay $100 for arti-
els worth only $50. he would be bound only for $50.
He is bound then not upon his own contracts, but upon
one implied by law. C. 8. 58. 187. C. St. 38. 37. 84. 15.

But then an certain dis-
tinction to be observed as to the mode in which an
infects may bind himself for mischief. The true
principle enacts to prevent that an infant may
bind himself in any mode that would have the
consideration of a person of age. But the decision
on this point is not uniform. In the first place
it is universally agreed that an infant cannot
1 Dow. Camb. 54. Eliz. Dig. 164.

But by a single bill
he may bind himself for mischief: 1
Fac. 939. 1 Salk. 86. Chit. 41st. 9. 1 Nort. 382. 216. 223.

2d. By a negotiable note actually negotiated he is
not bound, that is, he is not liable to the en-
dorsees. 1 T. 41st. 1. 1 Fost. 74.

3d. By a negotiable or it would seem not negotiated he
may bind himself for mischief. Cow. 16. 1 Dow.
1 Dow. Camb. 32. 5. 1 Nort. 229, note.

4th. By a bill of
exchange not negotiable, it seems he may be bound,
but if negotiated he is not bound in favour of the
endorsee. Cow. 16. 1 Fost. 74. 41st. 29 to 38.

Lastly, by an account stated he is not bound for
mischief. 1 Inst. 172. 1 T. 41st. 40. Latte 169, 74.
3 B. C. 19. 44.

Thus are the distinctions as to the person
which an infant may bind himself in writing.
In reason of the first rule as to the penal bond as well.
really gone is that the penalty is always to the defendant.  This appears to me to go rather to the question whether the bond is void or voidable.  The two great reasons, to be that the consideration is not examineable.  For if the infant is subject at all, he must be to the whole amount.  1 Prov. 26.  Chit. Bills 29.  21. and the first reason see Co. Lit. 172. a.  Ch. 36. 120.

The rule is that by a single bill an infant may bind himself for at the time this rule was established the consideration of a single might have been inquired into.  1 Vat. 382. 416. 123. 1 Raw. 86. Chit. Bills 29.

But a general rule of law the consideration of a single bill is not now examineable. And it is said in Text that the way to get along with this is, that in the case of infancy the consideration may be inquired into.  We have no case in point. The courts then said that the Plaintiff might reply in quinse and he certainly would not be allowed to make a replication not trespassable and it is impossible from that case that the infant cannot bind himself and if the consideration can be examined.  1 5. W. 121.

As to notes of Bills. When a non-negotiable note has been negotiated, the court cannot be inquired into in an act.  But by an endorser it is that an infant could not be liable to him. But if the note was not negotiable or being negotiable if it was not negotiated, the infant must be bound.  For it is clear that the consideration of a note may
In an act, or in a bill, the infant is not bound by his act, or he is bound by the act, or the infant is not bound by his act. The infant is bound by his act, or he is not bound by the act.

By an act, the infant is not bound by his act, or he is bound by the act, or the infant is not bound by his act. The infant is bound by his act, or he is not bound by the act.

In the case of a bill, the infant is not bound by his act, or he is bound by the act, or the infant is not bound by his act. The infant is bound by his act, or he is not bound by the act.
The law has a variety of doctrines in controversies given by infants at one time they have been declared void, and at another voidable only. 1 Nott 58. 477. 265. 155. 109.

For money borrowed an infant is not liable unless the money is actually laid out in the purchase of necessaries, and the law the infant is not bound unless the lender himself laid out the money, for to recover on a contract at law, it must have been paid at interest or made so by some thing of value for the facts. If the lender lays out the money himself he can recover to the true value of the article, but no further, being virtually the original owner as such. In Shorting this the infant is not liable at all at law for money borrowed, but he is liable in such cases as for necessaries furnished. 1 Tulk. 479. 286. 5 Nott. 366. 1 Cow. Cas. 37. 10 2 Nott. 67.

But in Eq. the infant is bound if the money is actually advanced for necessaries even by himself, for Eq. can join the contract as it affects beneficial to the infant in its result, putting the lender in the place of the vendor. 1 P. Wms. 583. 558. 2 Eq. Cas. Abb. 576. 1 Cow. Cas. 37.

An infant is not bound by his contracts for articles to procure in his trade, the law not trusting him with the ordinary power at this time as a kind of necessaries, yet they are not what the law claims such. Co. 19. 1241. 479. 1 M. & W. 729. 128. 187. 102.

And an infant cannot
being himself in a contract to pay for the house mentioned.

the buildings for having no say they may be, it is presumed
that his guardians will take care of this thing. I John 1.16. 1 Peter 3.6.

It has been said, however, that if an infant

takes a lease of a house or land, he is to

pay the rent, not being above the value or not

reasonable, he is bound to pay it. This may be what is called

as common practice, not against, yet it is very far

from legal necessity. The only reason for it seems to be

that it is to pay the rent, but that could not apply to land.

Co. 1. St. 320. 2 Pet. 69. 1 Peter 3.6.

It has been estimated

that an infant could not bind himself by contract

to pay for instruction in music or dancing when

being trained in lower necessity instruction. You will

observe that this decision was in the reign of Car

for the present day, however dancing might be that

necessary for youth of a certain class, Counts how

ever an entirely enough of extending the rules on

this point. 1 Peter 3.6. 1 Peter 3.6.

All these cases

come within the general rule that an infant can-

not bind himself by contract to pay for necessity.

If an infant does voluntarily, that which he is bound

to may be completed by law or Equity, to do he is bound

this way. As in case of infants, parents, dividing

their lands, unless it can be shown that

there was something fraudulent or unfair in th
division. So also if an infant pays rent upon a lease that has been transferred to him by his parent or by gift or devise or servant, he cannot recover
it back.

Again if an infant acts off done to the use of or if having received the interest of a mortgage he, on paying to, the mortgagee to, it will bind him. In such cases he discharges a duty that devolves upon him by law in consequence of a right that he enjoys. This is perhaps the only class of cases in which an infant is bound at law by his contracts entered for with others. 3 Bu. 1801 2. 1 Bl. Rep. 122a
315 & 9 Co. 85 1 Bl. Rep. 575 4 Co. Big 15 5 Bu. 1794

We have a statute in Co. providing, perhaps somewhat

social or legal

by which the infant's guardian may, or pay if the debt release the mortgage. And a later statute allowing
an or to exercise the same power. Stat.

Con. 2 2. lit 3 130 164

An infant is bound by a

dream in ch. receipt that he is bound six months

tit attaining full age to impair it for fraud or

in the mean time or paid or error is done

he is bound. 2 Tern 327 439 ib. 395 2 Inst. 551 1 B. 

554 2 id 201 3 id 352 3 id 626 1 Inst. 75 6

And

an infant as much bound by a dream as an adult unless he can prove fraud or gross neg-

necit in his guardian or most friend by whom the
Such acts, a gain of an infant, as do not affect his own interest, but take effect from an authority that he has a right to exercise, are binding. As a form of at least to have the face of Stock, no interest of his being misconducted, he acts merely as an agent, no direction is needed. Physical persons are all that is requisite.

Again if an infant of age to act, must do to receive done is no point or superiority in the proceedings. So if an infant does an act in the exercise of a ministerial capacity, which he has a right to do. 3 Term. 1802.

A promise made after full age will bind the promisee a contract made before even the the contract can never be ratified. It is a new nullity. 27 Crk. 76, 1 G. 690. 2 Vict. 203. 1 T. 648. 1 Term. 153, E. 164. Dig. 153.

And if he should have given such an infant a written evidence, which is absolutely for a promise after full age, will bind him, not made to the performance of the void contract or a ratification of it, true to the performance of the right hand contract of which the promisee action was a

But if the written security had been too vol-
able the rule would be different. for the promissory
promise or contract having arisen in the written
security, it could not remain a consideration for
the subsequent promise, so that the latter promise
would not be binding, thus far the book go. The subse-
cuent promise would however ratify the former
voidable security which is precisely the same
thing in effect. and in this ease the action should
brought when the voidable security or that which was void
able viz. the simple contract. This an import to a char-
acter thereof. and so far when a promise to pay a single
he had given for three. could not be sustained. the contract
being distinct not by the bond, could not be a consid-
for the promise of the age. the saving go the furthest in
the case. Mr. Giles observes that an action on the sin-
gle bond would have lain. Bull N. P. 155. 10th. Dig. 53.

Esq. Dig. 164. "Mean action."

When however a person after full age only,
a new promise, he is bound only to the amount of the
new promise. as when one engaged to pay half a crown
the pound. in such case he is considered as arriving
his defence of infancy as to so much. Esq. Dig. 164.

And when to a plea of infancy: Pllf. makes promise after
full age. Esq.Dig. as such promise after full age +
dree in pound it is enough for Pllf to prove the new
promise. attch the assertion of full age is part of the action.
and the proof that defendant was not of full age lies upon defendant itself, if not within his knowledge, it rests with
in the party. 1 Ch. 162. 1 B. & C. 84. 3 B. & C. 132. not

When an infant is sued, it asserts in an action to which infancy is a good defence, he cannot be dis
changed in motion as a sane court can in such a situation; he is left to his plea, the reason of the dif
ference is that the incapacity of a sane court is that of an infant only from time,
1 B. & C. 280. 2 C. 271

What contracts made by an infant are void,
and what only voidable.

As follows you will receiue from the rules already given, that the contracts
of an infant, resctpt those for necessaries, being inv
sated are either void or voidable.

And I would pre
mise, that courts of justice are of late inclined to con
trive the contracts of infants voidable rather than the
void. 1 B. & C. 566. 3 ib. 1805. 2 B. & C. 1832. not

once the construction when properly considered will be
forme an very advantage to the infant; it was
formerly that, to be for his interest to construe his priv
ileges strictly; but it is not so; for if the contract is
considered voidable only, he may in coming of age,
turn it to advantage by confirming a breach to
it at his election and the other party is prevented
from taking any advantage of its invalidity.
On the general enquiry into the contracts being void or voidable, the first general rule is, that, those contracts made by an infant, in which there is an apparent benefit or semblance of benefit to himself, are only voidable, but that those in which there is no such apparent benefit or semblance of benefit to the infant are void. 

**Case:** Ch. 502. 3 Mod. 310. 
1 Rol. 730. 1 Pau. 33. 38. 54. 2 Law. Bl. 511. 3 Bac. 136. 137.

As to the test branch of this rule I will suggest that there may be much about the general rule of its application, the truth is, that is a sort of contradiction in the books on this subject. The true distinction does not appear well settled.

**Trotter** 220. 2维护. 203.

When the same principle a house of 1808, given by him to accept estatic, or any other interest to the infant is only voidable, is of the property, does not affect in the name of the infant, the conveyance is not voidable. 3 Pau. 136. 1 Rol. 730. 3 Bac. 136.

Since also an inducement by an infant's done has been determined to be voidable only because it may better the condition of the infant by emancipation. 3 Dun. Bl. 511.

**Note:** Under the last branch
of this rule it has been said that by an infant not preserving rent or a very inadequate rent is void.

Mor. 78, 2 Ser. 216, Doug. 337, Knit. 102, Noy. 130. 3 Boc. 139, 389. It is any doings that this rule in
practice must be very inconvenient. As you must
go to intrinsic facts to give construction to a legal
instrument. The sufficiency of the rent being to be tried
by jury, therefore the rule has been doubted and
said. But the rule is so often mentioned yet there is
no precise determination subjegting it. 3 Bov. 1806.
3 Boc. 137, 302.

Then can also some very authoritative
decision against the rule as Co. Lit. & Marsh. who
declare the lease to be void at all. 2 St. 547
1 Part. 45, 208, 1 Dev. 6, Mor. 78, 3 Boc. 304, 5 St. 538.
without any reference to the rent.

That 2 Marsh. and 2

Dee. not only declare the absolution of the rule into
maximum but has absolutely disavowed it in a dem-
stration and first it is a matter of common
presence that an infant may make a lease without
rent to perform an executament to try his title. This
what is obvious, the lessee can in no wise avoid the

non of lessee inancy this is what I call de-

manifestation. - If the lease can not the infant could
not recover the rent, but in this as he would recover
the whole amount of rent & profits which would be

iniquitous. This I consider decision of the case
of the lease. tho. I would not say it is of the great

abstracts distinction. 3 Bov. 1794, 1806. 1 Dev. Ca. 38
I will further observe, that an infant cannot pleadNow as a factum to his harm, this because does not decide the question whether it is void or voidable, because he cannot do this when it is void. C.c. 10 Eliz. 15 Co. 43. 5 Eliz. 119.

Undoubtedly part of the general rule it has been said that a bond here given by an infant is strictly void as the benefit of the bond cannot be to be advantageous to him. 1 Rob. 729. 1 Co. Eliz. 920. Sutton 106. 3 Bac. 192. 5 Eliz. 334. 1 Pow. Om. 52. 8 Eq. 124.

There are 3 opinions as to uphold the proposition that such bond is void, see contra. 3 Bac. 1862. 5 Eliz. 339. Pink. 1 Eq. 158. 101 208. 203. 1 Inst. 172. See Most quoting 2d. I think it voidable 119.

It is agreed that an infant cannot implead in factum by proof of infancy whether the bond is void or voidable. Edw. 49. 5 Co. 119. 2d. Ray. 315. Pow. Brown 27.

If an infant having given a personal bond be capacitate property for the payment of his debts, a court of Eq. will order payment of the bond itself. 1 Rob. 74. 1 Pow. Om. 37. 1 Most. 203. 1 Eq. Ca. 2823.

The first branch of the question above given is confined to purchasers and acquisitions by the infant which are supposed to be to his advantage and according to principle the latter branch relates to sales conveyances, leases, obligations made by him. As to that latter part there is nothing.
general rule that it shall be the true one in preference to the false one before written up to write. That all gifts of quittance, sales, deeds and obligations made by an infant that do not take effect by manual or actual delivery are void, but that those which do not take effect are voidable only the instant omission laid down by Pickering, 10 Bac. 136, 3 B. & C. 1804, 5 Lat. 10. 30 Bac. 136, 139.

Thus, a performance made by an infant is completely voidable. For him, the intent to pay by the hiring of service is actual delivery of the subject at the time. It has been said to be only voidable because of the solemnity of the transaction but I do not see the effect upon the question. Pick. 137, 138, 135, 8 B. & S. 11, 3 B. & S. 1803, 5 Lat. 127, 387.

So if an infant sells a specific chattel as a horse & delivers it the contract is voidable only but if a contract is made with out delivery and the party takes the horse in pursuance of the agreement, he is a trespasser and may be treated as such, and the horse also when a contract, for he agreement were null voidable but by demand or due course of law the delivery takes effect, the principle above laid down. Pick. 12. 19, 12. 77, 1 Roll. 730, Lat. 10, 12. 74. 59.

The word which takes up the word by delivery is an essential part of the rule of delivery, as well with respect to deeds as to the actual delivery of specific chattels. Other words of course make
a difference between those cases which convey and those which interest on a deed of trust. A trust which conveys or delivers merely a bundle the first is voidable only, the latter void. *Mark* 9. 5 Co. 287 4. 67. 67 5 Co. 119.

Since an instrument, a deed of conveyance & interest, containing full power ministering to the conveyance has no effect on a delivery, it only satisfies the former delivery which was voidable. In case of a power to vest the deed is effective only from the conveyance, after certain 10 years, the former delivery being void. *Mark* 151 5 Co. 117 4. *Cm title* 109 4. 67 67

But on the other hand to explain the other part of the rule viz. that those deeds are which do not take effect by delivery are void. A power of *ad* *hoc* made by an infant, or to convey his inheritance is void. If a conveyee is under a conveyance made by virtue of it he is a trustee, the instrument does not create or convey any interest. The delivery of it effects nothing, it diligently a mass of power & that is all. The two instruments are plain the whole rule. 3 *Burr. 1804 1805 4. *Bott. 11.-Nov. 130. 4 St. 577 8. 1 *Burr. 1817 75. 1 *Burr. 530.

I will show the same that a power of *ad* *hoc* made by an infant to cause effect is only voidable. It being an act introductory to a power, does not interfere with this latter rule which does not relate to the former of infant but to sale conveyance. To make by them. 1 *Bott. 130. 3 *Bac. 186. 3 *Burr. 1805.
old Point. I am aware, during the continuance of this last
rule since I profess that he who is attended with
the instrument is entitled to recourse against any
appealing from place to place. Likewise if a benefit
in the infant or not. This are many authorities to support
such rule, and both being of a positive nature the weight
of authority must decide the question, but it would not
be very material which way provided are was fully
established that the truth in the authorities are

Now I must
enjoin that the law upon this head appears to be
contained in the first branch of the old gen. inter-
relating as I conceive to furnish a mode by which
it may appear only voidable. being considered
as disadvantageous to him. And with regard to
their contracts that assist him of an interest
that will appear to me to be of great incomm-
ent in a small or, you must want to estimate
evidence to determine their validity. whether
it supported by the true authority or by means, for
it evidence would be more for the infant
advantage to determine than voidable of to the
conveyance or grants proffants. then. I take the rule
to be. that if the instrument takes effect by deliv-
ery to create an immediate interest it is voidable
ly. if it does not create such an interest it is
void.

This I take to be the decision of Lord Mansfield
3 Burr. 1502. But to qualify in one particular
I think very properly, in any particular case, that if in any given instance, containing the contract voidable only under the general rule, would not sufficiently pro-
hibit the privileges of the infant, let it be construed void.
This would be reconcilable with the case in J evils, where a
suitable advantage, agreed with a girl for one week,
under her breast, contrary to her expectation it took all shelter,
and she lost. Perhaps against him. He contended that,
on immediate interest, proceeds by delivery. The contract was
voidable only so that at most there only wants living.
him. But the court held that such reasoning would de-
prive the infant of his privileges, because a restoration
of the same would be no remedy to him & if done once
lost, she could only recover its value, which would be its
remuneration to her: the rule then unqualified would be
afford justice. \(2\) Pet. 369.
Again suppose an infant sells
acting as hero to a bankrupt, him, if the contract was
voidable only, the infant, surely would be handy
impossible, it did thus be considered void, and the title
might not be arrested. I have to remark again, that the
reason which is inconceivable that however appears to me to be the
better rule as supported by reason & the best authorities.

Their without ethic of recent contracts a sale, suffic-
ient to.
On executory contracts made by an in-
fant, it must be only voidable, as a hand agent-thing.
will, impressed, note, 2 Pet. 51. 1 Thes. 3,7. &c. 5, 1 Thes. 570.
1 Thes. 3, 51. 1 Thes. 41. 3 Thes. 76. 5 Thes. 27. 5 Thes. 160

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It may appear to some that this distinction between void and voidable is technical and artificial, but it is of much practical importance in certain cases. If a contract is voidable, only it can be ratified, and a party interested in engaging to may take

advantages of it, invalidity. But if void it can never

be cured by a third party, making take advantage of it, invalidity.

Cor. 38. 1, 20. 3 T. V. 66. 6. R. 22. 2 R. 72. 

B. 51. 6 B. 182. 6. 1 B. 74.

Ratification of a void:

The contract of a minor may be ratified and

by a party manifesting the intention, as if it were

continuing in force. When a minor attains full age, the lien

is ratified and he becomes liable for rent, even when he was

beyond the time allowed for ratification. 2 Port. 67. 1 Port. 32. 3. 3 Co. 68

Sta. 673. Co. 37. 39. 2 Vent. 203. Co. 36. 3.

A void contract

on the other hand is incapable of confirmation, for

in itself, of course it is a mere nullity, so that there is

nothing to be confirmed. It is a legal nullity, as an

infant having once made a contract, may for every

age or the same other like it, or rather an error than the

title of it from the making it has no relation

determination upon the rights of the parties. Between the

of a minor, the void is the mere contract of

Vul. 76. 3 Cr. 37. 1 Doug. 53. Conv. 201 202. 7 T. V.

Cr. 83. 1 of the 35-4. 1 Rev. Co. 33.

An infant having

made a conveyance by fine or recovery may, during
his minority, but not afterwards, saved it by unit of
error. The reason is that, since it is a mere affair of
his age cannot be tried unless by inspection, often he is
inspected. Other evidence is admitted but none without
the inspection. 1 Inst. 380. 12 & 122. 3 Mod. 229. 12 & 127.

As to an infant conveyance by any
thing but matter of record which is called conveyance in
law, or instrument. It is, for void that it may
be avoided within seven years or afterward 1 Inst. 247
248. 38. But the steps not to be heard. And it has been
settled that it cannot be avoided until after he attains
full age. The reason is obvious, for if he should not avoid
the position there it would be equally voidable, the law
not permitting him to be bound by any man than the
attorn 3 Term. 1792. 1808. 1 181. 190. 579. 2 192. 161. 3 59. 8. 136

since the rule is not confined to instrument, it is the
same as that grant, by how or release, or whatever in addition
be the mode of conveyance.

If an infant conveyne a lien
for years, the rule is the same. Within the century is said
in 1 Inst. 380. But it has been determined by Mainfido
Hendall & Bull, that he can not avoid such lien dur-
ing minority, for the same reason. 2 197. 161. 3 59. 8. 140.

So far, I see, discover this true rule of set.
of personal property is that he may avoid such sale at
ey time as will during minority, as after. for such sale
not being considered of a harmful nature, if he wishes.
take advantage of his privilege human to study and I find no rule contrary to this. Indeed such an one would in most case expect the infant born of avoiding the contrary, 18 B. C. e. 141.

An infant being

liable during infancy to the extent that is transferable for to, for as he chooses to take advantage of this

lease, he must be subject to its incidents. 2 B. C. e. 18. 1 P. C. e. 35.

I have this, for in relation to the contract,

Exemplars of infants considered them as they are viewed in court below and in general they are regarded in the same manner in courts of C. B. But this is a case of incept can and an case by which an infant is bound in C. B. that will not be at law. This marriage settlement made in contemplation of marriage to provide for a family and made with consent of parents or guardian an infant case, binding in C. B. for they would not be at law. Because as the infant is capable of making the principal contract it is but just to remunerate that he should be bound by such contracts as are put according to that. 18 B. C. e. 152. 1 P. C. e. 35. 144. 3 cth. 518.

And courts of C. B. mean

as beneficially enfranchises infant, to direct their consciences according to the circumstances that 2 B. C. e. 18 consider the baptismal guardians of all the minors in the Kingdom standing in the place of the King and acting by his authority.

According to this means decided in the mad C. B. appear to have considered that this
was a difference between the situation of male and female infants and how infantile the marriage contract fits the latter, further than they have them of the former. We have no rule making any distinction neither do I see room for any. But there are cases apparently incident upon such distinction.

It has been determined that the interest of a female infant in a many portion, was held by her by agreement before marriage. 3 stth 6/3. 2 Vin. 501. 1 Bro. Ch. 111. 2 Com. Dig. 19. 1 Pow. 42 to 46.

And it makes no difference in the respect whether the interest be in possession or expectancy. She is equally bound in both to the sale in the same mode when the interest depends upon a future contingency, it being an uncertain whether it ever rests. 2 Wood. 101. 1 Som. 874. 3 stth 608.

It has also been determined that a female infant may have the right of dower by accepting a settlement by way of jointure or even if of personal property which could not be an adoptive wife at law, being made with consent of parent or guardian. Indeed this consent is required in all such cases where the contrary does not appear according to the first great rule. 2 Eq. Ca. 191. 2. 5 Rec. S.C. 371. 1 Eq. 55. 1 Pow. 35. 53.

Where a male infant under such circumstances could breed his real estate by a similar agreement does not appear settled. Some say he cannot. I see no ground of distinction between the case of a male and female infant. To make the case
a male infant, less than a year old, may be bound by such agreements; when made with consent of parent or guardian. Stat. c. 602, 1 Prov. Co. 53, 5 & 6 Wm. 3, 23.

And Mr. Cockfield once heard that, with respect to a female infant aged seven years, if she contracted with consent of parent or guardian on adequate consideration, to convey her inheritance to her husband, Esq., will enforce the contract. Y. B. Sandwich, said of this rule that it was going a great way, but that there were cases in which it would be construed to be groundless by it. Y. B. Shallow absolutely denied the rule. I said that the infant's estate would not be bound unless she had a settlement with a legal interest entitling her to enjoy it after her husband's death, in other words, entitled it after coverture determined. I gave you the case this fully that you may have the hold of authority. If it were worth while for us to lay out an opinion, I should say that Y. B. Shallow denies the rule, for the rule seems to lower down the privileges of infancy on both sides, while there is nothing left in the marriage. 1 & 3 Wm. 4, 243. 1 Prov. Co. 48, 53, 3 & 4 Wt. 613, 615. 2 & 4 H. 16, 17, 18. 1 B. & D. 116. 2 & 3 Shallow, 316. 1 & 2 B. & D. 510, 3 Meth. 453. act. 1697.

If it is asked why she cannot bind her inheritance as well as his, I say that the reason...
of this being bound is from infancy in making family provisions. The rule should not be extended beyond the privileges of infancy. This infancy does not require the estate be bound except during continuance in their joint lives, and then it is bound for the whole inheritance.

And it seems agreed that a contract by a female infant to bind her real estate must be made before marriage or it cannot be received, even in Ch. 3 Brev. Ch. 514, 3 Stat. 56. 11 Found. 70.

The great question whether a male infant can bind his real estate by such an agreement is not settled. Some say he can not; I think correctly, for we now apply to both such female infants. But it is settled that if a male infant married an adult, commits that her real estate shall be subject to certain uses she shall blemish by it, for the adult is capable to convey, and the infant only absolves some rights she might acquire over the property during life, by the marriage. 2 Brev. Ch. 514. 1 Found. 70. 4 Can. Dig. 14.

But an agreement whatever made by an adult or female infant before marriage, will bind him or her estate, unless it is fair, reasonable, or an adequate consideration. In that the affirmative only must be taken with this qualification for the form of a contract of child, otherwise it will not otherwise inform them. 3 Brev. Ch. 115, 16, 152. 3 Stat. 613. 1 Found. 69, 70. 1 Pow. Ch. 47, 50.
If an infant capable of making contracts beget or purchase property for the payment of his debt, his ESG is bound to pay them, although the infant was not bound to pay them. For if he can make voluntary grants or donations, he certainly may do the same by order of his debt paid. Indeed it may in direct cases be considered as a legacy to the creditor to the amount of his debt, if you please. 1 Esp. Ca. 182. 3 B. C. 146. 1 N. W. 403. 1 Pow. 37. 1 H. 46. 74.

I have already shown that an infant may alter his testamentary will, but the infant may alter the contract made during his minority, and it will bind him. An in Esgl. this may be done by another person, and by binding the infant. This contract was made by six minors, the mother, one of six partners, and the infant, as they were of age, willingly ratified the same by the acquisition of an estate. This bound them. But the contract originally made was void, 1 Esp. 489. 3 B. C. 146.

Thus an infant in Esgl. may alter his testamentary will, but I would again show that the contracts of infants are generally considered as void as they are at law.

What powers or authorities can infants may exercise. It is a settled rule that infants cannot inherit a legal power over real estate from a will executed after their event of discretion. This is implied from the obvious fact that
the use of such power, as at 3. a minor shall sustain. 

This cannot appoint for it requires a discretion to select 
which the law supposes him not to have. 1 Vg. 29:30.
3 edth. 69. Pown. Pown. 47.

But a minor's special power, 

lent unto by an infant, by a master's power invested 
therein without interest, is a power over another putting the 
execution of which does not affect his own rights, 
during special requiring no discretion. Thus H. Gib. 14 
masters a minor to execute a deed of conveyance in part to an 
executor requiring only physical strength enough to write 
the words, it is to mine ministerial much an act. 
3 edth. 70:71. 1 Pown. 55. Pown. Pown. 43. 68.

But he cannot ex-

ecute a power over his own inheritance, for if he could 
his own interest would be affected by his privileges in it, 
if a deed was made to an infant of land in fee 
with a power to convey to whom he pleased, he lets it 
leave out the power in fee, which would be to part with his own inheritance. Pown. Pown. 29. 1 Vg. 306.

Then 

is a particular rule laid down incorrectly by the statute 
in which 2 c. 16, on which such power is made to say, that the inno 
cence in law, or 159, from which it is impossible that an infant 
cour cannot execute a power over real estate, we can doubtfully 
to understand a quick power. It is otherwise incorrect. I mention it that it may may not lead you into a mis-
take. 3 edth. 70. 3. Bab. 138. ret.

The general rule then 

seems to be, that an infant must intend in the subject,
may execute a power so as to bind his principal, to the extent of it, if it does not amount to a divestment of his estate, for you will observe that he may at his own request dispose of his personal estate by will. 1 R. 312, 316. 1 S. 436. 1 Sc. 236. 1 Sc. 416. 1 Sc. 236. 1 Sc. 416.

For he may execute even a great power over his real estate. This being done, to effect his own intent, provided he is deemed to make a will of personal property, but not without the advice of his real estate, because it is to an infant without to dispose of it to whom he pleases, whereas it is given to him he may obtain it. Still he may dispose of it if the infant, being of sufficient age to make a will, and yet he could not dispose of it otherwise, then by will, and under the power, the infant to dispose of it by will without the power. 1 S. 436. 1 Sc. 236.

And when an infant being heir to life with a power to make a partition, conveyed to sell it in certain parts in his lifetime, the partition was effected in 12 Edw. 3, the power was revived, so decided, so on the person who lives to his wife for life, it was not of customary. 1 L. P. W. 283. 18 Eliz. 604.

And it is intimately connected with this subject to inquire what offices an infant may hold and execute civil authority or powers. It is laid down in the books, that an infant may hold a ministerial office requiring only skill and diligence, he being a personal one, as steward or bailiff, and if.
And when an infant can hold & accept an office, he is bound by all his official acts, and liable for his neglect of duty. Thus an infant prince is liable for an escape as if he were an adult. Know in the form of an action of eject for the rent is an executio. 5 Co. 27; id. 24; 3 Edw. 25, 3 Bae. 135; 3 T. R. 129.

Now far an infant is affected by the non-performance of a condition annexed to his office or estate.

Condition Known in the law are of two kinds express & implied. By an express condition an infant is bound. If the trust be held, an estate with an express condition annexed imposing a forfeiture in a certain event, he will forfeit the estate by non-performance. Thus if the title of a mortgagee's lands to an infant is the failure to pay at the appointed time the forfeits as an adult does for paying at that time is an express condition and if he does not perform it, he can have no claim to the estate. 1 Jost. 246 & 2 Vern. 560, 333, 323; 2 Lea. 21 & 44 Const. 25.

This rule however does not hold if the condition be a penalty distinct from a forfeiture of the estate, as a collateral penalty, the infant forfeits nothing by non-performance. Thus a lease adverse to an infant conditioned that if rent is not duly paid, the tenant is to be the penalty which might be forfeited by an adult, that not being a condition upon which the estate is held, it cannot be inferred
against the infant 2 B. & C. 129, 1 Vent. 80, 3 East 13.

3 Inst. 246 b.

Implied conditions may be imposed on the infant by the court or by statute. As to implied conditions at common law, all conditions are enforced as it is opposed to public policy to confine the infant in bounds by them. Thus if a ministerial office is granted or assigned to an infant, he forfeits it by mismanagement, or undue and unskillful exertion of its duties, because the condition implied by the C. L. is that he perform them faithfully and skillfully, and he is also guilty of a breach of trust or a violation of good faith. Co. C. 55 b, 2 Sc. 233 b, 8 Co. 24 b, 1 Inst. 83 b.

But by such condition impliedly the C. L. as are not founded on skill or confidence an infant is not bound. Thus if an infant who is a tenant for life makes a conveyance in fee, he does not forfeit his life estate as an adult would have done him in no breach of trust, no violation of good faith, as before, and the law attributes the act to his want of discretion. 8 Co. 24 b, 1 Inst. 857, 1 Inst. 233 b.

As to conditions impliedly by statute, the rule is, when the statute gives a recovery by action against the tenant for non-performance or breach of condition, an infant in bound to perform, as if the infant tenant cannot waste the estate, giving a recovery by action. 8 Lawn 344, 1 Inst. 54 b, 8 Co. 24 b, 2 Inst. 233.

But whenever the statute gives the
party injured by non-performance, or breach of condition, or right of entry merely. But a right of recoupment by action, the infant is not bound to perform the satisfaction not incurred. Thus the state of a contract provides that, if the tenant declines in mortmain, the executor may enter, but does not give him a right to recover by action. Except I do not see any ground for the distinction in this two cases. 8 Co. 116, 123. 1 & 5 Eq. Co. 304. 21 & 22. 516.

But infants are bound as well as adults by statutes of limitation, unless they are on steps implicit or special saving in their favour, which they generally is. It is often said that no backs shall be imposed to an infant. I yet it seems to be an agreed point, that infants are bound by the statute, unless they contain an explicit saving in the favour of infants, since the reason seems to be that they statutes are considered as an exception made to a right, or rather to a remedy. 1 Edw. 31. & 35. Co. 304. 21 & 22. 516.

There is a rule laid down by good authority, that, if an *4 Act is done in trust, for an infant, does not run in behalf of the infant, nor in the time prescribed by the Act, of limitation, the infant is bound notwithstanding the saving in the state in favour of infants. You have no illustration of this rule, but I conceive that it relates to those cases in which the *5 or other representative has a right to sue in his own name, and if damage occurs because he is negligent, the subject
himself to the infant. Thus a sound provision made to the infant, and the infant's life or estate are not seen within the time prescribed by the statute. The infant, who is entitled to a distribution share of estates, is not the infant, and he would be amighty up against the statute. The legal right is in the estate, but the collateral right of the infant cannot prevent the execution of the statute.

But I conceive that the rule cannot extend to suits which are to be brought by the infant in his own name and his own right, as when a provision was made to an infant. But then it is no one who can sue, if the rule does not apply the saving in the statute is a mere dead letter. 3 T. R. 509.

In what manner infants can sue? First, i.e. by whom are they to appear? We have examined the rights of infants in an前期 to inquire how they can to be enforced.

And first, how are infants to sue. The rule is that an infant must always sue by his guardian or next friend. The meaning is, that he must appear by his guardian or next friend throughout the proceedings, and he could not appear at all, for he could not constitute an 'adult' of any sort. Nor for him, as a minor of estate made by him is strictly vested within, could he plead in his own behalf because of his want of discretion. P. 225, 230, 240, 3 B. & C. 148.

If then our infant must wills.
A guardian or next friend of an infant may plead the infancy of the disabilit of the infant in any case. In the suit 3 Bl. 301. 2 Barnard 213 not. Cautil 123. 1 Inst. 135. b.

In twenty-two instances, only by guardian, and suit not in suit, the infant in any case, indeed the infant is entitled to the C.D. By Stat. Mat. 16 the infant is entitled to suit by his next friend in certain cases of jurisdiction. 1 Cor. 1: 620. Palm. 295. Pro. 709. 2 Cor. 684. Nisbt. 209.

This right is entirely by statute, but totally unknown to C.D. than one fourth, in which it may be exercised. 1. When the infant is his guardian as he may do. 2. When the suit is against a stranger and the guardian will not appear in his behalf of the infant. Then it is supposed that the guardian shall appear, for if he forbids the suit cannot proceed. 3. When the infant has no guardian. 4. When in the language of the law he is entitled from his guardian. That is, is out of his care, which is the four cases, in which an infant can sue by his next friend, in all other, he must sue and appear by guardian. 2 Cor. 1: 640. Palm. 295. Pro. 369. Nisbt. 72. 2 Cor. 135. b not. 2 Barc. 680. That in all other cases, he must appear by guardian is 3 Barc. 145. Palm. 396.

This in some opinion, according to which an infant may appear either by guardian or next friend, in any case, but this does not appear.
to be law, for it would be destroying the authority of the guardian, and allowing the infant to squander his estate. 

Cas. Ch. 86, Nutton 92. 1 suit, 1256.

If a suit is brought by husband or wife, the being an infant, she must not appear by guardian. The husband being sui juris, can appear on behalf of both. 2 Scam. 213, 30 B. 15.

When an infant suing by guardian, the latter is liable for the costs. I may be compelled to give security for them before bonds, and the same rule holds when the suit is by next friend. 1 Eq. Ca. 72, Fta. 586, 1026; 1 T. Rep. 291, 7 Wtn. 120, 1 McNally 60, Phil. 46.

This rule supposed is founded on a twofold reason, the protection of the infant's estate for the guardian can bring as many suits as he pleases, and the infant cannot prevent, and thus his estate might be wasted in groundless suits. Again if the guardian were not liable he might make use of the infant's name to sue and handle strangers perhaps the costs must be paid. The guardian is also liable to an attachment on non-payment of costs recovered. Gil. 60, 87.

According to some opinions, the infant is also liable for debt. If the debt is recovered may proceed against either for them at his election. 2 P. Wm. 298; Gil. 60, 87.

This however does not appear to be law, the case in P. Wm. is the only one where it has been decided that an infant is liable for
costs. But upon a motion of that case before Lord
Chancel-ler he desired the rule and said that where
appeal in which a defendant was sued for costs against an in-
fendant by E+2 against him, it stated the rule to be "illig.
that one infant is not liable in libel or by 80% to defen-
the costs.

But what
then to do? May it be done? Is all the right of
the infant to be enforced at the election of the guardian?
The rule is that it must go to the guardian, who first
to pay the costs, and the question whether the infant's
costs is liable to him, is referred to the settlement of
the guardian's accounts before the proper tribunal
Ch. in cases of probate in 5 when the guardian will
be allowed the costs if he appears to have conducted
properly.

The infant is clearly liable for costs as much as
any one else. In being subject personally in fact
when judge a minor against him, otherwise no such
recovery could be enforced. And if the guardian was
subject to be made on the infant being
referred to be without protection. Shaw 104. Buttr.
89. St. 12. 17.

Estphalow lays down a rule contrary to
this, but there is no authority cited to support its
utter
den what he says applies to me to be done. Estph. 110. 14.

By the Eng. practice both guardians & next friend
must be admitted by the court or must be of 80%
This is required out of prudence to guard against any injury that might arise from the acts of an
unprincipled guardian or next friend. 1 Sum. 204. 709.

In C.2. when the suit is brought by a guardian the court
must inquire into his qualifications at all times
in the court of justice who appoints guardians, and
especially if the court can remove them at any
time. And as to suits brought by next friends the rule
is that the must be admitted by the court and are
suits made upon the record, but it was said that a
transfer admission without entry was sufficient and
the rule not being adhered to our practice has been
very loose on this point. Kirk. 410. 419.

Any person
is said may bring a bill in behalf of an infant
the infant must not being in combination. It is at his
filing known for if the action is brought by the next
friend the bill is filed. It may be dismissed by the court
if another appointed to inquire whether it is expedient to
proceed in the suit. The amount of the suit then seems
to be that any one may commence a suit as next friend
2 Bac. 681 3 id. 149 131 1 Eq. Co. 72 162 264. Kirk. 411

If an
infant is an adult one conservator in an action but by
them in that capacity that may. Usually the
adult having power to appoint one for both, because the
suit is in the right of another and the infant interest not
affected. 2 Cow. 62 67. 62 621. Cart. 153. 2 Vardr. 242. 219
Yet if an infant is admitted as co-executor, the infant must appear by guardian; for the proceedings as to them is as in infants; they do not join voluntarily in the suit. It may be too that they are not co-executors, then brings no room to imply an admission on their part that they are such; they is when they are Puff.

It has been said it so decided, that when an infant is sole Ee. In some cases above it appears by a B, because his interest is not affected since he has no estate. Cre. 8ly 342. 5 B&c. 150. They however are, since been determined est to be heirs. Cre. 576. 541.
1 Rul. 297. 1 Vent. 162. 5 Sannt. 123. 8 Swannd. 112. 113

Now is an infant to the sue. But the, it is 8.

Remains an estate to the suit so that an infant defendant shall always appear by guardian. In the suit. Vent. 182. do not act as to actions that are against infants, but only to them which are both by infants or in their favor. The plea that must always be signed by guardians is not by next friend or executor. Palin. 25. 237. Cre. 35. 620. Sannt. 92. Cre. 8ly. 131

And so far is the rule carried, that in suits but against husband and wife, either the husband or wife may, yet if the wife be an infant she must appear by guardian, for the husband can neither plead for his own appointment an executor for both. The husband is always considered as the next friend of the wife that can sue.
Defendant may appear by next friend. 1 Pett. 288.
1 Pet. 186. 2 Edw. 38. 2 Pet. 878.

When husband and wife are deft.: Both being of age, the husband may appear for her that is for both. For no rule requires that the wife shall appear by guardian or a wife.
1 Pet. 185.

If an infant having no guardian, is sued, the court must appoint one for a mate, who is called a guardian of title. This rule is founded in necessity for the infant could not appear without guardian. And any court with power to try actions against infant has also power to appoint a guardian when there is no such guardian. 5 Co. 335. 5 Edw. 369.

But if the infant has a general guardian, the court cannot appoint a special one of title, unless the said guardian be out of the reach of process, or has so misconducted himself that the court is convinced, that he is an improper person to conduct the suit. 1 S. 226. 94. 411.
3 Blc. 154.

As a general rule thus, if an infant has a guardian, the party suing the infant must summon the guardian to appear and defend. The process against one does not abate merely because he is not summoned, but the court will give time to summon him in. This maxim is a rule of practice merely.

If an infant deft. appears by edd. - judge - goes against him. The judge

is erroneous. To set at nought such a view, will be to reverse it. This brings it before the same courts to try the case originally in which that is an impropriety, as the reversal is to be grounded on a must be of fact not appearing at the first trial of not upon erroneous judge in law. the suit of error may become a trial by a higher court of the case. The issues of fact. 1 Yelw. 53. 8th. Co. 620. Nutt. 94. 2 Bac. 218.

The rule is the same if an infant is sued without summons to the guardian of judge, so as against him by default of if a judge of an infant who appears by other is erroneous, as we have just seen a fortiori rule. But no erroneous when no one appears for him. The rule cannot apply in this Eng. practice unless from some irregularity in the proceedings for judge a default in non tamen that unless appearance is extenuate the practice of 1st is different to the rule here in of consequence. Nutt. 116.

So also if an infant 1st appears by a 2nd. It final judge is erroneous for or against him. That judge by C.L. is erroneous. There is a distinction taken in 8th, as being that if the judge be against the infant, it is erroneous, but if in his favour it is not, and this distinction I think to be on the rule of the C.L. being firmly established that it is erroneous in both cases. 8th. 2 Edw. 424, 10 Eliz. 2 Edw. 424, 10 Eliz. 213. 1st. 123.

But by Stat. 31 & 32.
it is provided that if judg. is awarded for an infant
when a verdict to the other party cannot occur it
by 21th Ann. of Anunci. the sum is the same unless
judg. is given for an infant. If on commission. will
cover or more some information. So that the distinc-
tion taken in Co. 1st. 1441 seems to be established by
Stat. 1 Samuel. 311. note. 1369.

Above so far as my knowledge
extends, we have adopted the rule established by the
two statutes as noticed in Co. 1 st. It indeed it was re-
determined in Hartford Co. 2 Deo. 1617.

It is
to be absurd however that if an infant. If appeal
otherwise than by guardians a most prime threat may
be abstracted. but after judgement. no new suit. it being
the effect of the chat. to take away the new and
not to attach the old mode of bringing the action.
Cont. 123. 2 Samuel. 213.

If an infant is sued with
another who is an adult. both appear by all but
damage is given against both deft. the whole action
is erroneous. not given the infant only. but in total.
both may join in a suit of error to reverse it. The error
is total for the judge have no rule whereby to apportion
the damages. Co. 1st. 1397. 1 Bue. 746. Caidt 367. 3 Dor.
Scc. 435.

But if the damages are adjudged severally the judg-
et error is erroneous only against the infant he may
reverse it as to himself by a suit in his sole name. but
it remains good against the other. Def 5 Co. 52. Sec. 138.
... of convenience. Thus an infant abettor entered in common in buying a fine, the abettor is bound to the infant not, agreeable to the rule of contract made by infant to adults. Bol. 278. Co. Bl. 115. 174. D. 126. 1. Bar. 229.

Now far the law regards infants in venture so much more.

Such infants are to many purposes considered as in esse the not or to alle. The modern authorities are much more liberal on this subject than the ancient ones, and thus infants are now considered in all personal purposes for which they formerly were not. 1 B. & C. 130.

The willful destruction of an infant in ventur so much is not murder but a great misprison that is a misdemeanour of the highest kind, short of felony. 1 Tr. 121. 1 B. & C. 173. 3 Bar. 665.

But if such a child receive a mortat enjury, is born alive and dies within a year to day after the act done in consequence, it may be murder that is such infant is the subject of murder. 1 B. & C. 173. 1 Tr. 121. 3 B. & C. 665.

There is indeed an opinion of high authority to the contrary but it is not law. 1 B. & C. 233.

Such an infant may also inherit from an ancestor unless the testor the estate descends to the heir presumptive when it is devolved in favour of the heir at-law. Thus a fact in this having a daughter, the heir presumptive, the testor devolved to the son the better of the son of whom the son is ancestor. So the son is considered as capable.
of inheriting before his father's death, and taken by relation
back to the time of his father's death, for if incapable
of inheriting at that time he never could inherit.
13 Bl. 208. 35 Cal. 2d. 99, 16 P. 2d. 286. 5 Tex.
Civ. App. 60. Doug. 481.

Anon., the law now is much in favor of the
child, Anno. 5, 196, 26, 196, 26. H. 2d.
2d Rev. 64. 2 Mich. 75. 3 Ill. 526. 187
2d. 22. 1 Ky. 114. 1 Boro. Cha. 386. 5 5 2d. 29
97. 1 Inst. 116.

The rule is the same as to a legacy or bequest of
personal property. 13 Boro. Cha. 386. 136. 130. 1 Boro.
& Chart. 243.

A question has arisen, in a recent case before this court,
whether under our statute, such an infant might not
inheriting be entitled to inherit as his own by the
words of the statute
and "no estate in fee or life than an estate in fee"
shall be limited by deed or will to any person under
the age of, or to the immediate issue of persons under
16. See, however, for the rule that the statute was not intended
to prevent the validity of a will to confer a home or give an
effect to deeds, although to C.L. Stat. C. 23.
state is devised to an infant in truth as much, the estate is in the mean time divided to the heir at law on the birth of devices, the little being divided out of the heir at law, rest in him. This analogy to the former similar rule in case of intestate dying.

Tit. 2 Mtd. 49, 1 P.M. 486, 8 ib. 28, 1 Myt. 114, 1 Bk. Th. 316, 5 T Kip. 19, 51.

Such an infant takes a share under the law of distribution. Thus a posthumous child takes equally with the other children. 1 Bk. Mtd. 446, Barma. 290, 2 Seith. 117.

So too the child may take under a trust created for raising portions for such children as a man has living at his death, the word living notwithstanding. This is generally a great inconvenience to devise an estate among those to create families, if this course is adopted to carry out the heir to raise portions for the young children, thus a trust is created by the father for a certain number of years until the trustor for raising portions for young children, and the trustee will hold until the portions are raised by rent, profits or until they are paid by the heir. Rev. Cha. 58, 1 P.M. 216, 321, 2 Kim. 30, 399.

Such a child may also take under a trust given to trustor in trust for such children as the obligor may have. 2 Thoman 828.

But if an instruction against waste will be granted in favour of an orphan child. Thus if an estate be devised to an
and the heir at law determined to get what he saw
before he is out of competent use. and the injunction
may be prayed for by any one stating himself to the
infants with friends. Venno 710 Pru. Ch. 80. 7 et al.
117.

A testamentary guardian may be appointed over
such children. that is by the father with evidence &
12 CH. 7 v. 1 181. 360. 462. 466.

An unborn child may be
an Eq. that he cannot be until 17. if an Eq. child,
surety, must be appointed. the consequence of this is
that if the mother should prove to be insane of
more than one. they will be co-executors. 5 Co. R. 29.
Aff. 345. 567. 3 122 e. 193.

And finally if any one
devises or bequeaths, an infant. to such child. as
to the unborn child of another more than one should
be born they will take as joint tenants. 3 122 e. 183.

Relative rights & duties of parent & child.
In this enquiry it will be necessary to consider the
distinction between legitimate & illegitimate children.
for the rights & duties are different as regards to the two
classes.

A legitimate child is defined to be one who is born
within lawful wedlock or within a competent time after
wards. 1 Stat. 244. 1 181. 246.

The meaning of that is surely for
pro. that a child born within the time prescribed is
prima facie legitimate. & that no other can be legiti
The presumption is strong in the favour of a child born within that time but it may be rebutted. Act 940. 5 Co. 98 b. 114. 267.

An illegitimate child is defined to be one begotten or born out of lawful matrimony, or not begotten nor born during lawful wedlock. 114. 267

But the definition I conceive to be in complete for support of those within the parents intercease before the birth, the father dies, the child born is within begotten nor born during lawful wedlock, still according to the definition of an illegitimate child, the son is legitime. The true definition of an illegitimate child is one begotten out of lawful wedlock or not born during lawful wedlock nor within a competent time afterward.

From the definition of a legitimate child, it seems that a child born during lawful wedlock or within a competent time afterward is presumed to be legitimate, and the presumption is so strong that no evidence was admitted to throw the contrary but such as rendered the legitimacy impossible, and the rest of illegitimate must abide only in one of two ways, on improbability of a legime or impossibility of a legime. 114. 267. 5 Co. 98. Act 940. Tulk. 178. 114. 267.

Under this rule that if a child was born during lawful wedlock or within a competent time afterward the more improbability of legitimacy however strong could not be found.

Originally no other proof needed.
was, excepted that husband absence beyond the four
years, that during the whole time of separation, and
if he was within the realm, the illegitimacy of his
wife's children could not be proved even after he
was confined in a dungeon. 1 Inst. 244. 2 Eliz. 7
1 N. B. 183. 1 Roll. 358. Cart. 122. 10 Eliz. 657.

Anno

if the husband was absent any in definite length
of time, it beyond seas even, his wife should have
a child, no matter how soon after his return it
might be legitimized. And so it a man, who has
returnd after an absence of years should be married
during a child born to him within 24 hours after
his arrival, the child would be legitimated, it one

But this rule has been greatly relaxed and widely
expanded, for now, more acts may be proved through
the marriage of any criminal offenses that go to
establish the fact, and the presence or absence of the
husband may be proved in the same manner as
it could be in any other case e.g. at the commission
of a crime or breach. Each can go to the jury
under its special circumstances, so that misconduct
may be proved att he husband was within the
realm or even in the same town. 3 P. R. 275. 6
5 Eliz. 219. Sta. 9 25. Esp. Dig. 484.

The fact of impor-
tation may be proved not only by want of age, but
by any other fact whatever that can prove it from it.
1 Bac. 311. Sta. 916. Esp. Dig. 483
Thus far, however, the rule admits of proof of illegitimacy, not otherwise than by what amounts to an absolute insuperability. Sutley, however, the rule has been more relaxed or liberally. If illegitimacy may now be proved not only by want of consent or impotency, but by any other fact that renders it within direct or circumstantial, or cohabitation by the wife with a stranger. Child refused to be the child of another, called by his name, wife supposed the stranger was her son called his wife, so that now the person of the infant who is entirely established. Comp. 894. 2741. 356. 619. 847. 254.

You mean then, that so the rule now stands, the illegitimacy of a child born during lawful cohabitation may be proved by evidence which goes merely to the improbability of a legitimacy, the actual improbability not being necessary to be proved.

The case of a marriage null at initio is of course illegitimate, and if a later time is obtained for cause which existed prior to the marriage, rendering it unlawful at initio, the issue is illegitimate if the marriage was invalid at its inception. At the time, the divorce has relation. 138, 235, 6, 440, 450, 1397. 235 1283 c. 311 7 Co. 41.

But the legality of a marriage may not absolutely void; can be called in question only during the lives of the parties to it. This is what is meant by the rule that the issue of a marriage cannot be bastardized after the death of either of the parties. By probate, the illegality of the marriage except the marriage was
The rule is commonly laid down in such
general terms, as to be more often misunderstood
than understood. For a child born during lawful cohabita-
tion may be proved or declared to be illegitimate in a court of
justice, as well, when the parties are both alive, as when
they are alone; and when the marriage is absolutely void.

Intestate: the children may be proved illegitimate, and

shall be before the death of the parents, for the mar-
rriage is dissolved by such a death. A child born
upon the death of the heir, the heir apparent being no subject

born, yet the same one last act. 1861. 440.

A child

gotten later after a partition decree a sum of three
is presumed to be illegitimate, if the parents are obliged
to obey the decree, which orders them to live separate.
But children born after a voluntary separation between
husband and wife are presumed legitimate, the being on
such a decree, in which to found a presumption of illegitimacy.
But in both these cases, the presumption may be rebutted
the one, of proof however, when different factors in the
two cases, will 123 7. Co. 42. 9 35 4 T. N. 356. 1861
487.

When the question of legitimacy arises upon the

appeal, the wife is more admitted to know by her

own testimony, than the husband. This rule says Thanger

is founded on an easy & insensible, if ever so slight,

in such ease, to prove facts which may be common

familiar to know, or her own misconduct, be

may be admitted to know by her own misconduct, be

may be admitted to know by her own misconduct, be

may be admitted to know by her own misconduct, be

may be admitted to know by her own misconduct, be

may be admitted to know by her own misconduct, be

may be admitted to know by her own misconduct, be

may be admitted to know by her own misconduct, be

may be admitted to know by her own misconduct, be

may be admitted to know by her own misconduct, be

may
this cannot in common human construction be otherwise.


And in question of legitimacy the mother is a con-
tentent witness to know the time of the child's birth of
the marriage as is her husband. Comp. 574.

And in question of
the know our legitimacy or recognize the determination of the
father or mother as to the facts whether the child was born
before or after marriage may be proved by other, after the
death, so their answer in stating the facts may be
begun in evidence. Primary evidence is admissible in
this case, witnesses being allowed to say what is common
tradition or expectations. As family records, as in family
books, inscriptions on tomb stones. And many kinds of evi-
dence not admissible in other cases for this reason that
these facts are not provable as others are. Comp. 571, 594.

Civil Canon law which provides generally in the contin-
a child born before marriage is legitimated by the sub-
sequent marriage of its parents, but by the C.L. without
know the rule is otherwise the child remains illegitimate.
Cate. 62, 6. E. 65. 1 P. L. 434. 436.

And a child born of a
widow so long after her husband's death that according
to the usual course of nature it could not have been
brought by him is illegitimate. If such child is not born
within lawful wedlock nor within a competent time of
two years 1 P. L. 456. Esth. 3. 54.
What this competent time is, the law does not precisely ascertain, the periods fixed are different, the best authorities on this subject are medical authors. The distinguished Dr. Walsh has lately introduced a rule which fixes the time laid down by Coke. But no rule can be precise on this point; for the length of time must depend upon a variety of circumstances; not proper to be particularized in this place. All the learning on this subject is to be found in

Rev. Co. 1st. 12. 2. note 142

see also 1 Phil. 143. 1 Bar. 313. Co. 3d. 341. Ely. Dec. 485.

Without further attempting to fix the time, I will observe that a child born within this usual time computed from the husband’s death is prima facie legitimate; the law presumes it so until presumption be rebutted. If a child be born after this time, it is presumed to be illegitimate. This presumption also may be rebutted. As the law allows it, the it may be impossible in point of fact to rebut it. Psalm. 9. 1st. 386. 1st. 388. 1st. 389. 1st. 381.

If a woman should marry immediately on the death of her husband (which is not to be presumed) and a child is born at such a period, that according to the ordinary course of nature it may have been begotten by her husband, the child when arrived at years of discretion may choose which to call father. Suppose however, that this would be allowed only in the absence of satisfactory evidence, for the child could not be supposed to decide against clear and satisfactory evidence, the books however say nothing of such qualification.
It is also a maxim of the law that no one can be bar
med after his death, it being another maxim of
the law, that all personal defects die with the person.

7 Co. 442. 1 Inst. 33, 245.

But this rule holds only in so far as
child born before the intermarriage of its parents, born
after, the former a bastard, the latter not bastet.
In the case of the former the latter cannot question
his legitimacy. 1 Dov. 110. 2 Co. 140. 1 Bac. 315 note. 2 Ch.
Dec. 486.

This rule thus does not prevent a child being
assumed illegitimate after his death by impeaching a void
or voidable marriage. And the effect of the rule, that
if the elder son enters upon his father's estate, he is
presumed born upon as shall tend to the exclusion of his
father's legitimate issue. This appears to me to be a positive
rule of law. 7 Co. 442. 2 Co. 262. 1 Inst. 33 a. 245. 1 Bac. 315.

Not to exclude the lawful issue in this case that must
have an uninterrupted possession by the new son to succeed
even then his issue for if it has been uninterrupted or if it
has not, and the question been made during his lifetime, his
issue may be writ by the lawful issue 1 Inst. 444
2 Co. 247. 1 Bac. 316.

Of the rights of incapacity of illegitimate
children.

The rights of their children are in general.
such only as they owe a property. For an illegitimate children
include nothing. Since he is called "nullius filius" or
"nullius populus." 1 Bl. 458.

But this raises the true
point in a more far too indefinite. Such child has been
said to have no kindred, but his own ipse since
kinds, is to be traced thence a common ancestor, and
a bastard has no ancestor. This is in concord, full
 herein. as set out to all purposes. This abstracted,
actual relation is recognized in the law relating to
marriage within the prohibited degree, and he will
not be allowed to marry anyone that he would not
be allowed to marry even the legitimate. So it is
unjust to say he is nullius filius. 5 Mxx. 163

Indeed it
has been determined under the Long State, requiring
the consent of parties to the marriage of their
minor children. that an illegitimate child is in the
said that if such an one should marry without the
consent of the mother, so the main trainings, that
the marriage would be void. 1 C. R. 2. 107.

The claim
is incorrect, since in which this matter has been
afflicted seems to have arisen from first misquoting
that minor substantiating an opinion of "falleter
He says that an illegitimate is "quasi nullius filius because
he cannot inherit to any," i.e., so far forth, grandfather
be is nullius. At the fact is the case in application of
to the law of inheritance. See 188. 1 Smith. 188. 1892.
An illegitimate child cannot acquire a surname by inheritance, or gain a surname as of his father, he may however by reputation or by the usage therein acquire a surname in the purchases, contracts, etc. 1 Pet. 3. 10th. 1529.

Under this acquired name, he can only make marriages, conveyances or contracts of any kind, i.e. when of age. Before that time he has the same capacity with other minors. 2 Cor. 10. 338. Rev. 14. 26. 10th. 110. 1 Invest. 3.

The name may be taken by the name of possession of a. J. the son of J. C. provided the has acquired by reputation the name of J. C. But he does not hold the name for the purpose of maintaining or inheriting the legitimate children. 10th. 110. 6 Co. 65. 2 Cor. 10. 338. 6 Hall 133. 14.

But the name is taken by the name of possession as if a conveyance were given to the name of J. C. an illegitimate would not be included. For the word possession includes consideration as synonymous with right of the body, and a bastard is not given to any body. 10th. 13. 14.

An illegitimate child cannot acquire a surname by imitation or by a lapse of time, it common reputation or name coinage gives a character in a minute, and a bishop at his birth is not considered as having acquired the imitation of being any man's child. So if a contingent man's son is limited to the eldest son of J. C. whether legitimate or illegitimate, the having no child at the
time an illegitimate child afterwards born to him cannot
take, for him on two contingencies, the birth of a child
and acquisition of the name bymutation, so as to ascer-
tain the heir:—Corb. 310. B Co. 25. C Co. 152. 17.

It has been said how-
ever that such a limitation to the eldest son for wo-
men may take effect in favour of a subsequent il-
legitimate child, as there is no uncertainty whether
the child will get a mutation of being the son of his moth-
er, so that there could be no mistake as to the heir on
May 33. 1632 c. 309.

I conceive however that the abomin-
ality of this contingency will not make void the con-
tingency for the birth itself of an illegitimate is a re-
most contingency. Blackstone calls it without
some hesitation, and too much too much to over that the
limitation: this point however is not settled. 1 John, 2 Bl. 170. 1 P. R. F. 529.

an illegitimate child can have
no heir but of his own body i.e. no other than his own
kins, for all other kinsmen must be treated thus, even
more necessary a bastard child has no avetor within his
father or mother, so the son of his mother cannot in-
herit to him. 1 John 3 Bl. 131. 259.

The settlement of such
a child in Eng. is regularly in the parish where he was
born, this is a consequence of the rule that he is
the heir of no one, for a determination settlement is a
species of intestacy, any person intent is presumed
to have a settlement where he is born, but the presumption may be rebutted by proof of the residence of his parents in another place. 1831. 3642. 3. 859. Gall. 127.

The mother living in another place keeping her child for a time, or even of a certain age (as seven) the next step is if the child becomes a pauper the parish in which it was born must maintain it, except so far as provision is otherwise made. Doug.

When however a pauper is justified or attempted to be justified in order to stand an illegitimate child as where the matter is sent by the officers of one parish for the purpose of imposing the child upon another, that pauper cannot be carried into effect. Gall. 121. 1831. 259.

It seems to be taken for granted in court that the settlement of the mother is the settlement of the child. It has been so decided as being the more reasonable rule when the whole. 1 Rast. 155. 1 Swift. 169.

But see the child can never inherit more any more than in Eng.

The duty of Parents to their illegitimate children.

This court, at least, in their obligation to maintain them and the mode of enforcing that duty is prescribed by statute. 1831. 257. 8. 1834. 1. 317.

The law in Eng on this subject is regulated by three or four different statutes. Some of these kinds however are merely local...
and each state has probably peculiar regulations of its own. The principle features of the Eng. statute are adopted into that of Connecticut, the many of the minor provisions are not. In Erp. 1 Eng. the father + mother are both chargeable with the maintenance of illegitimate children. 1 Bl. 85 & 4 Co. 99, 100.

I shall mention the outlines of the measure adopted in Eng. of enforcing this duty: how far it may differ from that of other states I know not. A complaint is to be made by the mother of the child to a magistrate under oath upon this issue a warrant to apprehend the person charged. 1 Swift. 211.

The province of the magistrate is to ascertain whether the party ought to be held to try at the next county court in the county where the child is born by a commission, or to charge him, the county court has exclusive jurisdiction in such cases. 1 R. 267.

The mother is allowed to testify both at the inquiry before the magistrate before the county court. 4 Co. 51. 1 Swift. 209.

The proof found by the magistrate is a copy of a writ, &c. as in civil criminal cases the object of it is civil. It was once supposed that the complaint must be made before inquiring, but that is now overruled. 1 Swift. 210. 11.

The mother's oath is admitted at magistrates, and the note conclusive. It shows the same upon the bill, she is not admitted to testify. His advice can be made only by them. The mother oath is
It is a prudent and prudent provision in our state, that the matter be put to the discovery of the truth, at the time of trial, for at this time defamation is false and to be of expenses, and this justice is indispensable, on the not bearing witness to the mischief of the tremendous advantage the matter has to the accused, not being allowed his oath, indeed the omission of it is fatal, and nothing can supply it. *Stir. Cor. 34. 13. 1 Day. 278.*

When the town presents for its own security, it is not indispensable that the matter be this discovery at this time, for they have no means of enforcing it. *1 Day. 278.*

The statute requires also, that she continues constant in her accusation of the person accused, and that all the other witnesses must appear allegé in the complaint, by being constant in meaning that she do not contradict herself or she can distinguish at different times.

If the is found to be the justitiate father or as an enemy, may quality the judge is that the judge may secure to pay the damages of repud, and if required give security to save the town from any injury in support of the child; so that he stands committed. This is determined one order of filiation is distinct from other judges. *St. Cor. 54. 5 7. Ref. 372.*

This form has been unite so that 54 give judgment, or where by this court. 1 Cor. Ref. 417.
But no security of this kind is requisite of the mother in
clay, I have never known of any proceeding agi
ther, they are contemplated by the statute.

The damages in
then case can not find, but are left to the direction of
the court, to be applied according to the circumstances
of the parent and the child. The practice has been to
refuse such sums for all purposes as will with the
matter and support the child, unless four years old,
and sometimes longer. But more life together with the
expenses of the birth, kind. 128. 1 Cor. 38. 416.

If the child

dies before the expiration of the period that the damages
are intended to cover, or when there is no much about
his wall, the remaining $2 are stated. And on the other
hand, if the expenses are found greatly to exceed the sum
applied, it may be increased by application to
the county court. The increase is inserted in the
remaining $2.

If the child is not born before the end
of that term of the court, the case is continued from
and a renewal of the bond ordered. 24. 439, 54.

In case of an abortion, the woman dies, or marries be
fore the birth, the defendant is still charged. 106. 256. 524.

If the mother does not prosecute as she may, the ac
tractor may in S. t. the executors of the poor in Congreen
in behalf of the town or parish, to serve them from
refuse in the child's maintenance.

If defendant is convicted
on the 8:45 he is not admitted to the poor prison, with
the proceeding being so far criminal. 41, 1846.

and if the matter does continue a prosecution shall
proceed the same as if not continued may go on with
the same complaint or fresh a new one in its stead.

What the mother has sworn before the magistrate in her
examination is good evidence of her having a right to con-
vinced the court to convict the Def. or support any order of punishment 5 Smith
373, 1221, 257

It was made a question whether an examination
by select men, the mother could be compelled to testify if
decided that she could. Her disability of being the same
was compelled by imprisonment. 1221, 278, 1 Swift, 211, 32.

It has been made a question whether the mother who testi-
fying on her own complaint, is to answer questions as
for her own incontinence with other than the accused
where the time the child was brought. The general
rule of law being that no witness is to disparage him-
self, it was decided that she was compelled to the
an act of the other great advantage.

The trial by

Can a suit is to be by the court or not jury, it originally
was by the court, then by jury that more determined to
be by 642, by construction of the state, the proceeding
indeed is precisely like that of the 62 of civil suits
in Eng. which has no jury.

a little in point of form the
process is criminal, yet depositions are admissible
evidence, the in criminal prosecutions they cannot, the reason is that the object of this is mainly civil. 1 Swift 211.

The prosecution is criminal again in this, that no appeal is allowed, this was the original rule, it was even allowed to them again after period. This is not an absurd anomalous

Of the rights & duties of parents in relation to their legitimate children, the duties of these children to their parents.

The duty of parents to their children consists principally in their particular care, maintenance, protection & education. 1 Blunt 416.

The duty of maintenance is founded in natural law, it is enforced by the municipal, it consists in providing necessities and by the law of Eng. down own country this duty is reciprocal under certain restrictions or qualifications. 1 Blunt 416 417. Rat. 500.

The obligation of parents to support their infant or minor is absolute, if no emotional respect is made by statute to provide for poor children, the obligation is absolute if no provision is made by statute to provide for poor children. In making no provision for the support of children, a man is bound to provide necessities for his children whether he is able to pay for them or not. The statute law however makes provision for alimony to be furnished by the husband or husband, parents however are in no case first
This duty is enforced in Eng. by stat. 25 Eliz. c. 1, and similar statutes of our own. 1 Bl. 248, 4 H. 6, c. 232.
The obligation of maintenance under these statutes, either as well to grand-parents as to parents, and the liability even to care with infirmity, the statutes provide, that all poor and impotent persons who are unable to support themselves, either from want of understanding or from infirmity, shall be supported by their parents or grand parents if of sufficient ability. In the statutes above the Ch. leaving the duty conditionals, 1 Bl. 248, 4 H. 6, c. 232.

Parents are not thus bound to support their adult children if such are able by their labors or otherwise to support themselves. But infants and minors are considered by the law as unable to support themselves, and the duty devolves to support them, is unconditional as well as far as the statute gives aid from the town or parish, 1 Bl. 449.

On the other hand, the same obligation of our statute, viz., upon the child or grand-child to support such of their parents or grand parents as are unable to support themselves, proviso always that the children are of sufficient ability, and if they are not the town or parish is liable. By the Eng. statute, children are under the same obligation, but the statute does not extend to grand children. 1 Bl. 234.

When they
are no relative standing in the relation of parents or grandparents, children or grandchildren, the obligation devolves upon the lover in Cor. 7.21. and in Bug. when the lover is settled, this obligation you will observe in secondary, that of relative primary, that Cor. 7.21, 3, et cæse.

Again the obligation in the first place comes, when those who are meet in relation to parents, would be liable before grandparents, children before grandchildren, we have no collection if rules upon this subject, this however I take to be the law according to principle thus support a principle, namely, able to furnish part of his necessities subject to grandparents, affluently. I take it that the parents are to furnish what they can and the grandparents take up the residue. And the rule would be the same as it regards children and grandchildren.

It seems to be the prevailing opinion in Cor. that if a man marrying woman or having children by a former marriage, that he is bound to support them during their minority and that he in return is entitled to their services, we have no case in point, the this is common practice. My own opinion is that he is not bound. This is the Bug. rule. 1 Bost. 250, 361. Part. 156.

In Bug. it is settled that a second husband is not bound to support the wife children by a former marriage, even during execution, and this rule appears settled without reference to the question.
whither the matter was at the time of the second marriage able to support them or not. D R Ray 1254. 2 T. Rep. 119. 2 R. 346. 3 Eq. 1. 1 Fla. 195. 5 Eq. 190. 345. 1 Bro. Ch. 263. 2 Vent. 383.

The rule in Eng is settled up.

as what is called the true construction of the state of the child. the word parents i.e. their wid rejoining to maintain relations by consanguinity and not at

finity. The wording of our statute is precisely like that of

child, and the construction of both it would seem should be similar. It has been determined in Eng. that the

maintenance advanced for minor children of the

wife by a former husband by the second is a good

consideration to support a promise made by such

child after full age to repay the same as before did

26 East. 76. 1 Blaw. 297.

When it rests for the weight of

authority. I should doubt whether within the Eng.

we own rule some court in its application to

this particular case. It appears to me that the

criterion of the husband's liability in such a case

is the matter at the time of the second marriage

was it ability to support such children, if so

we are able to maintain to support them, and as

the husband took his care once I should suppose

him bound, on O L principles, to support them.

Besides, the statute only makes it his duty to support

them until the second marriage certainly, and

as the power of discharging that duty afterwards

is destroyed by the mere O L principle, he ought to be
bound to support them. WT. The statute lays it down for law, and does not notice that the same authority are 
repugnant against it. Our statute would rather make 
both liable in every point whether the mother was 
sable to support them or not. But I apprehended 
the rule might be, that if the mother was at the 
time of the second marriage of ability to support the 
children, the husband is bound to do it. otherwise not. 
1 Cl. 246.举起 283. 

It is also settled, that a man is 
not bound to support his wife, parents with 
separation. More than is a manifest difference between 
the expressness of this rule and the one just 
mentioned. In the former case the husband knows 
the situation of the children, the and of the bur- 
den that he is leaving it may reasonably expect that 
it shall soon be discharged. in this case he is 
taken by surprise the poverty being superven- 
to and the burden likely to in arrear. this do- 
matic pace be endangered? Then I should support 
sufferingness for the distinction. And yet in the 
strict principles of EG. I should support his prop- 
erty might to be bound if when not convey at the 
time of the marriage. Gen. 119. 2 Th..4. 3. 5. 
1 Pet. 250. 361. Tit. 155. 

Thus, a separable cannot 
be settled by decison to which I will advert, as when a 
person has to the parents or children able to support 
them. The it matters at the susceptibility of parents 
children to support each other when able, and I know
of no principle by which we can determine which
first liable in the case supposed. I should think the
problem ought to be divided between them, it is mere
matter of opinion however.

But the parents who are of ability are
bound to support their children who are not able to sup-
port themselves. This does not prevent a parent from
being justified in leaving his children or any one of them by
interest of the duty as it arises out of the relation can con-
tinue no longer than the relation continues. 1 Bl. 829.

Thus without any, having a widow who is unable to support
himself, and having no relative who can bound to do it.
by the statute of 27. Hen. 8. 34. 1. the husband is liable for
her support during widow-
hood. This I think is peculiar to Conn. The reason of the
provision probably is, that the right supersedes that of
all but human beings. 9. Co. 384.

Of the mode of enforcing this duty.

In Conn. this duty
is enforced against children and the parents of adult children
by an application in the form of a summons to the county
court. I say parents of adult children because by
the 54. Conn. the duty to support their minor children
is absolute. They may be sued at 60. Co. to perform it. But the
duty to support an adult child is conditional as to their
own ability and that of the child so that an action
shall not lie on them is nothing to change them within
the shape of a suit. 3 Bl. 59. 2 Bl. 168.
The application for the maintenance of state children may be made by any of the relations of the pauper who are within the state, as children, grand children, etc., or by the next of kin of the pauper. The state does not provide that the pauper himself may apply. St. Ch. 3&4, 382.

On this memorandum all the parties concerned made & female an oath to appear before the court & the Inferior of the pauper, & every maintenance is awarded among them in proportion to their ability, and no reference is ever made to the amounts which he received from the family estate or from the pauper himself. Those who have received less sometimes nothing, often pay the most. These proceedings are in the nature of the proceedings at the Quarter Sessions. The relations are then required to give security to pay from the order than made or to pay the sum stipulated for each. If no security is given, the court issues executions to your quarter. The payments are to be made to some individual in trust to be employed for the support of the pauper. Act. Ch. 383.

The duty of protection is recognized by thestate laws and its execution is left to the discretion of the local boards of guardians. It is rather permitted by the state laws than required, certain provisions respecting
...paintured in adefang. 1 Bl. 250. — I cannot unde-
this principle may maintain or uphold his child
in lawsuit without incurring the legal writ of
maintenance. So he may justify a bill in de-
fence of his child, not that he may simply inten-
to prevent known or in many instances strange
the same considerations as at a child and his action
thereupon purely with regard to self defence. 2 Bl. 1554
1 Bl. 450. Civ. P. 746. 1 Cowell 23, 131

And I will here show
that this duty or rather right of protection is mea-
through provision of child in both the cases above stated
of maintaining in laws suits of defence. 1 Bl. 1454.

It is also a clear rule of the moral law that parents are
bound to give their children according to their ability
a suitable education. This is a duty sufficient for the Mem
education laws to enforce, and it is left generally to it safely
may be to the feelings of parents. No other provision made
by the Big law than that poor children may be bound
out of apprentices, and that parents shall not send
their children abroad to be educated in the popish
religion. 1 Bl. 426. 253.

We leave in Conf. an ancient state,
which is practically neglected and inhabited by worse or igno-
sity, providing that parents shall make pain fasting,
teach their children to not the Big tongue until
understand the laws inflicting capital punish-
ments, if incapable to do that much, to teach them some
short orthodox catechisms. It also authorize, the short
The only duty of children toward their parents, at the law supposes, is that of obedience and maintenance. In this accordance to the rule above laid down.

136. 253. 1.

as to the rights of power of parents over their children, it is a rule that a parent has right to correct his minor children in a reasonable manner and for a reasonable cause. This right arises out of his duty to maintain and protect them which he could not discharge without it. The right of governing being indispensable. Mark 130.

It is not to be considered that this right is unlimited. He has no more right to kill or to be- come his child's murderer than any other man, or that he is more subject for lightly stepping over the limit prescribed by the law. The power being divine, the law will not change a parent for an error of judgment to the extent of homicide. To subject the parent to punishment must have been both unreasonable and malicious, that is wanton and unreasonable in degree.


This power of correction the fathers
may delegate for every father has a right to bind his minor children as apprentices to masters, and as he can only delegate that relation, he can only for the persons of minors, the master is placed in lieu of parents, and this right is as necessary and indispensable to the master as the father. the father has indeed only what power is necessary to care for no other 1 Bl. 1253.

The father has also a right to control his minor children in contracts of marriage. The consent of the father when there is one is required by the English law, own, and without this consent by the English law, the marriage is utterly void at the issue of course illegitimate (see Hard Tuke). By our law, the the consent is requisite still the marriage is good without it, but the person solemnizing it is liable to punishment 21. 2. 285.

A parent has no
known own his infant child estate otherwise than as
trustee or guardian of in that capacity he is held to
account for the profits of the property when the child
attains full age, and perhaps sooner if the proper
court may call him to an account at any time 1 Bl. 1253.
452. see part of different kinds of guardians,

And a minor
child is entitled to all the benefits he can acquire otherwise than by
service, for the arrears of his labor belongs to the father and he may
sustain an act for them, but as to such as the infant acquire.
by gift, grant, device, etc., the father has no such right to it the
very same. However, he may take charge of it, being regularly the
infant's overseer or guardian, but he must account for it,

and
is a mere verbal authority, he has no power of entering the benefit whatever. The principle upon which the father is entitled to the services of the child is, that the child is considered as the servant of the father, except in the case of emancipation (with support) 1 Bl. 1. 53. 1 Bl. 200.

And upon this principle, that he is entitled to the services of the child, labor is not for this purpose servient servitium servitium. In the letting or otherwise injuring the child, so as to occasion a loss of service, the father is that the father recovers in the capacity of master, with the relation arising out of that of parent to child.

9 Co. 115. C. 8. 1565. 1 Bl. 153.

Whenever an act is done by a parent in using one of his children as a minor for this purpose, he is entitled to recover damages for the immediate personal injury. Isc. 18.

A.D. 1823. 1565. I would however, that if the child is personally injured, he is entitled to a relief to an action to recover damages for the immediate personal injury, it is not in his interest. If two are injured, the action to the parent, his injury in consequential. Co. 8. 1565. Is. 156. 1823.

And

if consequence of any such personal injury to a minor child, the parent has incurred any actual expense, for the curing of any corporeal hurt, he may recover it, if he alleges it specially as a ground of damage, but if the action is laid with a plea of servitium servitium servitium, merely without alleging, special damage he cannot recover. 3 Wris. 18. 1 D. 125.

When this same principle again, an act in favor of the father lies against any one who has seduced his daughter.
land with a pending controversy. In this case, it is the present
cause of loss of service in the event of the action. Attempt has been
made to liberalize the practice and make the plaintiff trespass,
without alleging some common nominal loss of service. But
that originally was one side raising the nominal ground
of action. 20 Ray. 1032; 3 Darm. 1879; 2 T. Rep. 168; Cio Syl. 769.
11 East. 24.

And in this action the plaintiff may also recover the
 damages incurred by his daughter's illness, provided he allege
is specially as before, but must without, for he must give noti-
tice of all the grounds upon which he claims special dam-
ages. Ray. 257; 3 Wils. 18.

But at the loss of service is the man-
inal ground of action it is not the real or principal ground
of damage. This consists in the suffering to the part in-
jured to his family, and the injury to the characteristic
affectional of the family, and yet that can not have suf-
ficiently definite in this nature to ground the action.
Yet they aggravate the damage to some extent, namely,
3 Wils. 19; Law, 675; 11 East. 23; 14th. Dig. 625; 21st. 187.

One subject
of the position that the loss of service is only the nominal
not the real ground of actual loss of damages, evid-
cence of the injury to service performed by the child is
sufficient to ground the action if it is not necessary that
the damages be in any measure proportionate to
the actual loss of service. 3 Wils. 19; 2 T. Rep. 168.

And the
action will lie the in a breaching points of view the
child may have been a burden to the parents and
This action nominates for loss of services due or arising for the seduction of the daughter of the highest nobleman in Eng. as of a laborer, and the amount of damages is in a great degree proportioned to the rank of the family injured; the amount of fact the loss is generally made up in families of rank. Peck, Co. 39. 560 Bill at 11 P. 27 11 P. 27

Includ the character of the daughter herself determining in a great measure the amount of damages, hence any evidence which goes to impeach her character goes in mitigation of damages, and yet this can scarce be weighing it or the amount of damages the father may have sustained by loss of services. Peck, Co. 39. 240 Bill at 11 P. 27 11 P. 27

But as the parent in this case the party recovering any misconduct of the parent in relation to the intercourse or intimacy of the parties concerned in the transaction goes in mitigation of damages it's case.

Shall assume to you that the action would not lie unless the daughter has been in some way the serv. of the & this is clear from the acts authority, that E. R. says that she must be proved to have actually labored in her service. Shall assume that any that last service will be sufficient, and if the daughter were a minor it is enough to have lived in the father's family or a subordinate member of it. This I take to be correct, for she is deemed a serv. subject to his commands, so it is not necessary to prove a single act of service if she were a minor in the family this constituting a servant
of course. [Text continues...]

It is further to be observed by
subject that the age of the daughter is not material at all.
The idea of full age the action will be if at the time of
the injury were she taken with her father subject to his de-
manded government & control, and then no right of taking
any contract of service, the child is not of course unwilling
more the relation disposed by her coming of age. If she
continues with her father as an attending servant as be
for the sick, always she is considered as a sort of de facto
Minor. 18 U.S.C. 166 6 ib. 255 1st emancipation. 1 East 526
2 ib. 276.

But if the daughter were under age at the time
of the injury done, she is considered as the servant of the
father of course until she earns saving another without any
wages or receiving them for herself in that case she
would not be in the service of the father.

It is said in
C.P. 26d. that the daughter must have been actually
resident in the father's family at the time of the in-
jury committed, but the authority quoted does not support
the position. Suppose the minor daughter is in the service of
another & the father receiving the avails of her labour
or she is at a boarding school, the father has not standing
all rights to her service, for if she is under age she
is considered of course as out to him until it appears
that she is naturally emancipated or in the service of
another whose closing includes those of the father. C.P. 26d.
5 East 25. 2 Phil. 1084.

It is 3d again by C.P. to have been
laid down by L. Mansfield, that to support the case the plaintiff must have been a minor, but this is a gross mistake. The Act says when the daughter was 22, 25, 30 it failed. The Act was originally intended for signing done to minors, but when the thing either of it be done under the age of the sufferer make no difference. Ed. 25, 645 with note. Bux. 1878.

This action may be brought not only by the father but also by his sweath, by any one standing in loco parentis, mother to

Thus is such a thing known as the case of adopting children, which is shown by declaration and acts consistent with it and proven the adopting children are considered parents for every purpose so, by bringing action, the relation bring facts that of parent to child that of master and

fathers of course. The son an event was allowed to sustain an action for the seduction of an adopted minor, and this is allowed unless the parent is living. 2 D. & B. 132, Co. 55.

In their cases the adopting itself is a competent evidence but this rule is not founded upon such a necessity but upon the ground of the not being interested in the event of the suit. 3 Will. 15, 1 Rand. 472.

For an action for libel it may be, with lots of service, the ground of action seven, in case he once that ought to be the form of the action and yet the long practice is to plead as in trespass. As it became the established form in case and that is the correct form, as if a man is injured by writing, he has an act of trespass but the most in
jury bring consequences his remedy is in case the Eng.
action is established by breach against principle
1 T. R. 167. 2 T. R. 1032. 1117. 5 T. R. 361. 2 ch. vs. 152.
6 East 388. that the Eng. hie. is res. 3 Mill. 18. 5 B. n. 1871
W. P. 43 P. D. 223. 240. 2 N. Y. 476.

But when the
action is held with an illigal entry of Diff. hie. it
subsequent wrongly the damage under a lesign. the
action is treps both in form & substance of the edu-
cation is mere matter of aggravation. W. P. 43 P. D.

In the
case the action is in form and substance treps. the gist of it
being the entry, and the subsequent injury is a consequence
of the wrong being a mere ground of aggravation or consequences damage. it was.

But when the action
is thus brought a license to enter the house, or by being
bidding to walk in subject to the whole action for the entry
is the ground of action. the gist is mere aggravation any
previous which was the alleged cause of action de-
fects the whole for what ever the gist returns to all
matters. of agg. This form of act. there is a dangerous
and this is no particular benefit to be derived from it the
damages are not increased. the action is mere if de-
defects and the best burden to be proved. W. P. 43 P. D.

In Swift's system it is insisted that a license to enter is no
defence to such an action for the subsequent unlawful
conclusion of Diff. within the whole act a treps ab initio.
but that is not supported by principle. When the law gives a licence or a right to enter, and he abuses it, he is considered as a trespasser admitted by virtue of a tacit condition annexed to the licence, but if a licence is given by an individual, any subsequent act does not alter the original one. 2 Swift 62 - Perc. 131. 8 Co. 145. 14.

Ryl. 967. 2 Bla. N.P. 1218. 5 Bla. 161. 15 T.R. 12.

It has been a question in which opinion is much divided, whether a parent can sustain an action for taking away his child without killing any limb of his person or any special damage. I think in the more liberal opinion that he could, the authority, however on the other way. By the former law an action would be for taking away the limb, because the wrong was inflicted to the value of the person, or some fixed sum on the marriage of the person in the person of that person usually by the other party. But with regard to young children it would not be without applying some specific damage. Procter says the action would be for the same, the bar has an interest in the education of his child, by Blackstone. The question appears to me unsettled. 770. 3 Co. 386 3 Bl. 120. 5 Bl. 92. 260. 5 Bl. 1679. 1880.

The authority of the parent ceases it is said when the child attains the age of 21 for then he is said to be an emancipated. This merely means that he has right to own and enjoy it, and exemption from further parental control. Thus an but few cases in which children have the parents at 21 and if a child does not leave but continues, as before without any contract of service, he is a sort of course, living with his home from one to the other, there is no actual emancipation. It appears this principle that
the father maintains the action for reducing his daughter over 21. as a child living, the accruing a manuscript with the father. 1 Pa. 453. 6 Term. 552. 1 East 526.

The mother or, much less, has no authority whatever over the child. Her authority is derived from the father entirely; she may prohibit him to consume it. as he wishes to do it. The mother, however, is not a wrong done when exercising domestic government, for she is considered as acting by his implied permission so that practically there is no want of domestic government; you will know that I am speaking of the rights as mother, during conduct according to the strict theory of the law. 1 Pa. 453.

Now far is the parent made liable by the acts of his children... on the subject then are three great rules. 1st. A parent is liable for the torts of the infant while they remain with him as minor, or as minors, it facts to the same extent for sixty as a master is for the torts of his servant and no further. for there is no reason why a parent should be subject to any given one than a master.

2d. The father is no otherwise liable for the contracts of his children than master are on those of his servants, except in the case of an expasion furnished for a master is not of course bound to provide an expasion for his serv.

vants, but a father is for his infants; 1 sometimes, for duties do for fault than he is liable as master, but for negligence the father is liable not father. see Malt. F. 40. v. 3a. 2d. 2f. t. I. 1. 10. under the Con. St. there is a manuscript indicating which usually
unknown to the C.L. it is provided that if a minor child is per
mitted to contract by himself and in his own name, the con-
tract binds the father of reason that the child, being under
twenty one years of age, is bound by such contracts in the same statute, this is a
peculiar rule of law. The C.L. act children to minors is
that they can bind their parents or guardians by those con-
tracts which they can enter into publicly or publicly authorized to
make. St. C. 273.

By our state laws parents are obliged to pay
the fines inflicted on their children for certain offenses, for the
reasons we supposed to have been able to have avoided the
punishment of such offenses, but not other punishment than necessity can be done
transferred. By O. L. any man can comme child suicide
for themselves in criminal matters. St. C. 316, 347, 337.

Of the different kinds of guardians, the
rights & duties.

A guardian is sometimes defined to be a
temporary parent or one standing in loco parentis for
certain purposes during minority. I say for certain
purposes for he is not a parent for every purpose. And a
minor child this under the law of a guardian is
called a ward. 1 Bl. 463.

In Eng. in our county the
guardian has the care of both the person & estate of the
ward by this it is meant only that both the state of
man under the care of some guardian, for the preserving
be under the care of one of the estate under that of others,
1 Bl. 260.
At 6. 1. the mind of guardians was for one year. 1st year
occur in 'kindly' this took place my when an estate
holder by the feudal tenure of knight service vested
in infant by descent it more than entirely from the
tenant and was vested in the 1st of its seignory it contin-
ued to own male until the full age of son female, until he,
or marriage which ever should happen first, and estates
were to pass to lands.

This guardian was not accountable for the
suite & profits during minority indeed the guardian
was interested mainly for the benefit of the guardian.
it was a species of property assignable and there
is an instance of its being sold for $101,000. But it
is now virtually abolished with the tenure in which
it originated by 12. Ct. 6. The more has been held under
by this tenure of course this kind of guardianship is un-
known to our law. 1 Bl. 77. 1 Suit 88. 2. 8 Bl. 67. 8.

2. Third of guardianship is by nature this subject is a
necessity toward of in this body. Some have considered it as
confined to the father, others to the father and mother only.
But the father or mother or any other one may be
guardian by nature. The father excludes all other
than the mother is next preferred among more distant
relations (other claims being equal) majority of parts of
the wards person decides the question 5. Ct. 36. 1. 1 Suit 88
p. 13.

A guardian by nature has no authority except on
the person of the wards which continues until the ward
is of full age. That is such guardian by nature
has no other power for the same reason may be in full
power in different capacities elsewhere.

This guardianship extends only to the heir apparent. Hence it would seem
that by 3.2. 4. daughter could never be the subject of a
guardianship by virtue, for a daughter cannot be heir
apparent. 3. Co. 386. 4. East. 34. a. 88 b. not. 14.

In Cor. 5. It is true throughout the law, all one child
are heir apparent for none they may all be the subject
of a guardianship by virtue. In Cor. 5. the father can
surrender all claims to the said every other kind of
guardianship by appointment by will or will take
the appointment, guardian by virtue of 12 Can. 4. for
it was not so at 3. 4. 1. East. 886 note 89. a. 14.

But as well as heir apparent, one child the natural gua-
dians of all their children, but so the term is techni-
cal the use of it is that sense is incorrect. For no
one can be by natural guardian to any one except to
his heir apparent. By the term in which the ten
is used it seems to mean only each one of us, or the law
of nature desire as a proper guardian. In cor.
the law appoints no guardian. the 3. 5. sets the
guardianship when the father is a matter of case.
if necessary, it in his death when the mother if there
is no rightful heir, for the reason above given. 19th 8
not. 14.

3. The guardian of the third sort at 3. 4. is called

Guardianship of the infant belongs to the mother of the infant, or to relations to whom the land cannot by any possibility descend. This is intended to guard against any temptation to breach of trust. (Bc. 261.)

I do not know the kind of guardianship which is known in any of the law. It extends to the person, the so-called estate, in personal representation; it seems to the personal property generally, excepting the custody of the person, as often at the will of every species of property. (Inst. 27, 3.) 1 Pld. 12. 30. 30. 1 Button 17. 3.

That is not assignable like that in chancery which is intended for the benefit of the guardian, but a trust founded in capacity. This is vested in the other hand, intended for the sole benefit of the infant, a personal confidence is vested in the guardian. He cannot hold for it his own; it is P. 299.

It ceases when the infant attains 12 and the ward may then enter himself. The guardian, who must account for all the profits which he has received in the mean time. It is said to cease at that time, because of that age, the infant may drive a guardian. He is not to be without a guardian then; in no age minority gives place to another. (Sec. 123. Inst. 161. 3. 3 Sec. 617.)

Such a guardian however may now be suspended by a testamentary one by virtue of statute.
A guardian for maintenance, this takes place only when there is no other appointed by law; it rests to these children only who are not heirs apparent, to their sons only and terminates at 14. (1 Bl. 261 3 Co. 38. 1 Chit. 88 n. 12. 95 n. 12.

This species of guardianship can be revoked only by father or mother of the ward if is not to be held by any other ancestor or relation so that a child without father or mother cannot be a ward to this kind of guard. An heir who can have no guardian for maintenance, his father's mother being to have maternal guardians, until 18th which is more extensive, continues longer and is more complete. 12 C. 114. 1 St. 87 p. 14.

It would seem then that there can be no guardian for maintenance in the US for all a minor child on his own account.

By 12 Car. 2 a father, whether himself of a merchant, may by deed or will attend by two witnesses appoint a guardian for his children who are infants or remain minors (for marriage is an emancipation) from birth or any birth, and this appointment may be in perpetuity or remainder, thus to last for life and then to 21 for life and then to 21 for life and so on so long as his children remain minors, creating a succession to provide against any probable contingency of his children's surviving without a guardian of his own choice. This appointment may be made to continue till the age is 21 or for a limited period, and it is not to be applied to the maintenance of the children under 21. May relate to one child or not to others or
This kind of guardianship is explicitly testatorial, its appointment to the person and all kinds of property and subsequent duties are upon the guardians. The father yields to authority to appoint by statute. In 51, 161 and 178, and in other statutes, 1 St. 2, 138, 1 and 179, 131, 89, 175.

Then you have other species of statute guardians, in Eng. entirely unknown, to wit, created by 24 5 Doth. 2 thea. own personal only. Concern only included 16, 1 Stat. 39, 14 and 25 Dec 4 75. This is also a guardian by custom with those in whom no prohibitive concern. 1 Stat. 39, 14.

But then an another species of guardianship not enumerated by the old. A writ of this the first is of those who are chosen by the infant himself, this takes place in these cases when the low minors move and move in properly, the point for this would conclude this election and statute. I have enumerated seven chief kinds of guardianship, and a case is explicable that be improbable. This award without father or mother, holding no land by knight-service, in socage or free, over 14, and this absent, he is than without a guardian. this last species is to provide for such emergencies, it is of late origin being introduced about the time of the restoration 1660, but it was somewhat known before 1 Stat. 87, 89, 16, 15, 975.

And yet, this does not appear to bring specific modes pointed out by the Eng. law in which the dece...
tion is to be made, in common practice, it is made before a
judge at the circuit, who takes some memorandum of it.
Sometimes, it is done by the main act of the parties, as in
the case of W. B. B. (B.) who appoints a guardian by
deed, whose acts can be evinced, and it is not certain
that it may be done by note, there is no law deciding
this point, but I should hardly think that so loose a
practice would be sanctioned. 1 Stark. 89. n. 16.

The age for
choosing in Eng is 14 for both men. in 1616. 12 for
males, 14 for females, and this point is not precisely
settled in Eng, it is said that an infant has the power before
14, and there is no decision to determine the exact
point, tho’ the age of 14 is generally considered in the law.
1 Stark. 89. n. 16. 1 Bl. 462. 49. 11 G. 188

Thus may be also a genera
bility, by the appointment of the C. H. W. this is
also of modern date, but the C. H. W. have now receiv’d
the authority of a century. 1 B. 29. 1 B. 20.
Par. 5 44.

The C. H. W. having power to cease the power
when the infant is otherwise provided with a suitable
guardian, but when when not provided or suitably
provided, the power of the C. H. W. is very plenary for bring
motion, a testamentary guardian or even the point
himself to appoint another. 1 B. 160. 1 B. 463. 4 Bl. 106.

In Can. a court of C. H. W. having none of these powers, the
same sort of power however is vested in our proxean
a provincial court, and in other states by various courts or than it
direct. It has been said again that a guardian may
be appointed by the Ecc. courts if that court have the
power of appointing a guardian over the person and
over the personal property. This was always the
law, has lately been denied and that court has so other power of
this kind, then to appoint a guardian. In the
U.S. there is no ecclesiastical court, few
It was, 1 3 B. C. 379, 8 T. N. 383, 3 B. B. 1696, 3 B. B. 131,
1 3 B. C. 131.

other lastly there is a species of guardian called
a guardian at titum, if the infant be of age to
speak, called too a civil guardian, and is appointed as
an infant be, no civil guardian. If a particular suit
or member of suits and may be appointed by any court
in which an infant is sued. This power is allowed from
necessity, for just could not be conducted without either
for or against infant. 3 3 4 2 2, 2 3 1 3 6, 5 5 3 3, 2 3 6 8 8.

This guardian is sometimes appointed in Eng by the crown
i.e. by the CH meg. in the place of the King, and guardian
next to titum, have been so appointed, but this is
not now practised. 1 3 2 5, 3 3 1 6.

I do not know how many
kinds of guardianships exist in U.S. but I presume they
are generally like those of Eng. Where courts may be
guardianship in chivalry or so. For these things are more
British in U.S. custom cannot make one. In Conn. less
are there no testamentary guardian for that.

1. Known to CL, we have no state, neither have we any
appointed by CH - the this kind may be known in those
states where they have Chanc., and in other states too the
may be testamentary guardians by state. But some of
these kinds of guardians are unknown in Con. Here
of them in all the states.

Thus our three kinds of guardians,
known in Con. 1st natural guardians or guardians
by nature. 2nd such as are appointed by the court of judic.
3rd Guardians ad litem. Guardians for minor cannot
exist here for it relates only to their children not minor
attain but all children can be appointed in Md. If the
rule that an infant must reside with his mother until
seven does not make him guardian or is only circus. Yet
"the father is natural guardian of all his children ad
being his appointee, this continues until 7th Attends to
the children for such to their property as their
persons. on his death the mother gains not a guardian
but she is not strictly a guardian of yours. for another
may be appointed over his male children during his
life without removing her. This rule is founded in the
pharmacology of the state. At Con. 37.

But with respect to minor
children it has been determined that the mother is their
natural guardian until of age to elect one. But our
state makes no distinction I do not consider when the
custody changes from a Rost. 131. a Rost. 320.

But during
the life of the father another cannot be appointed without
removing him of that can only be done on special rea-
sons showing his disqualification for he is not to be in-

not appear as the natural guardian of her male children of any age; and the court may appoint another
woman without removing her, unless the court of the given in the appointment which shows she is not
entitled to it the said. 1 Root. 321, 2.

Our state provides
that if there be no natural guardian a master the court
of justice of the district shall appoint a guardian to a minor. If he is of legal age to choose, the court
summons him in to make his election to which the court
returns some act that is not bound by it; for he may
appoint a totally different person. 4th. Cor. 373.

And if
the minor neglected to appear or affray below, not choose
for himself the court appoints a guardian at discretion. ib. ib.

If the minor be a male under the legal age
of choosing a guardian the court may appoint or
without summoning the infant all for that
would occur in no purpose. this is not done however
without special application if the minor is alien. The
court of justice has the same power in their particular
district that the Ch-les in Eng. 4 they can re-
move any guardian whatever even a father as I construe
the statute: the authority given by it being very strict in
2 Root 325, 4th. Cor. 373.

Under the former settlement of Cor. it was determined that a ward might be suit
his guardian whether he were settled in the same town or not of the town in which the guardian was settled or not removed him. 1 Coct. 131. W. 2d 328. I submit the question since one town state. I think this act a law. Under an old state, the town might remove a

person whether chargeable or not if not settled and their rules amount to this that a ward could not remove anything because not settled, but I should think that he

might be removed once the intent of both laws requir-

ed it.

A ward now gains a settlement by conviviality that if he becomes chargeable he may be removed. Under our law a guardian appointed for a ward under the age of choosing continues in office until the ward is 21, and if another is appointed 1 Coct. 52, 286.

By our law the court of probate is required to take

security of the guardian for the faithful discharge of his duty, and if the ward has any estate the security

must be with security. The guardian is then bound to account with the ward within of full age and before if required by the court. 1 Coct. 373, 458.

But a guardian

thus appointed is not liable to be sued to an account by the

ward while a minor, unless the court of probate call upon

him to do it. 1 Coct. 57, 2.

By C.L. also by the Eng. law of 8th all guardians, whether their wards is civilizing are com-

ful to account for their wards properly in the bond

and since the guardianship in chiro is abolished by stat.
10. 2. 3. the rule extends to all guardians, whatever.
   1 Inst. Eq. n. q.

The usual method of bringing the guardian to account is in Eq. by a bill in Ch. for that because
in Eq. is more extensively remedial than an act of
for the courts of law can compel a disclosure of particulars.
facts are under oath & indeed this action has almost entirely
been gone out of use, there have been but two or three instances
of drawing the present reign. 1 Bl. 463, 1 Inst. 56, n. 9. D. 68.
679, 687.

The usual remedy in Ch. is by act of account for
under one statute of a bill in Ch. in Eq. indeed our courts and
consider the power and the

...and if it appears that the estate is in danger of being misapplied or squandered, that the
insufficiency of the guardian in any or compelle
be, it may come at any time & this is the rule atts.
may be the guardian. 1 Eq. Ca. 177, 260. 2 Med. 177. 2 Dec.
679.

In case of any misconduct the court of Ch. may
remove the guardian, indeed the power of that court is most extraordinary, it being the paramount
guardians of all minors in the Kingdom as the rep
presentation of the King. 1 Eq. Ca. 261. 1 Dom. 728. 181, 663.
1 Laws. 242. 1 Eq. 160.

No guardian as such is bound to main
tain his suit or his own actions, the when it happens that
the parent is gone, the rule does not apply. For parent.
accorded to a former wife or absolute bound to main-

tain their children, any other guardian is allowed to
apply his ward, as to his education and maintenance,
but a tenant must support the ward. I see it myself.

If a ward, for Ch., will not suffer the ward to be
inhabited for this purpose. 1 Buc. Ch. 397 3 stth.
399. 1 Tim. 255.

If the parent, who is guardian, is not of
ability to give his ward such an education as the ward
requires, it may be supplied at his

But from a

rule already laid down in art. is not bound to support
her children by a former husband, so if she is the

In the same degree she may apply the ward to the

in maintenance education of the same, her husband, or

be subject to which the law does not allow in Aug. 1 Buc.
Ch. 268. 1 Vir. 116. n. Contr. 2 Vir. 363, not law.

It has

been said that for any thing more than necessary, he
may not release in maintaining the children, the pa-

rent may apply to the child's estate, if the object be ad-

vantage reasonable as a profitable occupation or a

profitable trade. But this has been adopted by Ch.

wick, who says that the parent shall not take the

property of the child. 2 Vir. 358. 2 Tim. 187 255 3 stth.

If I might be allowed to speak of I think

agreed with this rule, the same one for both our b

accepts the same, the ward shall have the benefit of the discretion. For the guardian shall not be permitted to speculate upon the ward's property by buying up his debts and then enforcing them against the ward for paying the debts, the guardian is deemed the agent of the ward and it would be a breach of good faith to allow him to act contrary to this rule. 2 Nacc. 687. 2 Chas. Ca. 245.

you will perceive that in ch. 4 a guardian is regarded as a trustee of the ward if a stranger tamely enters the ward's land and takes the crops. He may be compelled to account as trustor to the guardian as he must as a trustee at the direction of the ward. This is allowed in no other case for no adult can act as trustee as a trustee. 1 Chas. 687. 1 Vin. 436. 2 Bac 687. 2 Vin. 295. 342. 1 Esp. Ca. 240.

The rule is the same if the wrong does not continue upon the land or a number of years after the ward attains full age. For in such case he would have to account for the rent, if profits during the whole period for he was originally the beneficiary of the wrong is an entailed act. In case,

The guardian has money belonging to the ward in his hands. He must in accounting account for it. unless he can show which is almost impossible that it could not be made to produce. 2 Vir. 629.

If a ward has debts charged upon his estate and the guardian has personal property of his, it is his duty to apply it to the payment of those debts.
not to pay them with his own money, to preserve the personal property for the wards, for if he might do this interest would accumulate against the ward what this rule was intended to prevent. 1 Cha. Co. 155. 6

A trustee of the trust estate in under mortgage the guardian ought to apply the rents and profits to the diminution of the estate, to the interest first of all the principal. 2 P. Wm. 279.

A guardian as such has no power to vest the wards money in lands, but if he does, and takes a deed in the wards name, the latter may at full age take either the lands or the money with the interest. If he takes the money however all will come full him to recovery the lands for he cannot have both. 1 Vern. 435.

But if the ward dies without making his election, his heirs cannot claim the land, but his representation is entitled to the money & interest for the right of election is strictly personal & not transferable. The same is obvious, the ward was owner of both, but when he died his heir representation had conflicting claims and neither must have a right to defeat the other. So that the money goes as if there had been no purchaser. 1 Vern. 403 & 435.

The guardian in accounting for the wards money is not obliged to pay more than the principal & interest generally. Still however if he were inclined to vest the money in the funds & he should place it in some gainful trade, the ward may either having the interest the funds would have produced or the
As to the marriage of wards to CH's exercising an authority which I imagine is uncommon in any of our states, thus he may by injunction forbid the marriage of a ward when he thinks it unequal either with or against the wishes of the guardian and the prohibition is enforced by punishment of all those engaged in it, or even the clergyman that solemnizes the marriage. Tal. 1. 2 F. N. N. 110. 1562. 1 V. 160. Tal.214 writing a visiting 1754.

And when then in an emergency, show that the ward is about to marry judiciously the ward the consent of the guardian, the CH will give an injunction if necessity require the person of the ward in the profession of princes. 3 c. 15th 364. I do not know that this form has ever been received when neither of the parties was the guardian.

By general usage in Can. Arg. and D., my kinder out his ward as an affection according to his affection.

It has been long down in q[u][l]t. times that the power of the guardian over a minor ward was abrogated by his marriage. He may be emancipated from all parental control as to his person, but as to his property only as his husband is of age. If he was a minor, his own property in not at his own disposal except to purchase.
Of the settlement of minors or infants.

The law of settlements does not fall appropriately under this title but it is well examined in perhaps no other place. The law on this subject is regulative in one by those state provisions that relate to persons not belonging to the state to inhabitants of neighboring states, the 3d relates the settlement of persons originally inhabitants of the state who remove from one town to another.

1. No person, not an inhabitant of this or some of the neighboring states, can gain a settlement in this state or of the civil authority without or until he has been elected some public officer. Cem. 371 Bk 2 109.

2. An inhabitant of another state can gain a settlement in this state only if he has one of the above qualifications, or shall have resided one year in the town, and have held an in his own right in fee during that residence, and state to the value of $302. in this state.

3. No inhabitant of one town can gain a settlement in another, unless he has one of the foregoing qualifications or is possessed of his own right in fee of land to the amount of $100, or have supported himself for six years in continuity without being chargeable to the community, except when he becomes chargeable within that time. Where a person
another state may be removed before becoming chargeable in said. These rules of course regulate only the manner of acquiring original settlement.

But this is another mode of acquiring a settlement at C. L. The 1st of that is by birth, a place where a child is first known in consideration. His settlement exists where he is shown to have been at the 1st of the Court, 4th, Comb. 364, Salk. 385, 11th Ray. 567.

This then for is in Eng. generally the settlement of a child, and in all cases if another father or mother have a settlement the child is settled on him, but it is impossible to rebut the presumption raised by the birth except by proving another settlement. 1 St. 364, 2 Salk. 385, Court. 433, Salk. 477.

That in case of legitimate children and according to Court decisions illegitimate also the presumption arising from the place of birth may be rebutted, and indeed illegitimate in Eng. as certain cases (as where proof is attempted) are even more within this rule. In good known in Eng. this presumption in this case cannot be rebutted, it is one.

But in case of legitimate children this presumption may be rebutted for a settlement may be acquired of by process. The settlement of the father or maintaining parent is regularly the settlement of the child. This is called nomination settlement, it is not originally acquired by the child, but is transmitted to him who was in his stead which it resembles in this particular 1 St. 363, Salk.
this species of derision settlement follows only with regard to legitimate children but if the rule established in Cases 1-true one as that the settlement of a child follows that its mother in case of illegitimacy it would have extended to bastardy. 1 Inst. 155. 1 Swift. 187

And the same

telden that if an infant legitimate child not unincapitated follows that of the parents regularly so it should son one acquire not only by birth his father's settlement at the term of birth but also while he continues unincapitated he acquire any such subsequent settlement as the father may acquire. 1 this rule one. terms until the child is actually incapacitated.

3 Tith. 114. 116 146. 118. Anst. 243. 631. Bar. 2 Tith. Ca. 49. 64. 270. 638. 8 Tith. 479

And on the death of the father the settlement of the child not incapacitated regularly follows that of the mother. Bar. 2 Tith. Ca. 49. 64. 372. 16 May 1473. Anst. 746

The settlement of the child follows that of the mother on the same principle as it does that of the father while he is alive the burden of maintenance and domestic government then devolving upon her. This rule as to the mother is not universal however for you will remember that if she marries again, her husband is not bound to support them if under sound they are to reside with the mother for manner, i. e. if her husband can not or will not s
just then, the time when they have a settlement must
be it, according to Eng. law 31st. 363. 1 Pe. 5. 87. 68 1st. Reg. 595. Doug. 93.
By Con. law a man may
make a settlement by living with his guardian who
is appointed by the court of probate, this he may have
a right to live with him and he cannot be removed
the state so that he may, if he becomes chargeable,
and a minor cannot gain a settlement by con-
sensus, unless he is emancipated. 1 Port. 15. 2.

By an acquisition of a new settlement the original
one from one is lost but in no other way, and a man
cannot have two settlements at the same time that he
may have the qualification which will entitle him to
claim a settlement in two or more towns, for they
cannot settle in such a case in the town in which he
resides if entitled to settlement than. 181. 363. 244. 8525. 30th. 587. 370.

An infant may under some cir-
cumstances obtain a settlement by consensus, they
lose his original derivative settlement thus by an act
but an infant of 18 may do by living with his mother.

And an infant
by acquiring a settlement of his own becomes also fac-
to emancipated or emancipated from further parental
control, the principle is that he being no longer a mem-
ner the family he, is a part from it so far as to no right
of settlement. 3 2nd. Rep. 356.
But in Con. no minor can acquire a settlement by
imposition. not unmanipulated. some other way 1 Rost. 131. 2
the reason is that he is the reed of his father, who can
manipulate his person. 

universe, until otherwise. 

the relation of parent and child might be destroyed 
the authority of the parent destroyed.

After a child is emancipated, i.e. after he came in law to be regarded as the 
son of his father, he is not subject to his domestic govern-
ment. He cannot take the benefit of a settlement ac-
guired by the father of even he may acquire out of his own. 3 T. Rep. 25. 116. 4, 38. 831. Bus. Ind. Ca.
270. 638. 836. 8 T. Rep. 270. 1 Mil. 183.

And this rule likewise 

when the child continues to live with his father, if it 
not under his care or in his service, for he is to be con-
verted as a common boarder or stranger. 5 T. Rep. 533.
1 East. 526.

Emancipation may be affected in various 

fashion. 1. by attaining full age. I do not mean 
that this is of course an emancipation. or I shall have 
occasion to object shortly. Bus. Ind. Ca. 270. 1 Mil. 183.
3 T. Rep. 25.
2. by marriage, by this an infant is 
emancipated, because the new contract into which he 
has entered, as he has power to do, is inconsistent with 
a state of servitude to his father. Sta. 4, 38. 831. 5 T. Rep. 533.
3 ib. 116. 1 East. 526.

3. By gaining a settlement of his own. this 
means. by the Eng. statute. is emancipated by living with his 
mother. 3 T. Rep. 25.
675. By contracting any relation inconsistent with his living under the care and government of the main- 
launting parent, as if a minor under 21, or if 18 had 
entire to the army, he is emancipated. For another au-
thority has supposed this of the father. Bov. 1st. Ca. 
632. 3 T. Rep. 114. 16. 356. 6 ib. 247. 8 ib. 479.

So far as it is found that 
emanicipation might be obtained by attaining full 
age. yet it does not of course occasion emancipation 
for after arriving at full age for if he continues to live 
in the family in the character of servant to the fa-
thor as before and subject to his entire government 
as while he was an infant he is not actually emanci-
ated to be an servant at any moment he pleased. If 
however he should claim to be emancipated to live 
with the family yet if it were as a boarder, or was 
in the service of the father by agreement or contract 
he would be considered as emancipated out service as a 
third person or stranger in the same circumstances.
6 T. Rep. 262. 1 East. 526. 9 ib. 476.

It follows then that if 
after attaining full age the child remains with the fa-
thor as a servant of fact as while an infant, he will have 
the benefit of any subsequent settlement that the 
father may acquire.

A settlement may also be acquired 
by marriage. This is also done for by the marriage 
the husband's settlement if he has any in communi-
cation to the wife. 1 3d. 363. 3d. 324. 2d. 591. 
2d. 46. 163. 371.
And it has been decided that if the husband has no settlement as in case he is an alien, marries a woman whose husband is suspended during lifetime and survives again on his death, this decision was made both in England. But see 12 Ch. 142. The rule was recognized and to him for grant, indeed, it bids for immortality, for it was set in the change of poetry thus:

A woman, knowing a settlement,
Mourn'd in sorrow, with none;
The question was, she being dead,
If she had ever gone.

"Ch. 171"

But it seems now settled notwithstanding the poetry that if the husband has no settlement, does not remain the same as if he does, does not support I live with his wife. His settlement is not suspended, and he children as well as himself may benefit advantage of it. But see 12 Ch. 367. 370. 371. 373. 122.
Sheriffs & Gaolers.

I am now to treat of the duties and duties of Sherriffs and their under officers, and also of some other topics which can sufficiently be clasped under the title.

The word Sherrif is its scion etymology impacts the governo of the shrie or county shrie = one, he being the first executive or ministerial officer of the county. 1 Bl. 339 340.

for the manner of his appointment see 1 Bl. 340. 2 Bac. 431. 2 434. 5.

In Conv. this office is appointed by the governent or an act or in the laws. and one is appointed here or in counties in all the states in each county, he has held his office during the pleasure of the appointing body so that his authority is determined only by death, resignation or removal. 24, Conv. 382.

Every Sherriff must reside in the county for which he is appointed, being a county officer and he has regularly no jurisdiction out of his own county, however it is not universally true, for it is necessary for the purpose of completing an official act the gun in his own county that he should go out of it, it is in his power to go out for this purpose. This is

if Sherriff or ever attached with whom it is necessary to have a copy of processes live out of the county, or if he is ordered to bring a prisoner from his own county to the county in another by a writ etc. his authority does not determine when he reaches the county.
And if a person escapes from the jail, he shall not flee from one county to another, the sheriff may pursue him in the other county, the prisoner is not taken upon the same principle for the retaining is only a continuance of the same authority in the original arrest. Powell 37 1st Bov. 435.

And upon analogous principles, he may do or rather complete official acts after the termination of his office, so when he has begun a suit, he may execute it, he may not only may but must go on with the suit. In other words, if he is divested of his office, the suit must be continued and completed. If he is divested of his office, the suit must be continued and completed.

A sheriff may at his discretion or under duress, instruct a deputy sheriff who in his representative capacity in suits, may issue out all the writs necessary. By the same authority for the same action which cannot be performed by any but himself. Powell 13 1st Bov. 437.

By a statute of the General Assembly, a sheriff cannot appoint any person or office, without the approval of the General Assembly, the sheriff of the various counties may appoint each other and also appoint special deputies without such approval.
Every ship's officer is subject to the pleasure of the ship for he acts as the representative a month of the ship and by the authority which he has conferred upon him. But while the ship remains in office, his general powers as such cannot be abridged by any act of the ship. If the latter commanding he shall be ship's not have his power, a person for the Evin of his office, it would be to prevent the use of the laws. Soth 98. Act 13. 337. 430.

And in certain cases in so a C. court away, and, unless there be person in quality, ship's ship not so at C. So that he may have been borne by the ship. C. C. C. 501.

The C. the ship's master officer, only in the name of the ship, for the ship's master regards by the laws as a known public officer but not as the ship's master agent of the ship, and for this same reason at C. courts, are in all cases, not to the ship, but to his authority, under the ship. She may appoint yet the certificate return it in his own name, there the endorsement of services must be in the name of the ship. 337. 437. 430. 449.

In this state on the other hand he may act in his own name for instance Reasons you gave by the laws as a public officer, so that courts may be directed to him as well as to the ship, as they usually are done. They may be sent out returned by him in his own name. H. C. 24. 212.

This, you will observe, is different from the C. being entirely a state provision, and it has been determined in C. that a writ issues...
to the Sheriff only may be exercised by the Sheriff and in his own name unless the Sheriff be specially authorized.

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I have already observed that while the Sheriff continues in office the Sheriff cannot abridge his powers, hence if cost entered into by the Sheriff not to receive process of a certain description, it was no where the Sheriff would thus himself superintend the performance of the business for it is the duty of a Sheriff to prevent any legal process that may be in abeyance to him. Act 1845, 4 & 5 Vict. c. 43.

A Sheriff cannot by virtue of his authority in the exercise of his authority, itself is delegated and it is a violation of elementary principles in juris primor et, etc., etc., etc., etc. for a man to represent or act by virtue of his own right may do that or any other person who is the representative of another man but a Sheriff cannot substitute another for the purpose in the same manner without special provision for the purpose in the power as there indeed often is done when the same principle that a division of power cannot be delegated.

A Sheriff may however authorize to assist him in the performance of his duty or to aid an assistant to make an arrest in his presence, but this is no delegation of authority or assignment of power 14 Vict. c. 44, 2d Vict. 96.

This is a rule laid down in this...
subject which requires specification, it is said that an
arrest by the act of a sheriff is not good if it must
refer to arrest made when the sheriff is not himself pres-
ent in pursuance of the same object. 6 Mod. 211.

The sheriff
arrests or warrants to two or more persons either of
them may execute it, for when one authority of a public nature is gi-
ven to two or more, it is termed as such as joint but it is to
be a joint act a person is joint it not several. 1 Inst. 181.
Pia. 177. 2 Bae. 203 142.

If a sheriff is guilty of any neglect
of duty or by suffering an escape the sheriff may have
an action on the case for breach of trust against a
person himself liable to the injury incurred, besides it is a
violation of an implied agreement to do his duty faithfully
which the appointment and sentence places him under.
Indeed no officer ever is in the implied agreement whom he or
his office holds his duty, this is to the public but
the agreement the sheriff is with the sheriff for he is personally
liable. 1 Ball. 98. 2 Bae. 242.

The juries in the several coun-
ties, on the arrests of the sheriff appointed to execute
them, for the sheriff or officers the warrant of the part in his
own county. 4 Co. 34. 9 Co. 119. 4 Co. 342.

The sheriff or jailor
has regularly no right to confine a person in any other place
than the common jail, that being the place appointed
for that confinement, and if he does he is guilty of
false imprisonment by the guilt, so to say, and for
the same provision made by statute for imprisoning in
The Chief Justice of the peace. It follows that he cannot be imprisoned in his own county, of course he cannot be arrested in his own county in civil suits. For an arrest is made as preparatory to imprisonment, & it has been determined in Cl. that if a Chief is then arrested the suit will abate. 1 P. 48. 2 B. C. 239. 1 T. R. 465.

If indeed the is a special prison for common prisoners in the Crown, of which the Chief is not the Keeper, & the is no may be arrested & committed to or like any other individual, that he cannot be made his own bail, but the law does not provide for criminal cases. I suppose however, that from necessity the Chief might be arrested & imprisoned in an adjoining county, this appears to be the opinion of the profession & court at an incidental discussion of the subject.

The Middlesex county who are confined called for the King & let himself out. The Chief has been supposed seventy as for an escape, for the statute allows the King the use of our prisons, yet that does not constitute the marshall, prison Keeper.

A person under Chief is but the representative of one of the Chief it follows that the Chief is generally liable civilly for the official acts or defaults of his deputies agreeable to the maxim factae per alium factum fit se.
you will draw this circuit in the unqualified word in that rule, 9. 10. 98. 53. 89. 1. 2. 7. 12. 32. 158. 111. 312.

You know that the liability of the Servant in this case is similar to that of Master for the acts of his servant in consequence of the liability the Master allowed to take security of his default, for the faithful discharge of their duties for such house taken by a stranger would be void. Fig. 18. 582. 30.

On this subject of the Servant's liability the great rule of law is that the acts of the Servant are to all civil purposes those of the Master so that he is liable civilly for them but not criminally, for to subject every person criminally he must have been personally guilty. 2. 1. 4. 10. 1574. 42. 7. 10. 154. 17. 10. 7. 10. 13. 30. 111. 238.

But this liability of the Master is limited to the official acts of the Servant for the private acts of the Servant committed by him in his individual capacity the Master is not liable and he should commit a fraud. 1. 2. 7. 10. 154. 15. 175. 1. 146.

It has thus far been doubted whether if a Servant were an executive against a. when the goods or person of B. the Master would be liable because on the one hand it is said that he does not act in pursuance of his authority so that he cannot be considered as having been the agent of the Master. But I hold the rule to be still settled that the Master is liable for the Servant's acts officially the mistake subjects the Master not contemplate them acts which are commanded thus for neglect to serve proof of Servant's.
is liable, yet he is not sufficient to command an omission of duty, so that, the reason all along would completely prevent the plaintiff's liability in any case. 2 Bae. 252. 2 Bae. 832. Doug. 22. 3 Mls. 509.

And when the offense committed by the sheriff is with force the sheriff is liable in trespass, so that the form of the remedy is different from that which obtains against the master for the acts of his servant who would be liable in cases only. The reason assigned for the distinction is that the sheriff and his officers are in law not an officer, this defense does not appear entirely satisfactory to me. 2 Bae. 832. 4 2 Haml. 85. 2 Doug. 22.

For an omission of duty on the part of the sheriff, the sheriff only is liable but not the sheriff. He has his remedy own against the sheriff, and he must not resort to remove proof or suffer any negligent service, our act would not be ag. to the sheriff at C. L. for he is not considered a known public office, suffer the act, but ag. to for neglecting to remove proof, the proof must be given in evidence, and as it appears to be directed to the sheriff only it will not support the action. Conf. 203. 206. 3 1 Bae. 5 1 Bae. 89. 1 Rolle 94. 2 Bae 243.

But for offenses to be committed by a deputy in the discharge of his office, both are liable the deputy as well as the sheriff, for the party injured may consider the party injuring as a mere testator and not injure by what pretended authority, the act is as when he tells the goods of the owner C. L. ag. 2 B. The act as the representation of the sheriff who is made liable the person injured is
not bound to ask by what precept or authority he acts, for that
would be perfectly inconsistent with any as to a stuff of

Of on the other hand the officer is by reason of the authority
by which he is bound to act must appear that brings the
ground of the action. 10 Co. 18. 2 C. 175. 3 East. 106. 3 C. 2.
258.

We illustrate this in case of a voluntary
escape the stuff is liable, for it is a positive act of misfor-
cance. his authority is no justification and he is liable in
a similar case in law that for he may be subjected personally on grounds already specified.

The stuff is not liable for the acts of defaults of a
special stuff appointed at the request of the stuff in the action
and by his nomination as if he makes a default in not ex-
ecuting the wnt. for the appointment is made at the re-
guest of stuff and on his risk. But if the special stuff be
guilty of any wrong or injurious acts to third persons
or to the stuff the stuff is liable, so that his liability in the
case is only in relation to the stuff who make him own
right. 4 T. Rep. 120. 2 C. 259. 607.

Under our law by which
a stuff is considered as a known public officer the stuff is
liable as well for defaults as for positive acts for more
promises as well as mispromises. for he acts in his
own name both in fact and form the endorsement of
promise is in his own name, he is liable personally as irre-
tainingly for his own acts as the stuff is by C. 2. for his
of the stuff's liability is the same in law as by C. 2. other
rules relating to the liability of stuff for the acts and
infantry of his minor self. Only equally arise to the outside of his gavel, for to that purpose, they are his self.

After the death of a Chief, before another appointment, a prison or capital no one is liable by C. H. for it is so facts, a revocation of the gavel authority, in and all delinquency or authority comes to the death of the principal chief's temporary authority, which in standing cannot be said to be an addiction. The only remedy then is to

L in such a case is a new appointment as soon as possible.

the representative of the property are not the representatives of the Chief, and the gavel authority is determined immediately. 3 B. C. 445. 3 C. 7. 20 B. 366.

The only remedy

than an before death is to appoint a successor as soon as possible and have him sit on the prison. This is known no inconvenience, to be appointed in this case, for the position would continue his authority or facts truly upon the legislation for an indemnity. 1 Med. 115. 13 B. C. 445.

I know that the effect of the character of Chief, the relation to it liability in such of his & 40 I am now to speak of

The authority of duties of the Chief this subordinate offense. 182. 340.

By the C. H. a Chief is a judicial as well as an executive & ministerial officer; in this state however he has no judicial authority whatever, nor whatever it is. Eq. I shall therefore state of him as a ministerial officer a conservator of the peace, in which latter character he
is strictly an Executive officer. According to my understanding of the terms a ministerial officer is one who executes the law in obedience to the commands of some superior officer, thus the sheriff in executing a warrant or warrant. This is strictly ministerial, but executive officers; on the other hand, is one who obeys or enforces the laws without any such command of a superior, as the boards of adaptation acting in obedience to the laws only on executive officers, but their subordinate officers who act in obedience to their commands in enforcing the laws are ministerial officers, that there are these great departments of the state power as understood by the laws. As an Ex. off. he is the conservator of the peace of the Co. and the first Ex. off. in the Co. or as it might be some inferior and of the Co. or the highest Ex. Co. off. 1 Bl. 325. 1 Kat. 237. 48. Cor. 384.

As a conservator of the peace the sheriff at Ex., may not suspend or commit to prison all persons who break or attempt to break the peace or may bind them to keep the peace, this binding an bond in a judicious act which a sheriff in Cor. is not authorized to do. He is also bound as an officer to arrest or after being found guilty of any act against the laws. as treason, murder, etc., all persons, to commit them to safe custody, to defend the Co. not only not, but he but all enemies foreign or domestic, and this is one of his binding duties. To this purpose he may command the force consistent or power of the Co. which at Ex. consists of all male persons over the age of 15. Ch. of Br. 1 Cor. 168. 4 Bos. 120.
L. Bac. 253. 1 B. C. 229.

Can-stat. in that the officer is
similare forces except those in relation to judicial
acts, or to arrest offenders &c.; and also to command
the power of the Co. or proper, which by our statute
consists of the persons of age & ability which of course
includes persons. 44. Cor. 384.

Close by our statute similar
forces is given to constables within their respective
bailiwick.

As a ministerial officer the officer is bound to ex-
cute all legal process regularly directed to him, if not
refused or neglected he is subject to fine, imprisonment
and to a fine suit on the case by the party injured
by such neglect or default. Plow. 74. Dyn. 60. 1 B. C. 344
Stat. Cor. 385.

Close by our statute the officer is liable in a civil
suit for neglect of duty in which he is not at C.H.
or for neglecting to return a writ or order upon the
writ. In such suit, if a writ is not
returning at suit, as well as for not serving but
the process in a summary way or by making a
rule requiring him to return it, and if he does not
he is subject to an attachment or for contempt
of the fine than inflicted remuneral, the party
injured. Doug. 446. N. B. C. 238. 1 Bac. 58. 206.3. B.
461. 2. Esp. Dec. 616. 44. Cor. 601.

By our statute any
officer or constable is bound to give a receipt for every
sum delivered to him, if demanded. 44. Cor. 385.
I have shown that the Off. may command the troop to arrest him to keep the peace. He or his Off. may do the same thing when accused for the purpose of ascertaining his guilt; and any person is bound under severe penalties to do so. V. Inst. 193, 253; C. O. B. C. 453.

We have a further provision not known to the C.L. that if there shall be a present menace or suspicion to be made to the execution of peace, the Off. may with the advice of a Justice, arrest, raise part or even the whole body of militia to arrest him, that is in their military capacity and organized under their own officers. The appointment himself generalissimo for the State expects that no officer shall return that he cannot execute the process. H. C. 384.

This is a matter of important policy relating to the premises. A citizen or person in house when a thief is just found in breaking an outer door or window to commit for which I would refer you to the latter of Fresh J. B.

I would observe however that if a person is illegally apprehended by breaking of outer door or window, it cannot while under this arrest with another process. The latter is not provided that there was no collusion between the parties, the act or tolerance the officer that such collusion exists the whole. V. B. Rep. 3723. C. P. D. R. 605.

By stat. 29.

Case 2. If a similar case of our own no civil process can be served on Sunday, our service on that day will be void and the stuff guilty of false imprisonment, thus you will
obscure is not a word of C.L. but by st. 4 B Hd. 116. 636.

This statute however relates only to escape
or if a person escapes on Sunday, he may begin
the action in that day or even if he escapes on
another day, he may begin it in that precisely
at 3 P.M. for the act of escaping is no more than the
means of continuing the illegal restraint or custody
and as such stands upon the same principle as the
act that the thief may on Monday gain the prison door
or resists all attempts made to escape on that day.
2 Bae. 445. 27 May 10 78. 6 Bae. 392. 5. Thef. 25 6 Mod.
95.

In case of an illegal arrest on Sunday, the court will
order the prisoner discharged on motion or in any doubt.
Up in the changed by that cap. 6 Mod. 95 4 Bae. 256.

The duties of the thief as a ministerial officer to arrest
imprison lead to an important branch of the law:
restraint of his liberty within voluntarily or privately;
that restraint or is subject to great harm. If
he is discharged by due course of law then it is the
right of the law to dispose of the case. An escape
in this case of unlawful custody or restraint 2 Bae
293.

Of ESCAPED. When a person is under lawful custo-
Of course it is essential to constitute an escape, that there should have been a previous legal arrest, for the evasion of an illegal arrest is at law according to the definition given no escape. C.R. 607, 589. Corp. 65.

As introductory to the law of escapes, we must consider that of arrests. The arrest must have been made in pursuance of lawful authority, indeed an arrest not in pursuance of lawful authority is void and in itself unlawful. But I do not mean that the arrest must be in all cases have been made in pursuance of a lawful warrant or warrant. For legal arrest may be made without a warrant, as in the commissioners' cases, in which it is the duty of the officers to arrest offenders and be may arrest without warrant. 4 B.R. 455.

When the arrest is made by virtue of a warrant or warrant, the general rule is, by C.R. 607, to determine whether the arrest was lawful is, that if the arrest was by whose authority the arrest was made has jurisdiction of the subject matter of it, the arrest is lawful that is the arrest will warrant an arrest of course suffering the prisoner to go at large after such arrest will not be an escape.

This rule prescribes the mode of arresting to have been regular and lawful. For the arrest might have been unlawful from the manner of its execution or by breaking an outer door or window, but the circumstances of the prisoner being unwary is no objection to the arrest. For when imposed by good authority.
On the other hand, if
the court by whom authority the writ issued has
jurisdiction of the subject matter, the writ is un-
lawful. For the writ is void and of course the writ
is, in such case, null. Furthermore, even in respect
of an officer making such a writ, he ought to show
the person as soon as he finds, this mistake. 2 Dac. 236
Exp. Dig. 333, 391, 608, 657. 2 Mil. 382

To illustrate the
rules, the following is that if the court by which the writ
is lawful, then the restraint in an act of ouster of
ancient times from the E. of E. in Esg.
and the theft is regularly an act to make it. The writ
is lawful, but on the other hand suppose an act
made under his earnings, his esp issued by the same
court. It is void for that court has no jurisdiction in
ancient writs. Again consider an act law.
above that the jurisdiction is more than $15 is demaned. Suppose an act of theft of $15
is demanded. An act made under the authority
warrant is lawful. But if the act contains a
demand of $50. The act is void if the officer guilty
of false imprisonment.

But the first branch of the art
of distinction is not universal. the it is universally
true as stated above in the last branch, that if the
court have no jurisdiction the suit is void. For at the
issue warrant might have issued from speaking
authority, still the suit might have been void from
the irregularity or informality of the warrant.
Thus suppose a suit issued to day returnable 20th
haves, or indeed at any other time that the
next succeeding term of the court, one suit
warrant is issued, for it is voidable it could only
be voided by pleading when the cause came on, and
if not void one person might appear or not be
present measure for self-would be unimpaired dur-
ing the whole time a joint bail which would be
extremely difficult to secure appearance 20th
new term unless the jurisdiction is complete, yet the
suit is void and of course in such case there

An ex. next movable
are not usually issued from the court applied to for
replevin the it sometimes does. The rule here that you
not sufficiently broad to reach all arrests made under
many suits in our practice.

As to Cases of non-pro-
cept then not returnable to the rule C. 2 rule. the rule
in C. 1. suit in this. If the process is issue by con-
scientious authority it returnable to a C. having juris-
diction of the subject matter, an arrest and under
it is lawful, if the mode of arrest is proper, person
suffering the wrong to go at large may be
non. Ev. 63. If not returnable when return of Ex. 1.
Secur if used without competent authority, is returnable to a court having no jurisdiction. Ex. Act. 108 of 1877 for a single magistrates or judge by an individual. Irregularity renders the process void. Sun. 19 Eng.

At C. L. an officer having made an arrest on final process cannot delegate to a stranger a right to hold the prisoner in his own absence. 1 B. & C. 74. motion for a warrant if the prisoner evades this restraint the officer is guilty of an escape. The officer in con
derivating from this rule I know not how far custom may go to sanction the practice but think of C. L. in Eng. is well established.

Secondly an arrest must have been actually & regularly made or there can be no escape. 1 B. & C. 76. 386.

An order will not make an arrest. There must be an actual touching of the body or what is tantamount a prison of immediate parts of the person to submission to it. 1 Esp. 604. 2 B. & C. 296. Ex. If the officer merely says I arrest you and the party running from him has no arrest of course no escape. If however the party
resists if you give the officer the arrest is good without a distinct touching. See B. & C. 76. 386. 2 B. & C. 296.

If one is arrested on the unit of 1877 while in custody a unit in 1873 favour is entitled to the officer's pension. The 2nd unit is void. 1873

by construction of law, products in the custody of the 2nd unit also of course if he is released to go at large.
The officer is guilty of an iniquity both. 2 Bacc. 436
5 Co. 89. Salt. 277. I cannot say to what extent the
officer would be liable in Court, but it probably the best would be
necessary for the second writ when he has no personal pro-
erty to expend the claim. When the off has insured the
officer to take the person, not the officer and not arrest
without the provision. In Eng. he has a right of arrest
in cases of arrest merely. I therefore the rule is well estab-
lished here, that the officer must attach the person as well as the property.

The arrest must be regularly
made or quiet escribing the can be no escape. Thus,
in all civil cases the arrest must be made by victim of
a legal writ or warrant. Hence these can be enough.
2 Esp. 604. 2 Bacc. 236. Compl. 64.

Must be made by the off
for whom the writ or warrant is directed. If he arrest
in company of the person actually arrested, but the
arrest may be made by the officer of a follower, and the
officer must be actually present or in sight. It is
sufficient that he is seized by the officer of the same agent.
2 Esp. 65. 6 Mod. 217. 3 Esp. 602.

An arrest on Sabbath,
being made an officer, is not chargeable with an arrest
if the tit, the person go at large. For all arrests
in Eng. & Ot. except for treason, felony or breach of the
peace are void. 6 Mod. 95. Salt. 78. Esp. Dig. 605. 67.

So if an arrest is made by breaking an outer door or
window of a dwelling house, then can regularly be
Of Off having opportunity to take Off's refuse to arrest him, the latter eventually results in arrest. The Off is liable in case for right of duty, but being no escape he is not liable for

2 Bacc. 236. 2 Edw. 25. 4 C. Hay. 331. 10 Edw. 251 5

An officer acting under authority of a Chief or gaol. on constable is not bound to take his writ or warrant for

he makes the arrest is act by him, and the Off.

sheds advice and it. But he making the arrest is bound to his authority of the contents of the writ. 9 Co. 67. Co.

7. 25 85. 8 Edw. 107 Edw. Dig. 604. The reason of the

rule is that every person is supposed to know the charac-

ter of an Off. that is given. But on the other hand

a special Off, a bailiff is bound to take his author-

ity from on advice and before the arrest, otherwise

the Off may set him in justice for he is not a

person public or off. In such case he is not bound
to submit to unknown authority for if he were

ever on advice might keep him under his act of an arrest. If then the Off does thus arrest him, he does it at his peril. 9 Co. 67. 2 Bacc. 254

Escape of Two Hins, voluntary or negligent. A voluntary escape is one which takes Placca with the

consent of the Off. holding the party in custody.

A negligent escape is one which takes Placca without

this consent. 3 Bacc. 215. 3 Co. 52. 1 Edw. 330. 2 Bacc. 239.
In order to prevent that very fine committal to prison is kept in safe custody. Be it known, that "salva rraetra est tua".

If the judge authorizes the prisoner committed to leave the prison for a moment, he is not in danger of an escape, if he had permitted him to leave it for years, for the laws distinguish part between reasonable temporal times. 3 Co. 6:2. 36. 1 Rolle 806. 3 Bl. 415.

Of voluntary escape. If the judge grants bail or permission not to be received in public, it is equivalent to a voluntary escape. So if he commits to the prisoner going at large for a moment or beyond the limits of the prison even without a warrant. P 3 Bac. 237. 241.

While this seems if the prisoner is absent, it not committed, no dift between escape of an arrest, & one after commitment. 2 T. Ref. 176. 183. 17. 26.

Prisoners committed on crime in the public should regularly be kept within the walls of the prison, those committed on civil causes' are sometimes admitted to the liberties of the prison and are given security to serve their own lives. Thus liberal are known as a part of the prison, if it is not meant by salva rraetra est tua that the prisoner should be kept within the walls of the prison, when he has been committed on civil causes only. In case of criminal process, the prisoner is not considered as exceeding even the liberties however. 2 T. Ref. 176. 171.

It has been once considered in Eng. that if a person committed on Ex. 4 is brought by the const. out.
But if the off who brings into the person on a lab end grants him any
unnecessary liberty or unwarrantable, it is a voluntary escape
ex taking him 60 miles out of the direct road to give
him and airing. He must bring him to court in a
convenient time in the most convenient way.
2 Bac. 228. 2 Ves. 305. 2 All. 241. 391. 788. 4 1. Mod.

If an off having made an arrest on final pro-
ex must commit in convenient time to prison, who is
guilty of a wilful escape. So if the prisoner escapes
about with his off, but i.e. must bring preatory to
imprisonment which must be in the common goal, 108th
P. 24. 2. J. 176.

Off has no right to discharge a person
committed on £5 when pay't: to him nor of the contents
of the £5 but is liable for a wilful escape of her/his
For an is not off. Allt. 1 has no right to receive the
money.

If off marries a woman committed on £5
he is guilty of a voluntary escape for a man can
not be a scape to his wife. 2 Bac. 239. Plow. 17.

If he apprehends one of his persons traveling the inqui-
ity of a voluntary escape. For by the act bearing
the custody of the prisoner. Est. Dig. 608 N. S. 311

2 If a person having the custody of the gaol yard show a disposition to release any by transgressing the limits, it is the duty of the gaoler on notice of the fact to reconvey him to the walls, otherwise a subsequent escape is voluntary. 2 Co. 5. Ref. 131.

But if he is taken before showing such disposition or before it, becomes to the gaoler it is negligent, the gaoler not being privy to it. 1 Bowd. 106. 127. 8. 2 Co. Ref. 131.

In other words the omission of the person to the liberties of the gaol yard does not render his subsequent escape voluntary.

If a servant is not bound to grant the liberties of the gaol yard upon bond of indemnity, offered. It is matter of discretion in the gaoler, in many cases he may do it if the bond is of course legal, but he may not commit to the walls at his discretion. 2 Co. Ref. 131.

To a fugitive who escapes an on or is helpless without the officer, consent. 3 Bl. 415. Thus if the person goes to wall, or instant, by fleeing from the officer, or by using violence to escape is negligent, so if he committed escape by breaking the prison or in any other way took the prisoner, is not consenting as by reason. 3 Bl. 416. Co. 95. 419.

In an act for escape agt. of his master from into or putting in self, evidence that the act was done to him. Cook. 65. 5.
Diff. between an escape on minor & final process.

If a person is arrested on final process, he not committed is committed to go to large for a sentence the official for an escape and the whole enlarged on recommitting in that he shall again be surrendered into the custody of the officer. 8 Bl. 605. 5 T. R. 172. 3 B. L. 415.

Decided otherwise in C. but it is not done in

2 Robt. 33.

But at C. L. a person arrested on minor proc-

ess that committed may be permitted to go at large without subjecting the offender if he be forthcoming at the return of the writ. In Con. he may let Chicago at large during the life of the 

that may be obtained against him. For C. L. see 2 Bl. 1044. 3 T. R. 172. 5 Bl. 215. 5 T. R. 37. 3 Ida. 408. 2 N. Y. 295.


The reason of this diversity is that what would not be an escape in case of a person arrested on minor process, would be an escape in case of a person arrested on final process; this is, that the arrest under final process is a coercion means of obtaining 

fugitive, or it is a species of punishment that not used in fact. I hold, the prisoner is in large. In this case there is no discretion in the court to mit-

igate this kind of punishment. Whereas in case to enlarge him that is thus arrested, even for a moment, is an escape. But the object of the arrest in minor process is not conceivin
to punish; but surely to secure the person that he
may answer to any judge; that may be obtained
as to him. This object of the law is attained
in England if he be forthcoming at the return of the
writ; but as we can obtain a judg. by default
without personal knowledge of defendant it is
suff. if he be forthcoming during the life of the
E. v. If the affid. is not liable if he be forthcoming before that is en- due.

And this presents a case
in which the officer is made liable for an escape by
material fact or in other words that which
was not an escape originally is made so by ma-
terial fact. This escape however is insignificant
voluntary 2 Bw. 240. 3 R. 99. 807. Co. S 2 by 622, 52
S 68. 2 W. 294. 610. 609.

But of a prison arrest on non
move of committee, the governor by permitting him to go
at large even for a moment subjects himself to an
escape, for on commitment every person should be kept
salvo dextra; the return of the prisoner does not bar
the action for by a voluntary escape the guard
was the right of custody 2 W. 294. 1 Roll. 807.
E. 610. 209. 271.

The prisoner may be discharged by
order however if he applies before the time of en-
largement fixed by C.L. is proofed & by C.L. not
otherwise. This rule that no person arrested on mis-
233 250
arrest, on main appeal process, but mainly on it is
that after commitment of prisoner he has no right to bail
bail but by the st. balt. of Ct. + Eng. he may take bail
after commitment. 1 Bell. 87. 1 Nils. 294. 1 Bell. 277
Esp. Dig. 110

And in this latter case the the Dff. proceed
to take judgment agt. the orig. Dff. who has been committed
as aforesaid. This proceeding does not amount to a recovery
of the act. agt. the gaoler or Dff. but he may sue this Dff.
for damages immediately, so that he must be recoverable
as well as all others. 2 Nils. 294. Esp. 611.

But by a
Con. 41. 5 23. Ilav. 6. a person committed on process
process may be enlarged by Dff. on or before term as

For the recovery
of one taken on process process only. the remedy agt. the
Dff. is an action of trojaw on the case, wherein the
damages are presumptive, for the claim of Dff.
agt. orig. Dff. has not yet been liquified. And
the Dff. cannot support any claim on a 3d against
Dff. unless he prove a legal claim agt. the party
escapect for unless he there such claim it is in
judgment either classing. he is entitled to no damage.
The safer way therefore is to bring in the orig. Dff. to
judgment before the action is brought agt. the Dff. 2 Nils. 295

I would here observe that as a rule of evidence that
any acknowledgment of the orig. Dff. may be admitted
a frost in the act: in the strict for it may be
reported that this is the only remedy. This admission
of the plaintiff, notwithstanding it is good in
exception to the great rule of evidence it is founded
in this, that if the plaintiff would have been entitled to
acknowledgment in the other action he may have
it ag. the plaintiff who stands in his shoes in a
great measure incurs his liability. Peake, Ca. 65
2 Y. & R. 136, 1 Exp. Rep. 169

For an accessory in final
proceeds the plaintiff may have an at P. L. or by Stat. Mot. 2d
1 Rich. 2, c. 4, c. 5, C. 6, 1 Exp. Rep. 169. an action of debt, because the claim
against the other debt is liquidated and settled to amount
of the debt is to receive the goods or in amounts that in
damages. You will observe that debt will not be
in case of minor process, for the claim is not liquidated
but in final process it is liquidated, but in such case it is
that state is trans
ferred to the plaintiff or devolves on him by operation of law.
2 Y. & R. 110, 113.

This rule extends as well to minors after or
not on final process before after commitment. for by the
terms of the State, there is no difference the debt is li-
quidated. From both actions may be supported. But
there is one special difference between the operation
or extent of an action of torts as on the case of an act
of debt. In an act of trespass (which may be had
from a need for on final or minor proceedings) the
plaintiff recovers damages for the tort or loss of the bene-
fit of his act. In which damages can be certain
In which text a consequent.* Whereas in suit (which act may be had only for cause or final recovery) the jury are bound down to a specified sum of money to be given by their verdict, which the Debt goes for in manner first in damages. The sum claimed is liquidated and certain. The text immediately 2 T. R. 129, C. 1. Dig. 609.

Hence the recovery of damages against the Debt in an act on the case does not discharge the original Debt. For the true action against the Debt or the other. The action ag. the Debt is for damages occasioned by the latter's delivery of the original action, that ag. the Deb., is for a debt met liquidated or ascertained. Hence the jury are not bound to give all the damages for the original debt, yet they may and I think certainly ought to do so. 2 T. R. 172, 3, 5. 2 T. R. 124. C. 1. Dig. 129.

And here also as the original Debt is not discharged by an act ag. the Debt, it is a rule of Eq. that the party receiving the money is competent witness ag. the Deb., for he is not interested in the event of the suit it is sued for appears to be laid down too universally in the books, for such testimony might bor an act ag. the party receiving the money as the rule of Eq.

On the other hand if special damages only are given ag. the Deb., the Debt may recover ag. the Deb. debtor. 2 T. R. 129, 2 T. R. 295.

But if Deb. brings debt ag. the Deb. on the case,
for escape on final process, the jury must of right give the whole sum a value of the costs of the original suit, and such a recovery is a complete bar to the defendant of the whole of the damage (1) 2 B. R. 1048. 8th. Aug. 609. 2 T. R. 126. 129. 132

The principle in which the rule of damages has been settled is founded in that where the act of the defendant is committed as the delict or the delict is transferred to him.

Our statute requires that in case of voluntary escape from prison whether in main process or final process whatsoever the form of the action may be, the principal recover of the whole of the whole of the ejectment or damages. 41 & 42. 136

Our statute must give the same rule of recovery in all cases of voluntary escape from prison as obtains in England only in the act of debt for an escape on final process.

If a person commits an escape on main process but not committed in main, the offender is liable in such an escape on main process, for he ought to have sufficient the power of the crown does not appear to justify the distinction. But the crown the one given by 9 Ch. 4th. 122. to the crown. But is subject to have been to guard against the escape. The rule however is well established. 2 B. R. 240. 3 B. R. 416. 419. 6th. 610. 6th. 319. 875.

But after death an arrest in main process is committed.
means is no means for theft, unless made by public enemies or the will of God. So that means by traitor, robbing or insurgents is no means. No power, except that of public enemies or of God, being admitted to be able to overcome the theft with the means. Est. 6:10. 1 Pet. 8:8. Tha. 4:82. 1 Co. 8:4. a.

The same rule holds when an is accused or finally proved whether committed or not.

In cases of means when the theft is liable to a suit on final proof, the plaintiff may sue within the theft or the means at his election, but if the action is at law, the theft is discharged according to Est. 6:10. These decision is not always good law. In this however in all from to sue to be right, for by a suit on final proof, the theft is nullified into security by reason of an action when he is unjustly suitted for, or for an indemnifying action agst. the means. Est. 6:10. 657 659 6 Mod. 211. Tha. 48. 4 Bac. 397. Co. 9:7. 169.

It is said that the action against the means may in the theft or case, and I think it not good for this true action to lie for the same offense, I do suppose that thefts in the case would properly be the only action here; for the injury is plainly consequential if the theft has suit a suit on the means. The rule is well settled however, that both actions will lie. Est. 6:10. Co. 8:4. 86. 16 Bac. 397.

So that if suit be made on the suit the theft

originally Plaintiff may maintain an action agst. the means
Within the arrest can in final or summary process if the arrest can in final proceed he has a twofold remedy if the arrest proceed this action is agst the accused only as 1 486. Rob. 188. Matt. 99. Ex. 109.

In an action agst the accused the jury may give against the whole or a part of the deft's right demanded agst the party accused if only part the deft may still proceed agst the right denied or party accused to enforce his claim agst him le Mod. 211. 7th Dig. 587. 657

In proceeding on the subject of arrest I would observe further that in an act agst the deft for an escape or summary process if the return is adverse on the process it is conclusive evidence in its own favour but if the return was in fact false yet the deft is acquitted by it. He may however have an action agst the deft for the false return Where if the deft blends a return it may be rebutted by contrary proof so that he may then recover his right claimed. Cro Eliz. 781. Comb. 293. 1 Kant. 224. 7 H. 175

This other rule is as follows

recently incidently to the reason of it at first not very obvious yet it is founded in principle. Such official acts should not be falsified when they are incidentally in a suit concerning for another purpose yet in an action for that intire if any proceeding directly contrary can be shown to put the action in issue the claim may be falsified

There be few grounds that the means are liable
to the cafe in the proces. The cafe also may maintain an action on the case of the process 19th, but he must show this action only when he is himself to the cafe. The object of this action is to have the

indemnify him. So if the rescue was on a main

process before commitment, he ought to have no action

because he is not liable to the cafe. But if the main

process made an final process or main process after

commitment, his own liability should certainly

indemnify him to an action. The proposition is laid

down too general in the books. Hulot 98, Co. 74

107, Sept. 180.

(But if cafe brings up a person in hat,
cap, man is no man for him. The same reason

him more palpable for the man had time to

the house committee. Had time command of it in the

vicinity of the court of prison. Tho. 482, Ed. 610

After a person united is actually committed upon an main

process nothing but the act of god or of public enemy

will rescue the cafe in case of an escape. This is the

case of the polo gardens last where a rust of 2000 people

opened the prison of London. Parliament found it

crazy to pay an act indemnifying the cafe who

would have been otherwise liable to every cafe for the

escape of their respective prisoners. It similar case

occurred at the galleys in 1666 about the time of the

sitting; so that the plagues of prison occasioned otherwise than by lightning is no excuse

for an escape. 2 Co. 144 a. 2 St. 83. 113. 4 T. 3. 789

Ed. 610. Viz. 247.
When an offense is committed to be observed between the consequences of voluntary and negligent actions. It was formerly held that in case of voluntary theft, the thief is in effect on the party escaping, whereas absolutely, he charged his liability transferred entirely to the thief. This rule too vindicated in its effect on theft has been removed by modern decisions. It was not, I think, good law, for by it the thief was compelled to sue the thief only, thereby losing his election to sue the original debtor who was completely reconciled from his action. 202. 2 B & C. 289.

But it is now settled that the thief may, according to circumstances, have a new action of debt against the original debtor only, even facies a new suit on the original judgment, now by statute 8 &9 W. & C. 3, he may obtain a new execution on the original judgment without a scire facias, or he may substitute the party escaping on the original C. L. 136. 4. 269. 3 Bl. 415. Dig. 611. Bull. at P. 69.

And where there is a voluntary escape of one committed on mass prejudice, the right of escape is escaping may be erected by the thief with what is called a scire facias warrant even the bill in another state of the county. This warrant allows the search and directs his apprehension is return to prison. The only remedy in this case 3 Co. 52. 2. Will. 275. Dig. 611.
conceivably the party escaping now in such an
any action ag.t him for escaping, he himself being
parties therein. The remedies in this case, before
mentioned, are only for the Off. first for the Off. 3 Bli.
415. 3 Co. 52 1 Ed. 330. 2 T. Rep. 176

And if an Off.

after having permitted a voluntary escape should
not take the party escaping, he is guilty of false
imprisonment, for his authority over the party is
now facts for fault. 1 Wnt. 269. Carter 212. 3 T. Rep. 176.

And a bond to save the Off. harm'd or of a vol-
untary escape is void, as ag. law, as it would prob-
able cause collusions between the parties to encour-
ge escape, the bond is void on the same principle
that one to indemnify a master would be. 1
Poc. Cow. 196. 7 2 Dall. 213. 10 Co. 185.

But the Off

in this case may relate the party escaping even
the he has permitted the Off. to judge for second
part of his right claim and, provided he has not
received the whole from the Off. Bull. N.R. Bfn.
Cpr. Dig. 611.

But when the escape is unpermitted the Off.
may relate or have an action on the case ag.
the party escaping within immediately, i.e. before he has
been subjected himself or sent for the escape. For
is himself liable instantly. In which might otherwise
his remedy by delay. Cro. Eliz. 2 57 53. 3 Co. 52.
1 Bae. 2 15. 6. Cpr. Dig. 612 613.
And if a bond has been return to in demurrer theiff for a negligent escape, he may take his remedy on the bond for it is lawful. The is not particular obtaining.

(Cont. 15)

But the thiff bailiff cannot act at C.L. have an act at the bounty escaping, the he subject himself by it to the thiff, for he is not liable to the thiff in the buses of all, not bring a known public off. This contract with the thiff not being admitted or done as the party escaping is of no avail to him. The condition of the bailiff is thins in theory a bad one, but not so in practice. For he might if he please see the person in the name of the thiff take count of C.L. and compel the thiff to permit it on security given not to abuse the person. Cas. 643 44. Esp. dig. 613.

Cheriin

Cas. it has been determined, that the bounty escaping may be ratified by virtue of an escape warrant in another state. (Cont. 16) So in N.Y. 2 John. Vol. 2. In Cor. it has been also determined that bail may be thus obtained.

1 Cor. 647 Rep.

If a person arrested an criminal proewakes he is punishable with fine & imprisonment if he commits prison breach he is guilty of felony by C.L. I believe this is directed more by consent and do not reason any prosecution for prison breach. The Eng. rule is not in force in Cor. 12 Bl. 129. 130. 2 Bl. 94. 128.

If a thiff knowing arrests a person suffers even a negligent escape he is guilty of a misdemeanor.
is liable by fine, but for a voluntary escape in such case, he is guilty of felony or punishable as an escape, after the fact. 4 Bl. 130. 1 Hal. 6 C. 579. 2 Doug. 182.

And this whether the offender was actually committed or under a true arrest. 1 Bl. 119. 1 Dal. 5 C. 586.

When a sheriff’s
been compelled to pay costs or damages to a plaintiff for a
nuiglant escape, he may recover against the
nuigant by indictment for the money paid by the sheriff for the use. And it is a good rule then if one pay money for another he may have that money. Indict it has been decided in Eng. in
one or two cases at Chirnprin. that when it had been subjected by a voluntary escape he might have indicted a, the escape. In Chirnprin has since decided differently. In most questions.

Esq. 617. 621. Ca. 140. 141. 152. 156.

In case of a negligent escape when the chief
nuigant, the escape on fresh suit, I before an action is lost, agt. himself, his own const, and his discharged.

The words fresh suit, mean the always used on suit
minutes to be nugatory for the mentioned last
any distance of time or place, before an act of
being, agt. himself or it is on fresh suit. 611. 2 Dab. 227. 90 8 Co. 14 52. 2 Dab. 126. 15 211. 217
1. Pr. 106. It must however be placed especially in Eng.
2 T. R. 126. that in Ch.

But if the act is not such
the theft for an escape before reception, a ruling
reception does not disable him; for the thief by
commencing an act against the thief, (when the act is voluntary)
has attached in himself a right of recovery, it is a singular
rule, that he cannot be defeated by any act of the
801.

Indeed it seems improbable by what means the party
escaping is restored to custody before the act is but a right of the
thief, if it be done any how the thief is disabled. It has
been determined that a voluntary taking by the prisoner
before the act is (as is usual) it being equivalent to reception
513.

In case of a voluntary escape on the other hand, re-
ception is no reason for the thief, who has no right to
maintain such a right, being sued solely in the thief.
reception cannot avail the thief, because he can
not hold the prisoner without incurrence of false im-
prisonment. He is in fact considered as having
escaped. 3 C. 526. 67. 110. 611. 17

Hence another
principle further reception a privilege or right of custody
once voluntarily relinquished or suspended is aban-
doned forever: like a law on character, if once lost it is
so forever. Now in this case does the voluntary use
of the party escaped avail the thief at all, but he
is liable from the moment of the voluntary escape till the Piff right of action agt him is complete. 2 Mist. 294 foot 271. Cap. Dig. 612.

So will a subject absent by Piff, in the action hung a voluntary escape, he may stare the Piff or nothing the party. C. 612. 614. 271. But if the escape is negligent, the Piff may for his own security retire, even after action break agt him.

I have observed that after a negligent escape the Piff or gaoler may not the party; but if after the prisoner is discharged by the Piff as to the debt or damage, the Piff or gaoler cannot arrest him for his own fees: the he might have arrested him before the discharge. The officer him on him is lost by the laws of the prison, by his own fault, not with his consent. His fault is a minor fault, the no real crime, accordingly is only punishable as such by these means. Tit. 905. Cap. Dig. 611.

When a prisoner having the liberties of the gaol yard escapes, or retakes on fresh sent or a voluntary return by the party escaping before the action is broke agt the Piff, discharges the Piff. In such case if the Piff his a kind of indemnity from the prisoner he may recover on it even the he is not himself liable to Piff. Recovered or he suffers nothing from the Piff he will recover but nominal damages. C. 606. 127.

The Piff in such case may insist on taking a substantial remedy agt,
the bondsmen, i.e. debt & damages. This he may do by refusing to take him after his return; but in this case he is liable over to the master for the whole. [P. 128.

And when the master's liability to the master is barred by the stat of limitation, he cannot recover full damages a g. the orig. Daff. on the bond of indemnity. He can it is true receive nominal damages, but if by the suit he is not himself fully liable, he ought not certainly fully to recover. [P. 157. 128.

And if judgment is recovered a g. bondsmen before the reception, can the goods lie. [P. 157. For that part of the bond is to indemnify the master a g. the claim of the orig. Daff. and in the case supposed, that claim is barred.

In suing a Daff. for an escape, it is an established rule, that under a count for a voluntary escape, the Daff may give in evidence a negligent one; so also in the same case, he may plead to the count for a voluntary escape or taking or fencing on fresh premises & this he may plead without having the evidence that the act was voluntary; for it was incumbent for the Daff to allege it, & moreover necessary to his action. The Daff. plea is prima facie good, if he says it will go for the Daff. The Daff. is here to avail himself of the distinction between voluntary & negligent escapes by making a novel assignment, or implication in answer to any ase.
fines that may be made agst. a negligent seaman. It is by the way extremely unreasonable to set forth a voluntary or negligent seaman in the count. For in the Deeds you have nothing to do with any distinction between voluntary and negligent seamen. 1 Vent. 211, 217. 2 Bac. 248. V T. Rep. 126.

I have observed already that for a voluntary escape of the under seaf, deck or ganger who first
mit the ship is liable as well as the ship. If then the ship
sends the under seaf, the ship it seems is discharged.
This rule Cost. lays down on his own authority only.
I doubt that is a rule from that circumstance,
yet it is correct in principle. 5 H. Dig. 612.

If a ship enters into an escape for a seaf before
his plead, the ship or the right action is mor-
red, the ship may plead and the seaf shall
defeat the action against himself. For it pleas,
on which the action agst. the ship was formed
is annulled by a subsequent one. But of the
seaf no for the ship has been, after this the
original judge is wrong, yet the judge in the
escape remains good. It cannot be impreacht,
for it is within erroneous own word. The remedy
of the ship there is a writ of audita querela by
which he shows that for this matter it must fail
if the wrong of the escape judge 5 H. Dig. 612,
just. 8 Co 142. 5 61. No 6. 209. 2 Bac. 248. 3 Mod. 325.
A voluntary escape occasions a suspension of theiffs' office if the humbled it: a negligent one does not. & since this case is that the former is comm the latter a mere civil appearance. Dalk. 272. 32 Ed. 2 Ed. 2 Ed. 146. 2 Bae. 740. 2 Hard. 136.

False return of certain miscellaneous rules.

If a thiff makes a false return on a seizure he is liable to an act on the case in favour of the party injured. Ex. return of seizure on thiff return there has been none. thiff may sue him to recover all damages. Essex. 615. 1 W. 4. 336.

In Cor. where a false return is made the thiff in the action is at liberty to justify the return by plea in abatement. & thus defeat the action. In Cor. this could not be done by C.L. in this official case than only be justified by an act instituted for the purpose. And it follows that in Cor. if the thiff is thus defeated the may maintain an act agst. the thiff for the wrong & recover the damages arising from loss of the act.

By the C.L. as well as our own if thiff makes a return immediately disadvantageous to thiff. in may in all cases not in any case, act agst. thiff an in case of a false return of that, which is injurious only to thiff. false return on goods considered at C.L. as injurious to thiff only. Cor. 64. 729. 1 Stry. 650. Essex. 616.

With regard to the support of goods & persons. the C.L. makes it the duty of thiff to provide them. when then for any escape happens that the insufficiency of the goods, the thiff is
liable for it is his duty to provide & keep in place the plain and solemn, himself out of the Co. 1 Co. 84. 1 Rev. 808.

One Con. on the other hand, you shall be bound & required by the Co. and it is the duty of the magistracy of the executive officers of the Co. to be able & keep in your the good of to raise money by a tax to defray the expenses of the magistrates if necessary to compel them to do it. If there are cause & reason, then the insufficiency of the good the Co. not the iff is liable, unless indeed the cause was facilitated by their conduct of the iff or done. St. Con. 220. 223. 1 Rev. 450.

The remedy under our statute act the Co. is by petition or memorial to the Co. Court. our action would not lie. if this court is supposed intimated the party has in all cases a right of appeal to the civil court. St. Con. 367. 8 1 Post. 158. 155. 275. 278. 357. 450. 505. 7 89. 30.

But by a course of decision the liability of the Co. is in most cases only nominal. this the decision may possibly in question. Thus it has been determined that if the party is able to pay the iff must resort to him if not able the iff has really suffered no damage and the Co. is merely liable for special damage. 

St. p. 318. 1 Post. 176. 155. 278. 357. 535.

If we consider the principle on which this decision was made the original C.L. liability of the iff is transferred to the Co. and it would seem that the same rule might be applied in both.
case. However, if the deft. at the time of incurring an
ability to pay the debt, but by the same was unable
to make the claims. I suppose the co. on the 3d prin-
ciple being laid down would be subject to the other
claims. And it has been determined that the co.
was not liable if the party were rescued from the
exon by outward force, when the person was otherwise
strong enough to secure the prisoner. This seems
to me & Co laws. 2 Coit. 196

If a creditor voluntarily dis-
charges from custody a debtor taken in 84. he can
soon afterwards retake him. or otherwise enforce the
judg. seat him, whether he was actually committed
or not, for other artificial reasons, that the person
the body is deemed as satisfaction for the time being,
and the creditor hearing elected what is deemed his
best remedy, must abide by it; and if he volun-
tarily relinquish the law, the debt is extinguished
form. 2 D. 2487. 7 Coit. 420. 2 H. 557. 6 ib. 525. 8 ib. 125.

And the the P's. in the 84. to
discharge the debtor on consideration of new
promise to pay the judg's debt and the promiss is not
fulfilled, the rule is the same, P's cannot
pretend, nor maintain debt on judg. Be may claim
maintain an action on the new promise, for which
the discharge was a good consideration, the P's
have a right to discharge unless it would be a crime in P's
to do it. 2 D. 2487. 1 Coit. 557. 6 ib. 525. 8 ib. 420.
D Coit. 243.
But the debt will remain discharged in such case as
when the new agreement should be defeated after
waiting for information, and this can the old agreement
be discharged. 1 T. R. P. 577, 568, 525.

And in a bond conditioned
for receiving again in £21 a person once taken to be
charged by this is void as a false bill, it is a bond for
false instrument, the same is the same as if the bill
had been taken the bond— it is a bond for false instru-
ment when the receipt is abandoned. 1 St. 2 W. 254.

If two joint debtors are taken in
£21 and one is discharged from every, such discharge
is a discharge of the whole debt, etc. but of course
the other may be discharged by other means. On the
principle that a release of one prisoner is a discharge of
his debt, an obligation is secondary to a former one but
as he is bound to pay the whole it is an extirpation of
the whole debt. 1 14 K. & 1 Leg. 670, 680, 1 St. 251.
1 T. R. 58.

But under the law the suit, the debt on a
bill or note having taken an endorser, if discharged
from every, partly without actual satisfaction, may pay
some sum to the prisoner as the drawer or maker or ac-
teeper and discharge them successively for those are
not joint, nor joint to such debtors except on this
bound solutely, severally and independently by sepa-
rate covenants. 2 Bl. 12 35; 2 T. R. 81, 6 Bl.
400, 115, 174.
It was formerly decided in King that if a sole debtor was
found in prison the debt was forever discharged, but if, on a ground of
impunity in the prison, the highest security must abide in the debt.

2 B. & C. 354. 10 & 11 Car. Eliz. 852. 2 Cr. St. Tr. 136, 143.

If two joint debtors thus committed the debt as to both was never supposed
to be discharged. 2 Co. 86. 2 Cr. Eliz. 850. 2 Cr. St. Tr. 136, 143.

Since now by stat. 21 Geo. 1 which appears from its phraseology to be declaratory of the language of it being
'it is declared willfully and untrue, that when a sole

debt was due in prison, the debt is not discharged, but by

statute may run out a new 25. a g., the statute or if there

had been no law a g. to that the debt divided of the
court, seems to be overcome by the legislation, by a legis-

lation expropriation of the C. L. 2 B. & C. 354.

A personal bond

by prisoners, if to conditions, that the obligor should remain

a true prisoner until the debt for wages of board

paid, is wholly void as a g. to the statute. 23 Geo. 1 Sec. 6 to the

statute of ease takeover which statute provides, that a person is to be

allowed to the debt by a prisoner for any other purpose than to remain

a true prisoner is void to prevent violation by debt. or

the prisoner that a recovery on such bond must be of the whole

penalty, which is assumed double the sum due. In Co.

the bond was void void only in part 1 B. & C. 154, 1 Vict. 237,


351. 2 B. & C. 461.
By the way, I could much within it would not be good policy to consider the bond good in toto in this state in every other where the penalty can or should be, the state arose in consequence of the thin existence of answering of whole. But in C. E. a prior bond is precisely the same thing as a single bill and that would be good even in Eng. for such says he that the Eng. principle of policy would not prohibit this bond than there is no danger of escape.

In the conclusion of this title I would earnestly notice some state regulations of C. E. which are unknown to C. E. regarding good of gardens.

I would premise here that at C. E. all persons committed to prison on bonds to support themselves there, except sentenced felon, then being exempt in capable of doing it all their property being forfeited indeed, it would be inhuman to continue the rule of them.PLAYER 8: 1 Med. 32. 12 Med. 683.

By our law a person committed for any offense is to bear his own expense or to support if it ability his estate or subjects, if he has no estate he may be exempt in service. But in criminal cases the expense is first paid by the town or state, and the town or state may then have an action of his estate. For the latter is not bound to look up the estate but into it and execute it to recover the expense. St. C. 233. 3 65. 6

That taking of more than lawful fees from the jury, or subject the plaintiff to double damages at the suit.
of the party the same at discretion of the co. court. 4th. Con. 3.6.6. 365.

But the by the same provision committed to prison is bound to support himself and his wife. And in Eng. there is a statute that does not a similar one in any state by which it is provided that the person committed in civil process to support himself unless he is admitted to the poor's poor in order to help, this being the only legal evidence of his ability. The amount of this oath is that he has no estate of over $500 or any property sufficient to pay the debt in which he is imprison if less than $500 except property excepted from suit and that he has not conveyed it away to deprive creditors. He is then to be liberate unless the plaintiff furnishes a weekly maintenance to be lodged with the governor, the amount of which is to be adjusted by the co. court. 4th. Con. 3.6.5. 1 st 49. 117.

But when person committed to this oath binds himself by a writ of habeas to pay the Plaintiff if he had solvency at the time or in any way afterwards and an alias Ex. No. 167 in force to be paid to complete it. 1 st 49. 6.5.

But when person discharged his bond is not liable to an arrest for the same debt. 4th. notice necessary to be given to the state. If on the hearing no cause is shown for continuing him in prison the oath may be diminished by any magistrate of the co. 4th. Con. 3.6.5. 6.

If person's application is unsuccessful he cannot make a second application to a single magistrate but he may obtain
a writ of habeas corpus or a motion to set aside the sentence, and on the other hand if he is charged on the first app't the auditor may apply to the same two magistrates who may order the maintenance to be given to the mother of the state.

On the other hand, if the auditor administer the charge of prisoners, support lies on him; or the auditor may apply to the same two magistrates, who may order the maintenance to be given to the mother of the state.

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Contracts

A true contract is an agreement at E.L. is an agreement between two or more parties on sufficient consideration to be a not to do a particular or thing. On principle, if you have or the stipulation of the thing the consideration on the part of the contract, but by the E.L it is absolutely necessary to the existence of a contract and therefore it is included in the definition.

C.B. 242, 11 Nov. 1657

The true contract in the great acceptancer includes a will to execute such as presents, grants, leases, or those which are executing or covenanting, primers etc. for in both cases there is consent of the parties to an agreement respecting some property or rights which is the subject of the stipulation. More usually however it is used to signify such agreement as our recitalry. 1 Dow. 7

As a contract is an agreement there must in every way be an agent of the parties to it. This agent is of the essence of the contract. This can be no agent without mutual consent. Hence no mutual obligation can be created or discharged without it. 2 Bl. 442. Dow. The first inquiry then is,

Who may execute a contract? And how it is observable that a person who is non compos mentis, as an idiot or lunatic, cannot regularly make a binding contract. The reason is that wanting understanding in judge of laws he can have no will of course
no capacity to assume or resist. In goods, therefore contracts not of a real intent into by such persons can absolutely void. 2 Co. 123, 126; 2 Roll. 728. 1 Poth. 11 12.

Since if an idiot or lunatic is a particular
-tenant with contingent remainder over, a sur-
render of the particular estate by him does not destroy the contingent remainder, and it would seem if he was capable of performing a legal act, the act of an
-idiot being void. Salt. 576; 3 Mar. 276; 301; 3 Co. 284
Went. 198; Cott. 211, 250, 255.

Whether to the death of
an idiot or lunatic such a factum can be made
is not settled by the authorities. It is I think well es-
tablished that such deed as void it not voidable it
would seem that hence the plea of invitation would be
good. It is not however an universal rule that to
avoid clerical non est locum plus be pleaded for it cannot be
pleaded to a degree of clerical made by an infant which
is strictly void. 1 Poth. 11 12; 4 T. & C. 47; Edw. Dig. 223
Salt. 675; 2 Co. 123; 3 Co. 110; Bull. N. P. 17 2.

But in my
of this description an estate of receiving property by
a declaration title or by gift, grants, leases &c. ensue,
because says Sir Edward there is a person and to
their points to what sum contracts an intended to
beneficiaries to them. This is an unnatural time
reason, for the law is made to assume an spirit
in persons whose it always presumes incapable of
-union. I should say that the law determined with an
aspect in such case of such gift: grants to bring a common presumption advantageous to them, the law will
leave them to take without that aspect which is required in other cases. 1 Pet. 2. 6. 1 Pet. 12. 13. 3 Bar. 82. 2 Vent.
653
If an insane person is done upon his understanding, N/mm agrees to the purchase, his aspect becomes
binding on him; but if he die during his insanity, or never his intellect, to die with the agreement to it.
His heirs may avoid it if they please; for they shall not be bound by the contracts of a person incapacitated
without the power to contract, done.

But the contracts
of an idiot or lunatic to alienate his property or to create an obligation on himself, can within this gent. sub i.e. they
are void; no such contracts of his thus made to his purchasers are voidable, but are strictly void, and may be
avoided by his heirs.

As to those however it appears, to both
rules of C.2, that the sanity himself cannot in every
his understanding take advantage of his own incapacity: as if a lunatic soon to give a bond or note, he
could not himself plead non ad faciam to a subsequent second made during his life times. for no man of full
age shall be permitted to alienate himself. In short
att't the contract is regularly void yet he cannot a
void it himself by a paid of non ad faciam. The au
thorities differ in this point but this seems the prevail
ing opinion. Cas. 38. 39. 632. 4 Co. 173. Lit. see 395
Ch. 110. B.K.P. 172.

Now this rule may appear very
surprising one, since the contract is absolutely and be
verse, & liberty to avoid it. It appears founded on
very sound reasons of policy, for the prevention of frauds.
by putting on insanity, in fact however the cases
in many cases in which this fraud could be effected.
3 B.D. 47. 4 Co. 174. 5.

This point has arisen in case and
been carried to the court of error, it was then determined
that a person may owe his own insanity through avo-
and avoid his contract. 3 Dey. 90

And at C.I. after the death
of the insane party, his heirs, or C.I. may owe his in-
sanity. This avoids his contracts. Now I do not see
that there is any more design in allowing this plea
before his death than after it. 2 Co. 174. 5. Co. C. 398.
3 B.D. 87.

And thus our two modes, in which his contracts
may be avoided during his life at C.I. 1st. After of
fice found on a suit on idiot's incapacity or incapaci-
th for actions arising in the supreme executive of his
state may by some pecuniary avoid his contracts during
his life, such as his gifts, grants, letters acts in fact.
this office found has relation to the commencement
of the disability, and affects all contracts made after
that time. This office found is a species of credit
on issue taken in a particular manner prescribed
by law. 2 Co. 126. 8 Co. 170. 3 B.D. 88. 4
1 Co. 24 to 27.
By a lunatic may be brought into Ch. for the same purpose by the att'ls. first in office or by the committee of the lunatic if he has one, or in that way his contract may be set aside on the ground of insanity during his life, the lunatic bound is not, unless the can be a party in either case. There are two principal methods of avoidance during the life of the lunatic; at C. L. sumitted at law or Eq. can he own his own incapacity himself. 12 W. 2 T. 185, 111. 3 Att. 170

1 Eq. Ca. 279. 1 Pow. 26. 1

What if a suit in Ch. is brought in favour of the lunatic to compel performance of a contract made with him? The must be made a party to the suit, or in his name, the he must appear by committed as an infant does by guardian for the suit is not bind. to save his insanity or for him to take any advantage of his incapacity at all, but to enforce his claim against another. 1 Ch. Ca. 153. 1 Pow. 28. 29.

If a lunatic makes a contract in his mind, he is bound by it also and his representative, for he has the form of solition to be able to contract. Dyn. 105. 1 Co. 135. a. 12 W. 2 T. 182. 111. 3 Pow. 29. 1 Pow. 29.

A suit by the lunatic's fiduciary bound by acts, contracts of record, as by fine words or some medical suffering, then are not voidable by the party himself or his representatives or indeed by anyone. It would be an unconstitutional act of the sovereign called. Judicial impeachment of the judge. The presumption of law as to his capacity is irrebuttable. In being of full age

13 b. 247. 10 8. 42. 2 P. 14. 4 8. 8 8. 8 8. 8
By the way, one idea you may have a twist in it, is, what is called, 'a mental flaw.' Being a person of no understanding from his birth, the common acquire any. And it is said in the C.L.,

'bevis: that a person who has any understanding whatever, as to know his own name, his parents, the acts of the world or to count 20, is not an idiot.

Proverbs 23:23. (to whom blows the wind)

A lunatic is one who has had understanding, but has lost it from some subsequent cause, from the nature of the affection then recovery is not impossible, indeed it is most usually probable. 1 Thess. 4. 12 Co. 125: 1 Bl. 304.

Interjection, the

speaking as a temporary insanity, is not of itself a

cause of the law or effect of ground on which one can avoid his contracts. He is what Lord Coke calls, voluntary
decree of the law shows him no indulgence. The

principle of this rule is not that a person absolutely

breath of understanding is capable of contracting

that he shall not be permitted to own his in

equality. 2 P.M. 131. 12 Pl. 19. 2 Sir. 48. 1 P.M. 29.


The rule thus is really that

intoxication is not of itself a sufficient cause to

avoid contracts made at such times. But if one

party shows the other into a state of sleep intox-

ication, for the purpose of procuring a contract
from him, a court of Eq. will set the contract aside on the grounds of the fraudulent conduct of the other party. 3 P.M. 131. 1 Poo. 30.

A party being of weak understanding is not far as a sufficient reason for avoiding his contract, unless the party was more compus. For neither the C.L. nor the rules of Eq. distinguish between the subordinae degree of wisdom in the minds of man.

In Eq. if any fraud or inequity is practiced upon a man of weak mind, that Eq. will regularly set the contract aside. And if there are circumstancs warranting a suspicion of fraud, relief will be granted. For when such men are parties, they are so manageable that the fraud may be conducted as make a distinction difficult or impossible. 2 Poo. 23. 3 P.M. 129. 1 Poo. 30.

In the same general principle of want of capacity to contract, the contract made by infants without the assent of a next friend not binding; and even those for necessaries frequently are not. The reason is founded in necessity only to vs other principle for they have no judgment of law, no discretion whatso ever, no physical power to contract. In "Par. 1st Ch"
...
of the legal, makes no conveyance to a bona fide purchaser who has no notice of the other party's interest. This bona fide purchaser will also to the exclusion of the equitable title. For the purchaser is not to be affected by a recent right of which he had no knowledge or notice of. Knowledge, and this must always attend such conveyances as these, can no secures right to exhibit the transfer of property as their own in Conn. Ohio R. 1 T. 1935, 163, 8 ib. 516, 1 Tenn. 34, 44, 20 Mo. 296.

So an estate seized in feet may be an agreement to aline his property without bind his heir. So that if the ancestor dies without fulfilling the agreement, a court of C.S. will compel the heir upon whom the legal title descends to make the necessary conveyance. The reason is obvious; at the time of making the contract, the legal and beneficial title was in the ancestor, both at law and in C.S. the heir has no title, so that the purchaser's title is prior to the heir's, if his be better than his. 2 V. 213, 1 P. 115.

On the other hand, if a tenant in tail agree to convey the inheritance, and dies without executing the conveyance, his heirs are not bound by the agreement unless they be compelled to convey. For although their title is this the right tenant in tail or ancestor, yet they claim in a subsequent title of him for personal acts, and although he might have and have the entailment, yet as he has not done it, his agreement will not deprive his issue of
their legal rights. 1 Chit. 38. Q. D. 14 Vent. 357. Rot. 263.

Pro. C. 278. 1 Wri. 634. 1 Dec. 125.

That if on such an agreement he has received the consideration, they may be compelled to meet the agreement by making the necessary conveyances after his death, for if they take the benefit of the agreement they must receive this from it. 1 Chit. C. 171. 1 Dec. 126.

Thus an certain cause in 8F. in which a parent may make a contract binding upon his minor children, for which I would refer you to "certain recent cases in 8F." in the title of "Parent & Child."

To avoid the contracts of a woman made before marriage, bind during cohabitation the husband whom the afterwards marries, for as he takes a great part of his property absolutely and all contracts over the rest at E.4. and as his rights suspend her sole discretion, he cannot be liable on such contracts, on the principle that he taking the wife can once "husband" her. 1 Chit. 448. 1 Rob. 351. 10 Mc. 160. 243. 1 Dec. 123.

Girl. speaking the contracts which a man makes on after his death binding upon him. 64. 1 Ab. 99. for in the girl's rule of law, the 64. 1 Ab. 99. of every person implied in himself, by operation of law thereupon any (443) bound by a contract even the not married. [I say generally; for than on procuring contracts which not being transmissible an
not within the rule. On the ground that the E.O.,
on his representation for the purpose of collecting what
is due to & discharging what is due from his estate.
2 P.M. 1971 1 Rev. 128 2 Rev. 275

On the question how far an
agent acts as an agent, or agent may bind his principal
in "altera tueind." for the joint use of law see 1 P.M. 128
3 P.M. 277 2 Rev. 127.

If a joint tenant agrees to alien
his part of the estate, but dies before performance, the
servant cannot be compelled to perform it, but may
take the whole by survivorship because his title to the
whole commenced at the inception of the estate so that
his title to the whole was prior to that of the party,
claiming under the agreements to a part. 2 Vin. 63.

It is said to be an exception to this rule when
the agreement amounts to a surrender in Eqst of the joint
estate but does have no use or care to determine what
such agreements are. 2 Vin. 634. 1 P.M. 127.

The agent of a party to a contract may be either
express or tacit, or ascertainable implied. 

The agent of a party to a contract may be either
express or tacit, or ascertainable implied.

The effect of a statute or contract may be either
express or tacit, or ascertainable implied.
The men agree to purchase & pay for a horse at the same time his agent is deceased. If a servant or a stranger even without authority buys goods for another & the other afterwards approves the contract & ratifies it, he is bound by this subsequent approval.

Title as implied agent may arise in several ways. And first, an agent to a contract may implied from some silence or inaction. This if a prior mortgage is present while the mortgagor is contracting for another mortgage on the same subject. & knowing that the contract is intended as a subsequent mortgage, is voluntarily silent making no disclosure of his own claim, before his interest on the ground that he impliedly approved to a confirmation of his right. 2 Vom. 151. 18 Mo. 293. 1 Vom. 370. Pow. Mort. 185. 1 Viz. 6. 1 Rev. Ch. 337.

That in this case the first mortgage might be postponed on the ground of fraud. His conduct amounting to a negative deception, but there is no mischief of conferring to this reason, not as against infants.

And thus can several examples of this kind the same rule applies as well to bar or mortgages. 2 Vom. 239. 1 Eq. Ca. 355. Pow. Mort. 183. 185. 2 Vom. 150.

But in such an implied agent or in the person that effects by it, it is necessary not only that he should have known that his claim would interfere with such subsequent contract, but his silence
must have been voluntary if the con-tracts interdict the presumption of his defeat could not arise. I Pov. 136.

And it is a good rule that the law will sustain an implicit agreement, when necessary to give effect to some principal contracted form or executory agreement, as if I sell all my timber that growing on my land, the vendor by written of the implicit or tacit ag't., has for ingraft or ingraft to carry them off. So if a chamber is to the law must have for ingraft or ingraft, so if an area of land is conveyed to another which lies in the middle of the forest, in this case the implicit agree't. is necessary to give effect to the written contract. I Inst. 56. 2 Bl. 35. 1 Pov. 136.

There is one species of tacit agreement annexed to all contracts whatever, viz. that if one party fail to perform the part he has agreed to perform, he shall pay to the other party all damages sustained by the non performance. This is the principle in which damages are claimed on all breaches of contract. 2 Burr. 1011. 3 Bl. 166. 1 Pov. 137.

The warranty or undertaking to take for him or her to render a good conveyance he tacitly agrees to the contract of the same kind the other may make in his name. 1 Pov. 138. "Must that?"

An ev'ry such description, vere mere or affect grants, &c., there is a

-very such
unless the contrary appears. As, if a deed be understood while he is in Europe, & delivered into the possession of or to a third person for his use for a certain time, & that it may refer to receive the conveyance, still it is good until he dies. If a trust be committed before his return, an act for it may be supported in his absence. For his title good to all intents from the time of the conveyance until he ascertains it. By deposit. The rule is the same with respects to devises of all personal goods.

2 Lev. 233. 3 Co. 26. 7. Tha. 165. 12 Eliz. 39.

The rule is the same as to the heir at law, who is presumed to accept property descending to him, if it is not definite to transfer for injury done immediately in the death of the ancestor. That the heir had not operated to the detriment. 1 Pown. 139.

Is presumed to operate to many contracts made in his name by his wife. In "Abt" & wife."

When the sale of a personal chattel as a horse, there is always an implied warranty of title in the vendor. unless the contrary appears. As, if at will sum to £1 it turns out that it had no title to him. It shall remain back the consideration, but the thing is a warranty of title there is not of sound quality. 3 T. El. 57. 3 T. B. 150. 7. 1 Pown. 109 573.

We are next to enquire what circumstances will invalidate an agent actually given.
There can be no contracts without mutual express or actual consent. To quittance such quittance to contract is not binding. But there are cases in which the contract is void or voidable and of course not binding unless the plaintiff is actually given. This ignorance or error will in some cases invalidate or destroy an actual contract to a contract prorogued only if the mistake of one party was his right, even occasioned by the fraud or deception of the other party (Rom. 4:25).

The contract is said by some to be void in this case in account of the fraud of the language is cannot enough. But it is the proof of the fraud which disproves the facts of a legal or binding contract. Thus when an heir was induced to believe that a will which disindented him was valid and for a small consideration to relinquish his right to the estate, he will prove invalid (Eccles. 12:3) and the throw. In a point of fact actually agreed to a relinquishment of his right. Yet it was this ignorance, under the impression that he had more. (1 Pet. 2:3; Eccl. 19:1; 2:3; 3:4; 1 Pet. 140.

But on a doubtful point of right concerning which both parties are ignorant or such as side it has in dissent by which the party having the actual right is a loser, its binding. For the existence from which reutes the legal price actually given, it is contract voluntarily entered into with full knowledge that one must lose. It is nothing more than a compromise
In case of disputed title to land, there is no exception; it is entitled as a bar
against of execution to prevent the whole from falling upon one. It is then a
claim on land. I quoted both at law
in Coll. 1 P.M. 126. 2 with 587.

But in the party in

To the ignorant of the extent of his right as Mr. Powis
prepares it, of the means of informing himself, he is
not bound by his contract, now by ignorance of the
extent of his right must be meant ignorance of the
value of the property contracted about, for certainly
ignorance of law cannot be avoided, as when a
daughter in consideration of a bounty of 10,000
was relieved in the expropriation of the value of which
she was ignorant amounting in fact to 40,000.
the relief was relieved against in
Coll. 3 P.M. 316. 1 Bow. 145. 2d 205.

I would have notice in an which appeals always to
recognized in good law, which it is very difficult in-
and impossible to reconcile with principle, it is that
of Lonsdorff v. Lonsdorff, where both parties are
deceived by another known in point of law at
the right of each. a companion in deed which the
not aside, the question was whether the estate desired
to the elder or younger, brother, the schooler is
decided in favor of the younger, because a estate
descend and not a kind quasi possession. Thus we
had no point to a great rule in that no amount of
more amount of ignorance of law is to be admitted. I get that ways
the only ignorance in the case. 2 Bow. 496. 1st 3d
2d 1169. 2d 520.
Wagering contracts are in fact binding at law and it is not essential to the validity of such a contract that the event on which it depends should be in itself contingent; it is sufficient that it be equally uncertain to both parties. Ignorance does not invalidate the spirit. Comp. 37 N.J. Rep. 610, 34 N.J. 393, 5 Barr. 2802.

Thus, a wagering made upon the existence of a present fact is not invalidated by ignorance as to the fact, whether true or not. A particular reference in the act of Littiton.

Thus, an also case in which the agent of an instrument of that kind is invalidated by an erroneous representation respecting the circumstances or quality of the estate, the thing is no fraud. There has been much room for the application of this rule in our country in consequence of the great land speculation. Thus suppose an instrument for land or a mile bank. In surveying the map to be no more than a mere map, no more than a mere purpose, he is not bound for the object of the contract has failed entirely. I am inferring a case in which there is no fraud or there was fraud the room for relief would be much greater. 1 N.J. 400. 2 N.J. 185. 1 N.J. 82. 1 Bowd. 149. 210. 221.

Or suppose one to purchase land for the site of a dwelling house. In surveying, to be first a condition with location as in Littiton. The contract is not binding upon someone who is no agent unless there is a statute of frauds. 11 N.J. 224.
hand, if the mistake relates to a particular which appears not to have been principally in the contemplation of the parties at the time of the bargain, it will not avoid the contract, and if purchaser has suffered any loss he must recover in an action for damages. 1 Bow. 145. 9. For selling a farm not purchased in account of the timber, & giving a mistaken account of the timber without fraud will not invalidate the contract for the purchaser would be compelled to pay the consideration, and he must sue for defective value. Indict 2. In most cases, in enforcing such contract will make equitable determination. Bow. 146.

But if the contract is made upon false representations that the subject shall possess certain qualities or incidence that afterwards invalidate the same. 1 Bow. 150.

And in some cases the intention of the parties as to their object may be inferred from circumstances. e. whom one described a female slave by habit of a man to sell her as a male, the contract was void for the purchaser must amend to the purchase of a female.

And according to all brute if an estate must have a sale for a price he would only be worth when sound, the want of spirit may be inferred from that fact at the time it was sold. I do not see how this objection should ever have found its way into the work of so accurate an author as Bow.
it is wholly without foundation in principle and
found to all law. there is not the least semblance of
law in it. 1 Pont. 150. contra. Comp. 818. Doug. 23. 1 T. Ch.

Now this,

principle laid down by Brand is so far from law, that
by c. t. the purchaser cannot rescind a contract
by way of damages unless there is fraud, the mat-
ner of the law is "canst tumito." Thus suppose a
horse sold which dies so soon after as to prove that
the beast had been diseased at the time, but that
fact was unknown to both parties. if there had been
a fraudulent misrepresentation or concealment, a sug-
tico falsi or a suppositio sic the seller would have
been liable. but in this case there was neither and
the contract is good & binding.

In Con. it was for-
mally held that the pay" of a sound price implied
a warranty sufficiency against the C. T. ruled. I contended
against this decision for 15 yrs. when I had occasion
to make use of it the court denied it to be law
see. 2 Root. 787. 2 Swift 120. 160. 2 EAST 314. 2 BLACK 123

We have now con-
considered the nature of the effect of a breach of contract, of the
scope and rule relating to the invalidation of a breach. Now
now to examine.

The subject of Contracts or the
subject matter contracted about. And how them.
giving is in relation to what subjects, contracts may be
so made as to bind the parties.
and here I would premise that there is a distinction in law between contracts executed and contracts executory. I shall not at present define the distinction particularly, it belonging to another part of the title, but merely observe that the following principles may be more easily understood. That an executed contract is one which passes a right or interest together with immediate possession, an executory contract on the other hand is one which creates a right or obligation, but is never attainted with immediate possession. It is introductory to an executed contract.

Now no person can by contract executed convey a thing in which he has not at the time, an actual or potential interest, for one cannot convey in presenti that which he has not. Plow. 112, Hamb. 132. 1 Inst. 309. 6. 1 Pau. 152.

The subject of an executed contract then must be one in which the party executing it has an actual or potential interest at the time. So that if one should make a bill of sale of all the wood, or wheat, which he should purchase before a certain time, the bill is void for in such case there is nothing for the sale, gift, grant to be to act upon. It's none. There must interest by the contract imparted, and it is no part of presenti of what has not.
the moiety of the other does not pass by deed the vendor has no right to that at the time of executing the contract. The experiencedarns to convey the whole (yet be retained the on morty [int.]) 1 Pec 166.

And on the same principle if A sells a horse to B on condition of pay, at a certain future time. the vendor A cannot make a valid sale to another before the time of payment arrives. such a sale would not be good even if B did not pay according to agreement for A at the time had written interest in the same or ships of the horse. 1 Pec 166. 1 Pec 156 5. 1 Pec 187 79 5.

You can a man make a grant in pursuance of a subject in which his right is absolute, to vest in future, as if a contingency remain for limited to be on his marriage. if he attempts to convey it till it occurs, the contract is not binding upon him. it is a conveyance of an estate not at the time his. Whether it can be enforced in eq or an eq contract or an evidence of an one we can not have to enjoin. We can consider contract according to this effect in courts of Eq. Eq. 3 & 3 Eq. 246. 1 Pec 155. Eq 2 221. Eq 155 10 162 86.

But a thing of what some is the potential owned at the time, i.e. something accessory or incidental to, or arising out of an oil other at the time in the party making the conveyance may be the subject of an executory contract. This act is by or side above stated a conveyance
of all the estate that one should purchase in a given time is void. Yet a conveyance of all the wood that shall within a given time grow on any farm as good as if granted by reason the grantor has already the subject out of which the interest contracted about to arise, the wood to be is an exercing incidental thing in which he is said to have a potential interest the transfer of which the law recognizes as good.

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So too a present grant or sale of the future offspring of one cattle or animals is good so of the feathers shall grow on one's gue. The distinction in these cases is very obvious.

But on the other hand rights not actually or potentially vested may in the subject of except contracts, which are only stipulation proceeds or preparatory to the act by which the interest in question is to be conveyed. In this there is no in congruity for one may agree to convey all the land the shall own 5 years hence. But to say I do grant you now all the course I may own 5 years hence is a legal absurdion, and would be as outrageous as to convey some of something not in existence, among therefore cannot convey in presence that which he does not either actually or potentially own at the time. But he may obligate himself to convey in future what he may in future acquire. Thus one may covenant to convey with the condition of it to convey it to a.
to make lease for a limited term of all the land of which he shall be seized on such a day. In all other cases of equitable contracts and agreements that regard a future interest, there is always something future happening to be done to carry the agreement into execution. Bac. Mol. 4th. 158, 79.

But a contract is so made regarding a future interest, that no future act is necessary to be done to give it effect; it is not valid for it must take effect as at all as an executory contract which cannot be for a reason before given, an instrument regarding a future interest will not be valid, unless concluded in executory terms if in its legal effect it is to operate as an executory contract. Thus a covenant to stand respect to the use of another or all the land he shall purchase is invalid, the words covenant in strictly executory but to stand over is a common appearance, it operates as a present conveyance and no future act is necessary to make it complete and give it full effect as a conveyance. 2 Bl. 239. Bac. Mol. 80. 1 P. 2 34, 160.

But the a contract

would occasion as such a using a future interest, yet it

may bind or transfer a future interest by way of

to know, the contract will prevent the party from any

the person that he had no interest at the time and

surprise him of the right to give that in evidence

as if it should mortgage an estate of covenant

that he is with respect to him is not, but after
wonder he acquires a good title, he is then entitled to say that he had no interest in the covenant and

B. The mortgage has a good title, as if it were had been a subsisting title at the time. B; interest

arises out of such evidence, by which it is pre

cluded from evincing that he had no title. 4 Blk


The rule is the same as to leases. If I loan to you to

lay a form that I do not own it; let there be how

I acquire a title to it, and until the covenant of

warrant is in the lease. I am entitled to say that I

had no interest at the time; or one or persons

claiming control over, 4 Blk. 276. Prov. Mat 475

296. 2 Rens. 729, 1048. 1550. 3 T. Rep. 370.

This rule

appears to be the same in relation to an absolute pro-

perty conveyed with the usual covenant of seisin

upon the same principles. The mortgagee will hold

for the covenant is an estoppel, 2 Blk. 296, 2 T. Rep.


222. These are known instructive examples used in Contracts.

But if one makes a conveyance in presence of

that in which he has no interest at the time

without such covenant of seisin, then it is

not estoppel; the contract is not binding in any

manner, and the contract can show that he

had no interest at the time, and in every

instance in which there is no estoppel, the gen-

eral rule of law must have its full effect, it one of

3 last rules.
Regulates of a contract. The first is that it be possible of performance. 2. that it be lawful. 3. that it be certain. All contracts thus to be valid must be possible, lawful and certain. By the latter requisite is meant merely that it be definite & intelligible.

It must be possible that is in performance. For no right can be acquired, nor any obligation created, by a contract the performance of which is impossible. this is the decision of law & common sense. Such a contract is nugatory and may be considered void on the ground of intuition. as if a man should contract to travel with the velocity of the ray of light, on this subject it is a maxim that the law must compell a man to do what is merely void or nugatory or impossible. 1 Port. 206. Nov. 31 20. 1 Prov. 160. 1 178. Thus if an evem- rent wants to make a passport of himself come with the ocean, or to travel from the heat to the snow in a day, such contract are void from this impossibility of performance. no clareage will be given for the non performance. so if a man agrees to suffer a man into a town this is no such action depending. 1 Port. 206. Piske 735.

But in the application of this great rule the law distinguishes between acts in themselves in the nature of things impossible and those which are not so ven it are merely impracticable to the human con-
trading contracts of the latter class are not void, as if a person not under a court's command to pay money within a month, or suppose a person contracts to sell an estate belonging to a man he cannot convey, it may be can be purchased. That however is a thing not impossible in itself, and if the contract is not performed damages are given. It is true indeed that 80% will not confer a specific performance of the contract for that would infringe the rights of third persons. 2 L. Ray, 1163.

Thus has been made a peculiar kind of contracts made by way of practice in ignorant men where appear to have been that the Eng. courts very much on when a man contracts to deliver two grains of rye on the monday following. So enjoin finding in describing the quantity on each monday in the year, so when one agreed to pay for the house a penny for the first week in big shaws drawn in geometrical proportion that the thirty two weeks. These contracts were not in themselves physically impossible in this case the court held that the payment being contracts beyond his ability, such impossibility should not avoid the contract and that he should pay for the excess that he had received. Since the rule the look was to give the full value of the article sold as of the date in the latter case, now this was sitting beside the contract with the court did not prejudge as that for when a thing is not delivered at the time the rule of damages is the value of the thing at the
time of payment for delivery. So that the court
construed the contract absolutely void. I have no diffi-
culty in considering that void on the ground of law
in matters of fact, in science indeed, but not of
law. The plaintiffs' contract then being void the
case stood, as if there had been no contract. To the
defendant was adjudged to pay by virtue of the implied
contract, the full value of certain receipts cited. 2 Eng.
1164. 1 Vict. 269. 1 Cen. 111. 1 Will. 295. 1 Vict. 5 Cen. 1 Pau.
Cor. 162. 3. 2 Pau. 159. Rull. 438

As to the great rule of damages above
mentioned, which by the way is made to operate in
favour of plaintiff, who suffers by defendant, non ape,
see 2 Burr. 1018. 1 Pau. 274. 1 Pau. 408. Stan. 486.
2 East. 211. 2 Cen. 397. If I must be indemnified, if the value
after the time of contract value, it is of

A contract is not void on the ground of impossi-
bility, unless the performance is strictly impossible.
I do not consider the two contracts just adverted to a void
on the ground of impossibility. The distinction be-
tween a man and woman's impossibility is not recognized
in law. Thus, if A with a promise, offering one
wines with B, that all his land shall be away
to him if it does without, him the the chance
be very small as one in a thousand, yet the con-
sort is binding, and may be enforced in 

For the question is, not whether the performance or
the happening of the event is probable, but is it 
visible? in the case of the contract for the transmission
of title.
And if a man covenants to do a thing by a
sort of absolute contract, which is not in itself impossible,
but which is unusual to him, and by inevitable
accident comes as the act of God, still he
must pay for it. Thus a master of a vessel in London covenanted
peacefully, without qualification, to send ships to New-
York in St. Croix at such a time to take in freight
once it was agreed by all that this voyage might be
made within the time. The master sailed in season
but adverse winds rendered the performance impos-
sible, it was held notwithstanding that the con-
tract was binding, and the covenantee was consid-
ered as a virtual insuror against the risk of failure.
He should have acquainted himself with the probabi-
listic, and not make a covenant therein. Equally,
This must be the rule in the construction of contract in
the point will be left vague without any decisive
rule which would have been too much to the dis-
cussion of years. 3 Pet. 1639. 1 Findl. 366. Day, 239.

If this covenante had been impossible in the nature
of things as to perform the voyage in that day,
I think it lawful, would not have been bound for
the contract would have been void.

II. A contract to be valid must be lawful, and if
not lawful it is void. For clearly no man can be bound
in law to do an act that the law prohibits; it will
prevent from doing a thing which the law requires.
If a contract is against law it is strictly void and not only invalid and liable to be avoided.

A contract may be unlawful if void when it is do avoid that is unlawful in itself or which is unlawful in prohibition. 1 Pet. 16:5. 1 Cor. 15:18.

Of the first place are all contracts that have for their object the consignment of property that is prohibited by the law of nature or moral under the moral law or theft, robbery, treason, murder or fraud whatsoever. So that if a bond or any nutritious hand or writing should be entered into to pay certain a sum of money if the will know or not another it is void. 1 Cor. 11:13. 1 Pet. 11:13. Corp. 37.

In the next place contracts can void when they have for their object something which the law of nature or moral law yet is contrary to the municipal law or laws of the land.

A contract may be against the municipal law in either of these particulars. It is repugnant to the public welfare which in some relation to the policy of the law. It is against some measure or principle of the common, common or customary law. It is against some positive statute regulation. 1 Pet. 16:6. Corp. 139.

In the first place there are contracts of which the object is against law, being opposed to the
policy of the law to the welfare of community. Indeed it is a great proposition that all contract that militate against national policy are void, and a contract that to continue a particular trade is a mechanical one or to prevent a useful trade belonging to this class are in void. 67 1 John v 32 27 7 T. R. p. 524 3 Corp. 39 8 T. R. p. 57 1 Oct. 211.

... to contract the object of which is a great contraction of the means of a trade for a limited period, or not to continue a useful trade for a year, for the law will not distinguish between long and short periods, and the rule of good policy prohibits a restriction for a year, as for a lifetime. Cor. 53 6 T. R. p. 523 1 Adapt. 236 1 Mart. 181 1 Pow. 167.

So if a husbandman should not cultivate his farm for a limited period, it would be void as against the public welfare. 11 Co. 53 b 1 Pow. 167.

But an agreement not to continue a particular trade at a particular place may be good for such contracts may be beneficial in preventing monopolies and harmful competition and promoting a proper useful distribution of tradesmen throughout the country. Cor. 53 6 12 Mart. 1836 15 Pa. 167.

But a contract of the latter sort is not binding unless it is a sufficient consideration, that must not only be a consideration must it must be an adequate one, and...
the same fraudulent lie upon him who attempts to make the contract, in the presumption is against such agreement. It is law regarding them with jealousy, and the fact of a sufficient consideration is not to be presumed, as it would go so in case of lands. Arv. 89. Palm. 172. 10 M. 181. 192. 18 Mcr. 27, 27, 169.

Since it appears to be immaterial in the application of these rules whether the trade one engages not to pursue in his own trade by profession or not, the validity of the contract depends on the same stated in either case upon the genuineness of the restriction and the sufficiency of the consideration. 10 M. 192. 1 Pow. 169.

On the principle in this case is that no man ought to prejudice himself from engaging in any useful trade, and however probable the event may be the law will not allow of such restrictions.

On the same principle of justice abroad as a contract of many things, for what is called unlawful maintenance is void, as, &c. Laws, &c. depend on the public peace & tranquility. It is in connection with holding in lawsuit which amounts to the offense of licentiousness. Cart. 229. 2 Inst. 215. 2 Bl. 135. 1 Pow. 173.

In yest also a contract with an alien enemy is void on the same principle as aix the public welfare on the ground that any misconduct communicates a public enemy may be exercised. the public safety, how the subjects of belligerents cannot contract with each other.
...ed on the
some principle, a policy of insurance upon the property of an alien enemy is void. This is found of form only,
not made with the enemy, for it promotes the con-
venience of the enemy to injure our citizens, our interest
in the safety of that enemy. I am aware that
this rule has been questioned on the ground that the
interest of the insurance and perhaps the probable profit
of it might justify a parliamentary act: but I am
not competent to the examination of this subject. It is
manifest that the tendency of such a policy has just
been conclusively stated. 8 T. 4 H. 548, 65. 35. 1 6 B. 8. 345
1 East 36, 275. Doug. 288.

But the rule that contracts with
an alien enemy are void, is not universal. It is with
the laws of the civilized world that ransom con-
tracts are, or as they are called, ransom bills, are调节.
By a ransom bill is meant a contract by which
a captured enemy agrees to pay the captor a certain
sum on condition of release, and the matter of ship
may be such a contract, since this summary act is,
himself. 3 Benr. 1734, 1 68. 8 5. 8. 62. Doug. 619.

The in-
mediate jurisdiction of these contracts is vested in the
courts of admiralty, not in the courts of C.L. the
question of this kind may incidentally arise in those
courts. (March. 8. 434, 3.)

And ransom bills have been
enforced when the hostage has died; for you will do
...since that it is customary for the chief nation to have two or three of his men as hostages.

And it has been once decided, that the ransom bill was good after the capture was taken with the hostage. This was determined in the time of C. F. before the admittance had obtained the immediate jurisdiction of these matters, which by this way was not 15 or 20 years since. 

And in due with regard to the great principle of such contracts. I conceive that all contracts arising out of a state of hostility, whilst man exist within alien society, yet as tending to mitigate the evils of war are binding, that is, they may be notwithstanding the state of war or the relations the two nations have to each other. It is on this principle that treaties of peace agreements for the exchange of prisoners, times as are made. Don. 6256.

But at this day ransom bills are prohibited by WV. 3. 3. a bill for a ransom was introduced into Congress the fate of it I have not learnt. The rule in that now is that an Englishman may take a ransom bill, but cannot give one. Mar. Jos. 232.

On the same principle marriage brooches too are, as they are termed one sort as opposed to the public well are thus an honor which are given as a reward for bringing about marriages or for influence used for that favor. They are considered as very valuable since they...
tend to the disturbance of domestic tranquility by encouraging improper pretensions to direction in the purpose of effecting a most important contract. 1 Pow. 245
1 Chit. 274. 5. 3 Sir. 411. Chit. 184. 1 Pow. 174. 198.

And not only bonds, but notes, bills of exchange, & contracts of a similar nature are all subject to the same rule.

I have now given you the leading instances of contracts which are void or opposed to the public welfare. We are now to consider those which are void on account of their unfitness to the maxims of the unwritten or common law. For in general, all contracts which are opposed to the maxims or principles of the law are void, referring now particularly to the unwritten law.

Hence if a consideration which is the cause of the promise, or the promise itself is opposed to any of these principles, the contract itself is unlawful void. 4 Bulst. 38. 3 Stalk. 97.

Thus a promise made to a merchant, clerk, or to any agent or the master of a merchant in lieu of his promissory discharge, a debt due to his principal is void, for the consideration is a promise when a third person, and of course opposed to the first principles of the common law, the promise in itself is not illegal, but the consideration connotes during the contract. 1 Pow. 176. 3 Stalk. 97.

And on the other hand to illustrate that point of the rule which
...relate to unlawful promises. If a party, for a valuable consideration, promises to permit an escape, the contract is void. For what the consideration is good for the promisee, illegal. As considering as a pay money is in the abstract unlawful but takes its character from the thing promised, consideration as stipulated to be done. The rule would hold same in relation to a promise or obligation (as by way of indemnity to a party to suffer an escape), the promise, in the abstract, is not illegal, but as the consideration, so the contract is void. 10 C. 76. 102. Cro. Eliz. 199, Dyn. 356
1 Poc. 176.

On the same principle a promise by a minister of justice to do an unlawful act in his office, or by a third person to indemnify him for doing it, is void as against the principles of C. 1. Cro. Eliz. 230. 1 Poc. 176.

But still when the unlawfulness of the consideration or act in the fact which makes the consideration unlawful is unknown to the promisee, a contract of indemnity founded on it is not unlawful, but may be binding. Thus, if a sheriff, without authority and power as a promisor of indemnity, a third person to assist him in becoming & keeping the prison, of the third person is subject for the false imprisonment, the sheriff is bound on his promise of indemnity to indemnify him, that is provided the third person has done such an act of the fact that the sheriff acted without the proper authority, for otherwise, he would be partly or in whole, crimine. Ot. 53. 1 Poc. 177.
To if off in 24, sagt et: direct the ship to take
the goods of B, alleging them to belong to et; while
the ship does not know to be actually B's, upon
a promise of indemnity, such promiss will bind
et, for at the consideration unlawful, yet the
ship did not know the fact; besides, if the promis-
to had proved to have been defective, the ship
would have been liable for not obeying upon it.

So too if I have a sworn to cut timber as I say in my
hands, I am bound to ennunat him for all damages
he sustains for cutting them in trespass, but by another
writer I partly engage to indemnify him or not.

For this can occur, see 1 Pet. 2, 22, as 3 S. 562.

Upon this

great principle, all contracts, the objects of which mili-
tate against the laws of morality, decency, or
void as against the meaning of the law. These
wagering contracts are to the use of the great
Church. Even was held void on holding to indecent discri-
nination, besides being an iniquity to the feelings of
a third person. A wagering contract you will ob-
serves, as of course void at C. L. Conf. 29, 7, 29,
735, 2 V. Rep. 610, 3 ib. 693, 1 Pow. 233, 183.

And all contracts

made for any corrupt purpose as in effect, to bring about
bribery are void. All to not in form contracts of bribing
this for a candidate to buy with a vote on the result
of an election or with one who is influential in the
appointment, or with a judge (in the supreme court) or the counsel of a trial. All such contracts are void of tending to bribery or corrupt influence. 

**Con. 39. 1 Pec. 184. 2. 3. 4.**

So also a wager made at a crime for unprofitable, for this as well as any other suit or cause which some intend the mind of man has been created to for that purpose. Thus to beg, that the money lost would never be returned in such a time. 1 Pec. 184.

So a wager as to the end of playing on illegal games is void as tending to promote the practices of it. 2 Tim. 3 11. 128. 13.

Thus the a wager with a judge who is to determine a cause, as to the events of it is void, for any other suit, for a wager between the parties, to it are not, for it cannot be proved to influence them. Con. 37. 1 Pec. 184.

And as a general wager by law, C.L. are binding, as they are in some of the states. The policy of this rule has long been questioned by many eminent men in Eng. as such contracts are that a species of gambling, which is individual, and of course hurtful to the community. But the decisions in this point are too stubborn to be easily wound. 1 Pec. 184. 7. 120. 110. 116. 120. 13.

But in Cor. all wagers are made illegal by statute. Our courts had before determined this to be one common law, but it probably would have been made it not for the statute. But our statute was, further and provides that all money
Oddly but at the time place for the purpose of gaining or having sering he shall not be reunified

All contracts entered into to effect these persons are universally illegal and void, an and thus are visible at C.L. as the most weighty of our contracts. As a contract between two parties of a contract who took a composition for the foreign power they are not kept so that the spirit was divided between them. Douc. 33. 11. Pow. 185. 2 Pow. 165. 176. 187. 15-6
11. T. Rep. 104. 1 Anq. Pl. 322. 656. 2 T. Rep. 762. 1 Book Pl. 95. 286

And thus our contracts that can never be ratified the power cannot enforce them nor can they be the conduit of a future promise.

On the same principle a private agreement, between one of the parties to a marriage with the person who finances the parties, to receive it is void as a fraud upon others. As of a bond with his father, it is a fraud upon the wife. The principle and it cannot be enforced. 1 Civ. App. 184

And no agreement to pay one for attending an auction by way of puffing so it is trusted to enhance the price of goods is binding it is void as a fraud upon the bidder or state trick. 1 Pow. 186 1st instance.

... also a secret agreement by a bank draft in his agent to pay money to a credit for any of his certificate is void as an act of the 5th. C. 2. as was the case in U.S. when an act, a bankrupt law and I should think such an act would be void at C.L. as a fraud upon the other creditors, by depriving them of any means it is bribery. In the case of Ramsey v. Blythe in C. 3. it was determined that such an act was to induce a creditor to conspire in order to the debtor in paying his creditor, fraud here was void, and in Eng. this is a stat to this effect. [Footnotes: 1 1676. 1 696. 1 11696. 1 11696.]

... under this head there is little occasion to fear. Where a 7th. and an agreement to contract or so of contracts void, it is only necessary to bring the case within this class.

... the illegality of contracts, that all such are unlawful and void as such, in the opinion of the grand jury, or by a Court. Of Illegality not to receive his cap of a certain description. [Footnotes: 1 1 15. 1 11. Rep. 1156. 1 1156. 1 1156. 1 1156. 1 1156.]

... the act is the same as to contracts which tend to encourage unlawful acts or conspiracies, the that agreement does not expressly stipulate for such acts or conspiracies are voided of misconduct to a parties against any intention or situation to which he might be subject, by publishing libel on the other, unless there is no express stipulation.
for the performance of the unlawful act, yet it is true, to
encourage the commission. [P. 196]

So too a bond to indemnify
a thrift for enlisting, or thus in permitting an event
authorized the act, is not simply unlawful but yet the con-
tract is void as tending to a breach of law.
And it may be laid down as a general proposition
that any contract stipulating to save or benefit
in committing any offense is void as an
against law. Whether the thing to be done be
a public officer or a private in person. [P. 196, 198
C. 13. 209. 10 C. 100. 4. Co. 235. 44

Hence also an apology

between two persons, that one of whom is in any unlawful
shall commit any unlawful act, is void, because it is
a limitation to the commission of it done.

And that
extends to contracts which operate as an incentive to the
commission of any kind of criminality even such as is not
forbidden by positive laws.

There is a distinction taken in the
books as to bonds, an alleged for the performance of
several contracts, of which none are lawful to
void by statute. And contracts some of which are lawful
void & some unlawful by C. L. contracts or bonds
of the first kind, are void by the statute, some of
the contracts are strictly lawful. [P. 196, 351
1 Vent. 2 37. 1 Cor. 199. 1 Brand. 66. 96

But in the latter case when some
of the contracts are good and some void by C. L. the
instrument would be void as to part one, viz as to the
end, as to C.L. and good as to the residue.

Then, if
a statute declares any thing to be unlawful a bond
stipulating for the performance of that thing or inclu-
ding a covenant declared void by statute, with other
other covenants that are strictly lawful, is strictly
void in toto. But if it contains several covenants,
part good or lawful & part void by C.L. the bond
is binding as to the lawful covenants. Thus if
an undue shift covenant not to sue for cup of a prac-
ticular description is also to save the shift, himself
for use or cup of person accused by virtue (the undue shift)
the first covenant is void, but the bond is good as
to the latter coven.

On the other hand, if a shift, a
final bond for matter of the shift of N.3 & N.6
of care favour, it also in another case, requires or
limits to remain a certain piece debt to himself, the bond
is void in toto because the first mentioned covenant
is made so by statute. 2 Mils 357. 2 Vent. 237. 2 Dec. 388.
1 Decr. 200.

I have never yet seen in any book the least
reason for this distinction, it seems to have been
handled as a mystery, and a positive rule of law
and I was myself was much inclined to think
that there was no foundation for it. That
is this distinction does not arise from any sub
and differ
ence in effect of a partial illegality by C.L.
covenant statute. I trust the true reason is to be found
in the established principle of construction of state law, for when a state policy contracts to be no or makes it unlawful, it takes the law, not the whole security in effect to be void. The I can see the only true and satisfactory reason for this

The law does not; according to the rule laid down an illegal contract can vest no right that can be enforced, as after such a contract has been entered into the law confers it to take effect, by refusing and to the party to be reduced as against it. This is the first place when the illegality is of such kind that both parties are damaged, and it contracts the contract is adjudged that the illegal act is done, he who has paid his money in the contract cannot recover it back. The law in this case merely permits the contract to be

effect. If the contract has not been executed it was

have reformed it. It merely stands as though it

in pari delicto, potest ipsa judicium defendi

Song. 451, 468. Bull. at 3. 131, 2. 9th 22. 2, 8, 1307, 577

1 Burn. 9, 298. Comp. 390, 2 Burn. 1012.

Pp. 3, 4. When

into an Ed 4 agreement by which he engages to pay a certain sum or convey lands to B if he will stagger a certain given for him. This contract cannot be enforced at law. But if B acting honestly as between himself and B has paid from his part of the contract, the law will not interfere in his favor after the wrongdoing has been done to force B to repay or convey unless he received the money to on this point consid.
Both in this case are equally criminal.

But while there

trust remains existing on one side, the party who pays

paid money on it, may it is said, receive it back,

if this appears to be the established rule, then if A

pays to B a sum of money for which B undertakes

to commit some offence, so to beat C, now before the

act is committed, I can receive back this money

to if it has been committed, I cannot receive it back.

now this appears to me to be a palpable departure

from the principle of policy of the C.L. Bull

at Ch 132; Doug 179.

This distinction appears to me to

founder in mistake or misapplication of principle. with

out overt the party ought to be able to recover in both

cases or neither, for as the rule now stands by the

weight of authority, it is plainly calculated to intro

duce a communciation of the offence, for if in hopes of

the money. Performance of the act will occur to

fruits. Whereas if it could be recovered back in both

cases, i.e. whether he had performed it or not, or if it could

not be recovered back in either case, the common mistake

to the money would not be affected at all by the per

formance, so this would be no inducement to perform

the illegal act. for his liability to repay would be the

doom whether the act was done or not. I think from

principle that the money ought not to be recoverable in

either case. (in most questions) and this appears to be

the policy of the law in either case, to remove all

temptation for the commission of offence.
Money deposited upon an illegal wage, if paid over out of the estate of the lessee, cannot be recovered back, but if it has not been paid over to the party due to receive from the tenant the rent deposited by himself, the lessee, the wage has been decided. For the first part of the rule, see 8 T. R. 142; Doug. 696; 1 Bos. & Pul. 298; & for the latter part, 5 T. R. 405. 3 East. 322.

This latter rule has beenoen as such, 13 John. 1176, when it was determined that money deposited on an illegal wage could not be recovered back in any case.

In all cases when money is deposited on an illegal wage, it may be used back before the wage is determined, the after it, it depends upon the fact whether it has been paid over. 1 Bowr. 243. 2067; Bull. 14. 332.

There is a case arising from the rule, which is to the point, viz., the case of money deposited with the tenant holder on an illegal wage paid over by him to the wagee after he was forbidden to do so by the lease; the question was whether he could be compelled to pay it back to the party depositing. It appears to me that it would not be paid now from weight of authority. The wagee could not receive it. If the stockholder had been after a prohibition that it is clear the stockholder could not retain it. Whether the wagee for this be right in order to cheat both parties, there is no such authority which go in support of this opinion, but from the analogy of such a case, it seems that the party cannot prevent the stockholder from paying it over. 1 Ch. 89. 3 T. R. 429; 1 Bos. & Pul. 297; 12 T. R. 64. 2 T. R. 83.
It has been determined in one case that money had for an illegal wage before hands may be accounted back after wage determined. 7 T. & C. 136, the judgment of this court may be read in sec. 3. John 286, S. C. at 5, I am not sure if I think as you in the right principle viz. that it can be accounted back in all cases. Still however it is not very important whether it is to be accounted in all cases or no. In 1 S. 198, if it were Accounted in all cases 38, 361. It has been determined again in substance of the first distinction that money advanced in pursuance of an offer might be accounted back like a horse whose purchase was not after

So also money advanced as premium on an illegal policy of insurance may be accounted back before the risk ran but even after Doug. 171, 1 Cow. 201, 6. 7.

I have thus far stated a contract in which both parties were deemed agents criminel. On the other hand when one party is not guaranty on an illegal contract, he may account it back the contract is executed on the other side. This rule applies to an ease where the law prohibits a contract for the protection of one party against the other as in case of every when if one has bound an insurance premium he may account it back; the law makes every criminal in the law but not in the business for whose protection the law was made.
who is supposed to be the fact it would be absurd to make his misfortune crimes. Comp. 311. Doug. 451. 671. Star. 415. 1 Forn. 218. 235. 10 Hen. 65. This rule was formerly otherwise. Salk. 22. but that is not now.

The rule is the same when money has been paid by a bankrupt or any of his friends to enable to get him to sign the certificate in order to avoid apprehension. The stock is made for his benefit & the stock money may be recovered in equity. 1 Pint. 209.

But all contracts stipulating for the performance of an illegal act is void, yet a security given or promise made in consequence of a prior illegal act is not of course void. Thus if a man in an illegal trade has paid the losses and takes a security of the other to reimburse him on the completion of the loss. This contract a promise is binding, as in case of an illegal insurance. Narrative 14th Pint. 1433.

I should observe here that this decision has been questioned and I do not know that it has been precisely cited anywhere 11 B. & D. 267. 3 T. Rep. 218. 20 Bl. 379. Watts. Part. 121. In however 3 T. Rep. 10 30. 6 T. Rep. 61. 505. 2 B. & C. 372. 3.

It has also been determined that if the whole loss has been paid by one partner with the prior consent of the other and no such promise to refund made, the other is bound to repay on a promise implied in law. 3 T. Rep. 11 222. This has been stated more extensively since
Of a person entering into a contract, the acts of making which by him is made unlawful by positive
law in many he is bound by it, the he could not bring any action but to give him an immunity or privilege. 1 c 66, 199
Ch. Bills 19.

So also if a person becomes a trader or a by himself
mainly he is liable as a trader to the contract law, yet
he could not avoid himself of his contract made
in that line of business. 1 & 7 Ed. 199.

It is read again

that if the object of any contract is perfectly useful or
magnatory it is void. The law will not interfere to in-
force it, or if one should contract not to commit the said
work for the law will not suffer itself to be trifled
with in this manner. 1 Faw 1 2 32
And a contract which wantonly affects the person or interest of a third person is void, as that a woman has committed adultery be. So is a contract which has for its object the defence of some woman except a third person, indeed such an already in vulgar, as well as wanton, as that already has no such truth, a woman false hair a false truth. Cor. 729 735. 5 T. Rep. 74. 1 Cow. 237.

Having considered the second quality of a valid contract viz. intangibility the next enquiry is making third enquitying that it be certain. That is the terms of a contract must admit of some intelligible construction. For as if a contract to convey to B certain lands or goods is convergence of B promises to pay him a sum of money in a short time, the contract is void, the time short being too vague, as something can be void to be short receipt by composition.

1 B. R. 92. 97. Ex. P. 250

But a promise to pay money generally without more is good, as if it is understood to be payable presently. The promise is sufficiently certain, creating a present duty which is of some payable immediately unless some future time is expressly agreed upon. 7 T. Rep. 537. 124. 1 Cow. 108

But if one promises to do a collateral act, or enacts distincquent from paying money at some future time he is bound by it. That he is allowed his whole life to do it as so that he cannot be subjected
to an action for the non-performance. The only action that can lie is against his representative. Thus an agent to make a loan at some future day, if the promisor dies without owing it, the contract is invalid, his representative may be subject to $1 Pow. 180.

But in relation to this rule requiring contracts to be certain it means, i.e., that if certain it must certainly describe, i.e., what can be made certain by reference to a known definite standard or measure is sufficiently certain in general of law, as if an contract to pay the value of $100, without this may be ascertained by reference to the market price. He too a contract to pay $10 such a sum for a certain article as C shall determine, $10, 14 C. Cos. Ch. 1914, 1 Sec. 270, $10, 52 65, 1 Pow 180.

Of the Manner of Kind of Contracts.
All contracts are into executory or executory, a contract is said to be executory when the parties transfer promises or rights to each other, together with immediate possession or with a present, indefeasible right, rights of future profit. In such contracts neither trusts the other, for the right of profit. Also of imperfect other immediate or future is supposed to be paid. Thus the contract is executory when the goods are sold delivered. This is a transfer of property with an immediate or actual possession.

So it is executory where there is a transfer of property, i.e., an inexecutable right.
of future performance, or, when a man has hired under some engagement to dispose thereof from the time such engagement occurs. Thus, lands are under a lease to pay 21. 106. 64. 3. I Poss. 175. 188. 9. 234. 5.

Executive contracts are those by which no property passes in present, but which are introductory or preparatory to an actual future transfer or exchange of property. Thus, A & B agree to exchange houses next week, so that B's can settle to grant or lease his lands to B. This, hence, it seems.

A contract that is executory, either when one party performs immediately on the other is trusted, or when neither performs immediately but each is trusted, is the language of all. I confess it would be more correct to say in this case that the contract is as to one side yet it is as to both sides. Thus, if A lends money to B on a promise of repayment it is executory on the part of A, but is to B. Again if A engages to make a man in the future, the contract is executory as to B, but as to A. Hence, 1 Poss. 235. 6. I shall treat of the first of this distinction more at large hereafter.

All contracts are either stipula or implied. This is simply another coordinate division. And Bond divides contracts into such implication & contract.
Construction, the latter division of contracts cannot be distinguished from esquires and as I respect to their dignity, an esquire contract is one which each party stipulates in such time, what is to be done or omitted. 1 Fox, 236.

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A construction contract, as Powell says, is one which is raised out of an esquire contract by construction. It is difficult from what the instrument forms a basic import. Now this is a distinction entirely arbitrary. An instrument for them is so logical or legal distinction between esquire and construction contracts, for a construction contract is nothing more than a division or branch of esquire contract, for it is raised by construction out of the word or terms of the esquire contract.

Thus, a method in a deed of conveyance on neglecting the grantor's intent in the subject somehow in construction of law to a contract that he has the title or title, more than in a different. Hence in the nature of this 1 an esquire contract is agreement. Now if the deed or agreement that I am well might, be it is clearly esquire. But according to Mr. Powell if the deed run this, whereas I am well might, be the contract is nothing esquire no implied, but it appears to run that there is no difference and that the contract is to be found in the language of the parties it is clearly an esquire contract. So this there is no sort of propriety in treating it as a distinct class. That such a method in an esquire contra.
So also a nuptial in a marriage settlement that whereas it is to pay £1000 as a marriage portion is held due to be a covenant or agreement that it will pay that sum. This is Dowel also turns in equity a constructive contract. 1 Sam. 236. 2 Eq. Ca. 652.

Then an certain case, in which a claim by way of in
ception in a deed by dedication. In any amount in construc-
tion of law to a covenant. On this subject I would refer you to the title of covenant hoard. I will just mention however that if a lease is made by dedication of a farm unless the certain sum amount to a covenant that the sum mentioned shall not pay. (a) 667. How. 67. 11 Co. 50 b. 1 Lew. 117 b Lab. 232.

To also a reservation of rent in a lease in the amount to a
 covenant in the hands of the lessor to pay the rent, as if an induced lease more than at least in claiming to 1B. yielding, paying the remaining rent. 1. Co. 667. 1 Sna. 407. 1 Kent 10. Co. 379 Pol. 136. 7.
1 Chit. 518. 1 Bow. 242.

So also a lease containing these words...

"without unlawful and waste" amount to a grant of two growing upon the estate described to the
and the Subject of what I call an in shop grant. Hor. 137. 1 Bow. 243.

Implicit contracts on the other hand are those which are not express; in terms not named the contract from the terms used in the contract, but write
but aim by adhesion of law one of the facts transacted in its gists of the case, as if it required to work for him. The implied contract is to pay the value of the labour, from the fact of the request of labour to the performance of that request by law raise the implied in out of the whole transaction.

So if one delivers goods to another for safe keeping or any other purpose, the bailee implicitly engages to take such care of them as the law requires. Here there must be no implicit promise, nor must the contract be raised from the language used by the parties, but from the facts as they took place. 1 Pet. 2:16. 6

Thus two classes of such implied include one contract known to the law.

If a seller raises money on an

Act, the law rais a promise on his part to repay it to the seller in the action, that promise is not raised out of the terms of any express agreement, but from the same fact in the case.

And all that numerous classes of actions called

instituted, I mean, art an implied universally in this class of promises, or promise implied in law from the transaction.

If B grants to B, the tree growing on his land to A, the implied, implication also grants to B, for ingraft

trees to keep them, this is strictly an implied contract or promise not raised from any construction of the express contract, but mainly from the fact of the grant.

Nov. 15. 1 Sam. 3:22 2 Pet. 3:6. 2 Pet. 36

And now since a truth
money at will, has been converted into a linear of from
year to year. If a lease hold, own his time, without any
notes or contract, then is our in full act, by right to
a lease for a year, so it will be continued from year
to year until one notice is given to quit, which is
usually six months in the estate, or then a hold or
"tates at will" 1 (Paw. 135, 256.

There is such a vast variety
of unlimited contracts, that mere full specification of the
I must refer you to "action of aft"

All contracts again are either absolute or conditional.
Absolute is used to distinguish itself from conditional:
which means, contract by which one binds
himself or his property absolutely: an absolutely,
as it is considered of a covenant to lease, or promise
to pay rent, or in consideration of money de
named: in my age to pay, or to deliver some
shattel, 2 (Paw. 252. 1 Paw. 259, 256.

A conditional con-
tract is one the obligation of which depends within
culogy, or in some respect upon some uncertain
events, upon which it is to take effect or be defeated,
be enlarged or abridged. 2 (Paw. 151.

When the contract is to take
effect or be definite within by the event of the con-
dition it is entirely conditional. When it is to be
enlarged or abridged, the obligation continued or con-
tinued is partially conditional the condition
not going to the whole contract. In both cases,
Thus if A agrees to purchase lands on condition that B returns from abroad on such a day, the performance or obligation is suspended until the event determined. If he returns according to the condition the contract is absolute; if not the contract is at an end. Is performs entirely to another party is bound by it. It one.

Again if A promises B to pay £100 on condition that he marries B by such a day, the effect of the contingency is happening or not, is precisely the same; in the other case, before the day the event is the consequent obligation is altogether doubtful, but if A marries B by the time the obligation is absolute; if not the contract is at an end.

So also if I consent to pay you £100 on condition that you coming to me entertain lands by such a day. If you fulfill your part, your right to the money is absolute if you may demand it immediately. If you do not come by the day I am at a loss. It one.

In this case the contract is wholly conditional, but there are cases in which it is only partially so. Thus if A drags goods to B. It is an agreement to pay £100 for them, however much. The £75, the condition relates only to the amount to be paid. But no further. It is to pay something at all events. This contract then is only partially conditional. Pint. 262. 1 Pint. 260.
If a contract to give $A$ for his labor or service to $B$ is to be void, the obligation to pay is suspended until $C$ determines how much is to be paid when it is determined the money may be demanded unconditionally. But if $C$ refuses to accept it, the contract is altogether at an end, for it is entirely altogether conditional.

Dyer 91 1 Page 261.

This subject of conditional contracts involves of course the subject of unlawful condition.

The effect of unlawful condition varies according to the nature of the condition of the condition itself, on the subject that:

First point: sure is that if an unlawful condition is annexed to an executory contract, not the consideration only, but the whole contract is void. Thus if one is bound by agreement to leave a horse in safe hands conditioned for the performance of some unlawful act or theft, the whole bond is void. The performance of it can never be enforced because a wrong if rendering can never be acquired by the commission of a crime. 1 Inst 206 b. Ed. Dyer 182 175. 185.

The rule is the same when the unlawful condition is for the performance of any unlawful act or on taking of any legal office or if to sustain against the public policy or general welfare, or in condition by the obligor of a horse, not to engage in a particular trade, the whole bond is void, for it cannot be enforced, without compelling the performance of a contract the law without
In such cases the law frees the obligor from the penalty when he is the person to commit the unlawful act, but he should decide of his own free will to commit it, and supposing the obligee gets benefit he might derive from the obligation, when he is the one to perform, for the same purpose, the will of the latter is not held by committing the act, i.e., the other is freed from the obligation in any event, the object is plainly the same in both cases.

Generally speaking, when an unlawful condition is annexed to an executed contract or conveyance, the condition only is void and the conveyance or principal part of the contract is good. The contract in this case is executed by the parties, bind, not the aid of the law. Whereas in case of an unexecuted contract recourse must be had to the courts of justice.

So the contract is to be void unless the proffered condition is void. i.e., the professed act is good. Thus the title is merely an absolute as if there had been no condition annexed. 2 B. 157, 1 B. 264.

In this case the law seems to the profferer the estate that he may be certain no limitation to commit the offence. Whereas if the condition is void, then to convey to B. implies 13 does some illegal act. B. receives no benefit from it, whether he performs or not he cannot enforce the contract.

This means may not be obvious. States the effect in this
two cases is different, yet the principle, the object to
end to be attained is precisely the same in both.
No different effect arises out of the different nature
of the two contracts.

The law by refusing to interfere in
such as contracts, or those which are executory when
both parties are in pari delicto, leave the parties
free to commit the act without any temptation to do
it, and as the law in such cases will not enforce the
contract, neither will it aid one party in enforcing
it when it has been induced by the parties; it stands
mute.

But this latter rule relating to contracts execut
able, obtains only when both parties are deemed to
be in pari delicto, for when the froward is not froward,
eminent the law will mandate it aid, as it was made
for his protection and made both the conveyance
and condition void. As in the case of a mortgage to
secure the payment of usury, and it is unfaithful
this case for the protection of giving that protection
which the law intends: 4 P.C. 361; 2 P.C. 328, 8th 1671.

Whenever then there is an
undertaking condition and both parties are deemed
to be in pari delicto, the conveyance and condition both annul.

Under the rest rules to be cited is another case which
some may consider. If a bond is given in restraint of
marriage, the bond is condition void on both sides, as opposed
that the policy of the law.

So a bond given to a misprision
determined to be void if no person in any event, the oblige is not bound in any event. 2 Cunn. 72. 25. 2 Vent. 109. 2 Will. 3 1141. Earl of 1834.

To a bond given before hand because a remise for prostitution, is void in title, as it is an instrument to immorality. 3 But are given afterwards, as a reward to the party injured, it is good, it simply way of compensation. 3 Cunn. 1568. 1 Ch. 381. 517 3 Will. 339. 2 S. P. 432.

And all conditions inapplicable to the matter of the contract or conveyance are void. Thus if a profit in fee is made with a condition that the profit shall not alienate, the condition is void if the profit be absolute. In the condition is technically indefensible to the policy of the law.

So also a conveyance in fee conditioned that the purchaser shall not take the profits of the estate is good absolutely the condition being void, for it is inapplicable to the value of the estate, so that the conveyance and the condition cannot coexist. 3 E. & J. 596. 2 Will. 233. 1. Raw. 262.

It is agreed however that a bond or covenant by the father that he will not alienate certain land, the profits of which he holds, the estate, or that he is not to alienate it, or to release the profits. As if a father convey land to his son and the son then covenant by bond to let the father enjoy the profits during his life, and that he will not alienate the land in the meantime. The son is not prevented from enjoying his right, being
alium or tate the profits of the choses to perfect his land.

This is a natural distinction to be observed with regard to impossibility conditions. A condition may be impossible at the time of the contract made or possible at that time and become afterwards impossible and the effect of the impossibility in these two cases is in many instances very different.

As to those conditions which are possible at the time of making the contract or conveyance, became impossible afterwards by the act of God or irresistible accident, the rule is, that if such a condition is annexed to a contract received, the contract is not avoided by non-performance, i.e. the party claiming under the contract or conveyance does not lose his interest by non-performance.

1 Inst. 206 b. 1 Peth. 264. 244. 245 b.

Thus suppose a profit must make by A to B as conditioned that within six months, B goes to ¾ to a transact certain business for A the proffer, in the 1st mo. B dies. Now the estate is devolved in A on B's death, but goes to the heirs of B, unless B's estate absolute in them agreeable to the maxim, "extra die mensuris non est injuria."

10 Mod. 268. 1 Co. 98. Nov. 35.

The rule is the same when this condition is rendered impossible by the act of the party granting the interest or entering into the contract. As if a conveyee were made to B as conditioned that he appear at a certain time at place to do cer-
time acts, now proceeding to the terms of the contract if it
does not appear at the time and place for the purpose speciﬁed
he does nothing by the conveyance. But if in the same
time it happens to imprison him so that he cannot
perform the condition, the condition is void. The same
is the same as when the impossibility is created by inev-
itability accident.

The principle of the rule is that in
estate being voided cannot be done by except by the
default of the donee, and he is not in fault when
the non-performance is occasioned by the act of God
or of the other party, or by the force of law of which that
is the direct cause.

But it is otherwise when the condi-
tion becomes impossible by the act of the party
himself, as of the donee in the sample above, if he
committed suicide or became a slave, for the law will
not suffer him to avoid himself of a subsequent
cause occasioned by himself but that can his
tricks could not hold the land. 12 Vent. 210. 4 Pau.
430.

I have given examples of conditions which are impossible
at the time of making the contract or conveyance
but which become afterwards impossible by the act
of God or of the other party. We are now to consider those
which are made impossible by law.

Here a man makes
agreement to A condition that he perform a voyage from
A. to B, within such a time, and virtue after an
act is helped prohibiting all intercourse between the
two counties which continue during the whole time fixed in the condition, the grantee is allowed to treat the thing stipulated in the condition as an infeasibility, for what the law prohibits it treats as infeasible, so that the thing granted is also totally in the grantor. 2 D.W. 278.

Palk 198. 3 Rev. Case. 592. 5 ib. 269.

And finally to give an example where a condition is often so uncertain impossible by the act of the party making the grant, it makes a breach to B condition that B marries C within in such a time, or in the same time at marriage himself. Now non-performance by the promise will not defeat his estate, the grantee.

But when a condition which is possible at the time of executing the contract or conveyance, but after was made becomes impossible by the act of God or positive law, is an answer to an executory contract, the whole obligation is discharged, but the final grant does not stand above but the obligation is discharged. Palk 147. 1 Pemb. 209. 1 Pyc. 138. 7 ib. 382. 2 Ad. 126. 178.

Suppose a bond given by A to B, with condition to be void an act appearing in a by on such a day. A dies before the day, the whole obligation is discharged. It does not stand as a single bond, as it would in case of executory contracts. Suppose the condition had been to perform a voyage which is now that made illegal or impossibly the effect would be the same.
The rule has again its name when the condition becomes impossible by the act of the obligor or co-venturer, the latter in whom favour the obligation is made. Thus it goes about: if 13 conditioned to be void if 5 remains 2 within such a time of time that time 13 remains 2 himself the obligation is destroyed.

It would be otherwise if the performance were rendered impossible by the act of the obligor. The moment he renders it impossible to perform his own contract he is liable, that is immediately after the time of performance has not arrived, for he shall not avoid himself of himself of his own wrong. 1 Co. 21: 1 Esp. Ca. 2: 30 26: 827. 6 John. 110.

Thus suppose 1 conditioned to convey his house to him on such a day 1 before the day arrives, it was truly hers, the house, he is liable immediately.

The effect of such a condition in an executory contract is different from that of a similar one in an executory contract. The principle is precisely the same.

When the contract is executory, the estate is void and the law will not suffer it to be divested unless the grantor has been in fault, but when it is executory, revenue must be had to the estate who will more careful performance of the condition unless the co-venturer has been faulty.

Suppose a bond given conditioned that the bird of C. shall fly in event the return of the event and D. dies, the bond is discharged, the contract being void, the obligor not in fault.
So if it were conditioned to render a certain quantity of cotton, &c. a statute should intervene (at least) the bond would be entirely discharged, or the condition be that obligor pay any other in ten days, and at the expiry of another before the time has expired he may be discharged. *Tol. 178. 2 N. Rep. 240. 8 Co. 92. Cr. 11. 374. 1 Sim. 256.

I would here refer to a rule upon hand drawn by the 1st. article & unconditionally commence to do an act which at the time is possible but afterwards becomes impossible by the act of God or inevitable accident, the commissary is bound notwithstanding as in the case before mentioned of a ship math to sail to King's. This might appear contradictory to rule that I have just spoken of in relation to the conditions of an 1st. contract, which it was impossible in that manner discharge the whole obligation. In the case of the ship math the construction was plain by such as the intention of the parties or warrants. As being virtually an insurance. But in the case of the said bond, the act to be done is merely toward a penalty.

The difference then in the two cases is formed in a difference of construction & that found in a plain difference of intention.

If a contract contain a clause making the party bound a judge whether the construction is performed or not it would be a jury may determine the fact notwithstanding as if the contract were to build a house in a particular manner, and the
family, is to determine whether the event is null and void, such a
event is an incident to a pronouncement of the first principles of contracts. N.E. Rep. 208.

If a bond is
given an option for the performance of one of two
things in the alternative of one of them becomes impossi-
ble by law or the act of God, the obligee is still bound
to perform the other, unless it is agreed that the obligee himself
occasioned the impossibility, in which case the obligation
would be at an end.

This rule was formerly otherwise because
as it best says the obligor loses his election which by the
contract he was to have. But the reasoning is much more
satisfactory in saying that as he was to perform one he is
to perform the other. This supposes
the contract to be every house or house of the house is
burst down by lightning. 1 Best Paul 242, 5 Co. 22,
10 Mod. 26,Talk 170, 1 Penn 398.

If a condition becomes
practically impossible by the act of God or by the law,
the obligee is still bound to perform as much as remains
possible, provided the obligee requires it. Thus suppose
the condition is to convey land at house of the house is
burst down by lightning.

So if the entire act is made impos-
sible by law, the obligor may be required to do as much
as is consistent with the law. Thus, an exclusion that a
tobe commanded to bear for 60 years before performance
a statute required such bonds to be in making legal for a
longer time than 60 years, the obligor was entitled to cli-
The term considered these conditions which were possible at the time of making the contract and afterwards became impossible by act of God, etc. It must be

considered that in the contract the whole obligation was discharged by the superfuence in possibility. When to void contracts, the condition only was void of the conveyance, absolute.

With respect to the other class of conditions, viz. those which are impossible at the time of making the contract to which they are annexed, it must be shown that their operation depends upon the question whether the condition be subsequent or precedent.

A precedent condition is one that must be performed before the rights or estate dependent upon it can rest or accrue. A subsequent condition is one by which a right or estate already vested is to be defeated, and for this reason it is usually termed a hindrance or defeasance. In its defense it is to expire. 1 Inst. 206. 2 Bl. 156. 7 W. 263.

As to the effect of a precedent condition if it is impossible at the time of making the contract, the right or estate which is the subject of the conveyance can never vest. The contract is void at initiation, yes by the terms of the conveyance the estate can never
must an uplift the condition be performed. If the condition is by
the support impossible. Thus a current 66 to 10
10 if 13 you to Rome in our story.

But if the impossible condition
is subsequent, the condition only is void if the estate is
settled and the non-performance is not the fault of the
grantor. Thus, the condition of a fearful bond is, that the
obligee goes to China in 14 hours, the bond is single.
the condition void. 1 Inst. 205, 1 Brow. 666.

I find nowhere
in the books relating to a condition precedent which is
possible at the time of making the contract or even
agreement that which becomes impossible afterward
without the fault of the obligee or grantor. Still
it without doubt, that the rule would be the same as
when the condition was impossible at the time of
making the contract.

Thus a current 66 to 10 to take effect
must in imposition when 13 returns from India. 16 miles
or some others, it is clear from the terms of the contract
of the supervinum impossibility that the estate can
never vest.

The rule is, the same if the precedent condi-
tion is unlawful you will remember, that if an
illegal condition is annexed to an if, contract the
whole is void. If to an existing contract the con-
dition is void.

But when an unlawful condition is precedent
no right can ever vest. Thus at most, a current
10 to take effect when. 18 steals, Now it is known that
no right can vest in title for performance. If it be still, it cannot vest, for no right can be acquired by an
unlawful act. 2 Bl. 157.

If a subsequent condition is impossible at the time of making the contract on either part, it has no effect whatever the contract is in law unconditional. As a proof to this, to be void if properly goes to Rome in 24 hours.

And the rule is the same in relation to conclusive subsequent which are impossible at the time of making the contract, that which becomes so afterwards, unless the impossibility isoccasioned by him in whose favour the contract is made. If an est contract is accompanied with a condition given at the time of making is impossible, the condition only is void. As a bond to B conditioned to be void if B failing to go to Rome in one hour. This is in legal construction a single bile. 1 Burr. 266. 2 Bl. 157. 1 Pow. 266.

The doctrine under this rule an y more, that it is very important to understand the reason of the rule, how it is to be applied, why a subsequent impossible condition amounts to a contract shall remain. If, in the words of the present condition be annexed it enforces the whole contract? I answer, that when a bond bond is given the formal part creates a debt in futuro, so in a present the estate vested in the vendor and a subsequent impossible condition, which is impossible at the time occasioned by way of defeasance is void.
The bond in one case is in effect a single bill, and
the estate in the other vested absolutely Vbl. 15.

This rule is founded in the maxim that the law never con-
vides a way to do an impossibility. If the condition
is void, by necessity of mere construction.

In the case of such contracts if the impossible condition is in
carded in the body of an instrument, instead of being
annexed by way of subsistence, the whole instrument
is void, for the condition is in the nature of a precedent
condition. There is no deduction in present.

To explain
myself. A final bond running thus, "Know all men by
these presents that I, A.B., do freely and unreservedly
and C.D. in the sum of $1000 to the payment of which
whensoever he shall now or that creates a condition in pre-
sent, it is thus for an absolute unconditional debt.
Then follows the condition: "the condition of the above
obligation is such to enable the C.D. to go to Canton
in 24 hours, it is to be void. This condition the law
may declare void if it is annexed the final contract,
a present debt it being a distinct thing which
the condition is intended to-defeat.

But if instead
of such a bond the contract had been thus. This in
dertain must be between A.B. and C.D. that A.B. in
consideration of C.D.'s undertaking to sell to Cant-
ton in 24 hours, covenant to pay him $1000 if he
the condition is void in toto by the terms of the con-
trust that this is no subject in present. All agree
to pay if 8. Davies perform an impossibility 8. 8. 8.
then no claim without performance. This you must of
sure constitutes the difference. 1 Thel. 172. 1 Poor Con
267. 1642. 1644. 1646.

Contracts of agreements required by state
paw to be written.

I am not now to notice the C.P
 distinction between special ties. Simple contracts
that will be considered under the heads of considera-

The rules relating to the subject now on hand are
bom introduced by the state of frauds. Inquiring
as it is called. 15 Th. 2 punishing ro. 163 as p. 72
W. Bl. 157. 1 Poor 267.

This stat in one very serious
is probably in force in every state in the union.
Poor Con. 1 St. 134 as it is in the transcript of

The Stat. Eng having been long in fac-
received many constructions or supposed to differ
cases long before our statute were made, so that
knowing adopted the Eng. and to his party we may be
said to have adopted the construction of the Eng.
count.

The statute provides that certain classes of
agreements will not support it shall not be made the
foundation of any action or suit in law or equity
enlists the agreement of some new executant shall be in writing signed by the body or his authorized agent. ibid. Ext. En. 354.

The mean effect intended to only one is to make a mere signing, i.e., that there be some writing in for a memorandum, and to give certain contracts or promises legal effect which by C.2. would have been good by privity merely.

For the statute does not provide that the contract shall be in writing, but that no action shall be maintained on it. And this remark will be found very material, for it is observable from the philosophy of the statute that its object is to prescribe a number of evidence requiring written in some cases where the C.2. fraud evidence would have been sufficient, and it is apparent from the same source that it was not the intention of the legislature to afford the inherent force of the plain contract, that has preceding so many inherent validity as it had at C.2.

The class of cases contemplated by the enactment are six cases, including the first five. In the first place, it is provided that no action shall be maintained at law or at Equity, or in any of these species of contracts or promises unless it shall proceed to writing.

1st. Where made by Executor or Administrator to assume out of their own estate, any debt or duty of testator or intestate.

2nd. A promise by one person
to answer for the state defect or miscarriage of another.

3. From the consideration of marriage

4. Contract or sales of lands, tenements or hereditaments, or of any interest in them, concerning the contracts of lands, is in most jurisdictions, the meaning of the sentence is probably sale or contract for the sale of lands.

The law would seem to be, that by the Eng statute it is provided that all leases or leases of lands or of interest in them shall first be leased at will of the owner for a term not exceeding three years, and assuming a rent equal at least to twice thirds of the improved value, and leases thus may be good for ten years. And now in Eng leases, at will are by continued decision considered the same as leases for one year to year.

In our Can statutes there is no such exception so that all leases can be treated alike.

5. Contracts not to be performed within one year from the time of making the

Lastly, there is a clause in the Eng statute making a similar provision restricting the sale of goods of the value of £10 or upwards, which is somewhat curious, and, while you draw so I shall not treat of this kind of contracts, that this provision extends to sales to says or is to those which are received at the time.
New I would observe that the amount of the statute is that none of these classes of contracts will support an action at law or C.P. unless they are in writing or some note or memorandum of them is reduced to writing: signed by the party or his authorized agent with the exception in the 1st class of leases of tenement of time, receiving the specific rent, and another in the 6th class, relating to the sale of goods which may be binding in law if the buyer accepts part of the goods so sold, but actually receives the same or gives something in earnest. 1 Bac. 73. 8 T. 73.

The object of public policy, perhaps, was to prevent frauds or injuries, or rather prevent the medium of injuries. Hence the statute is anomalous in that it prevents injuries: if this object was to be effected by preventing the proof of such contracts as are unlimited in time or by fraud, evidence. It being supposed that there was great danger of perjury in proving them with the solemnity of written testimony.

Contracts of the first kind are found by 64. or 74. to answer one of the same estate or debt or duty of the testator or intestate.

It has been said un

in the clause that if he has goods in his hands transn

the promise to sell, bind him personally even tho' by

a bond, because it is said that the goods being advan
tagious to him, transact the debt or duty to him per

dually. 1 Ky. 125, 6 T. 72. 8.
This is a new statute. It is no judicial decision to support it, and it has been overruled by courts of error, being unjustly against the interest of the state.

The reason assigned is not true of law would not support the proposition. The proposition is an Ex. of course cannot transfer the duty to him personally, the parties, all being tortuus. Verdict, should properly.

And since the state was not brought upon the grounds of distinction in contracts to consideration. If the argument were without consideration, it would not have been good before the state and if any prior promise is good which is made on good consideration the statute is completely done away. Only further his written promise will not bind him without consideration. The common is to be a question in an act or a written promise but if the promise is not written then can be no question of the consideration since the state 79 Ed. 1. 2. 8. 7. R. 9. 1. 4. 5. 0. 6. 6. 5. 7. 0. 9. 0.

Indeed even in the last century it was determined by taking the proof of ejectment in the hands of the court. The court now is, next promise. In the promise of the court is, in the court. The court now is, in the court. The court now is, in the court. The court now is, in the court. The court now is, in the court.
been annulled and run through how much or diminution there
was been made, such a subrogan may be very
declirable. To ascertain the existence of the debt, & also
to know whether in was effects or not. 1 T.R. 369, 2
Rev. 6:7, 7 Rev. 453.

But if in subrogation to substituting it
assumed that he shall pay a certain sum. It is part
of debts to that amount he cannot afterward deny
forth by swearing that he has no debts for such answer
is equivalent to include besides, a finding of debt
to that amount and as answer is generally as said
for binding as a paying of account of law. 1 T.R. 453.

It was once held that the leg of Interest by Eu was
an admissions of debts to the amount of the principal
in nature with this qualification that it the same few
before on the Eu. This too has been annulled in place
for it might be that Eu had debts formerly to pay
the interest of now more, and it was his duty to pay
that. 5 T.R. 8.

But one acceptance of a bill of ex-
change by the payee Eu is an admission of debts
to that amount, i.e. an unqualified acceptance by
the Eu, as such, to permit him to deny having
debts would be a fraud of the original principle of
man cannot have by infringing the rights of third parties.

1 T.R. 1260, 3 Willy 1, 1 Rev. 36, 622, 2 Bac. 1235

And a transfer by
the Eu, or a holder of a bill of exchange amount to
a similar admission in his favor, for endorsing on a
bill amounts to assuming a new one. By endorsing an
bill the drawer commits that if the drawer does not
pay the bill he will. 2 Stark, 1260. 3 Mil. & Litt. Chitt. 426.

at any event, the Esquire promise should be in
writing to bind him to answer out of his own estate
the debt or duty of his testator, yet he is not bound if
the promise is written unless some sufficient considera-
tion is shown. The statute was not meant to subject
him by any writing but to prevent his being subjected to
suits by a written agreement. For instance, if a suit
is sufficient considered. Indeed the rules relating to this
subject are precisely like those which govern fraud
promissory before the statute. The mere fact that the tes-
tator was indebted is not enough. 7 T. & C. 350. note.

I suppose that he is not liable on any written promise
but, an Esquire is liable on written promises in those cases
and times only in which he would have been liable
on paid promises at common law, and that I take to be a
complete criterion by which to determine the statute

As to make the Esquire personally liable on his
promise, the written, then must have been a prior ex-
isting claim debt or duty, formerly existing on the tes-
tator, which bound him as Esquire and without that
there can be no consideration. For the statute relates
to such promises as were made to pay some debt or duty
The consideration necessary to support the promise must also appear in the writing. This rule is established under the combination of the word "agreement" and "in the statute." It does not direct that the promise be in writing, but the agreement, or the contract of both parties, so that what is relative to the transaction on either side, which of course includes the consideration, must appear in writing. 5 East. 106 cit. 307. Robt. 116. 257. 67.

But an estoppel, advantage of this clause must have been an estoppel when made the promise, otherwise the promise is not within the clause of the statute. As a promise made by one in consideration of being afterwards appropriated Estoppel. 379. to which one after the death of the original creditor knowing to pay a certain debt of intestate, provided he is authorized about the business is not within this clause. Whether it would be within the statute at all must depend upon the nature, form of the contract. 306. Robt. 201.

In declining against an Estoppel on the promise to pay the debt of intestate, it is not necessary to some facts, for he is subject to it as all are being paid, if it is no defense that he has no assets, the action is not to recover against him individually. Whether if he were sued in the original character of Estoppel as such, he is not to be sued, Estoppel without assets. Robt. 205. 8
II. Promises by one person to answer the debt, default or miscarriage of another.

Under this clause there is established by construction the general distinction. If the promise is made by one for the benefit of another it is binding not within the state itself by hand. But if collateral, it is not binding unless it be in writing being within the state. 2 Ky. 1077, Conk. 227. 1 Mo. 306. 3 Barn. 1888. [41. 101. 2]

It is to be observed that the words original and collateral are not used in the statute at all; the distinction between them arises out of the construction of the statute. By a collateral promise a man is put in effect a promise to answer for the debt, default or of another. And an original promise is not in effect to answer for the debt, default or of another. A promise is said to be original when it comes under one of the three following classes.

1. When the.those persons for whose benefit it was made is not liable at all to the promises. It come with no necessity to said to the promise to answer for the debt, default of another. When the party promising is the only debtor. As if A made a promise for B in a case in which A is not at all, nor is B liable at all. Full 1 P. 84. 3 Barn 1921. 217, 212, 209 216.

2. A promise is said to be original which not within the statute when the third person liability (for whose benefit the promise was made) is extinguished by the promise.
being made, (Thou dost sometimes quoad, &c.) I say to you, 'If I will pay you for it.' This is a promise to pay the amount of the debt, but it does not take effect till his debt exists; it is said therefore to be an original promise & I think correctly, (of this new breach,) 374. 273.

2. A promise is also said to be original, that without the debt, when there is a new consideration, arising out of a new & distinct transaction or event, and moving to the promisor, i.e. made for his benefit. For in this case, the original debt is only a measure of what is to be paid for another object, there is a new consideration. 3 Penn. 1856, 366, 86. 3 East 325. 374. 232.

Now to sum up the reason of the whole distinction. If it be asked why is this promise called original, because that it is because in consideration of law, it is not a promise to answer for the debt be of another, unless the language would imply it to be so.

But on the other hand, when a promise is made by one in order to the sustaining & continuing liability on the part of the other, for whom benefit the promise is made, or to become credit for such third from the promise is collateral & so within the statute.

So when the promise is made by one in behalf of another to furnish a man, to the hirer, a new remedy against the original
promisor or debtor. T ellis 205. 2 Mcg. 94. 120. 306. Ca.

Reg. 1885. 2 Phil. D. Comp. 166 1 Bl. 120. 1886. 132. 3 D. 185 2 Mcg. 106. 2. Perk, Co., 212.

If it is asked why there
are collateral promises. I answer by relying on the common
law form as is single promises that such promises
are always be found in consideration to be taken
in legal effect by the parties as will arise from, pursuant
therefor for the act itself of another.

For example. Thus under
the first rule. I say to a man where goods to A for his own
account, there to me and I will pay you. This promises for
but the act is not this. it is among a set of which
the terms he is also engaged to pay
on my account. or deliver goods to A I will pay you by
understanding it the deliverer of goods delivery. it is my
act alone within the statute. 2 T. 81. 2 Mcg. 1066
1 Bl. 120. 1886. 106. 106. 241. 241. 241.

But on the other hand. if I contract
with a tenant in this form, deliver goods to A for
his own for if he does not pay me I will the promis-
in is collateral. It is here means a security. It is a
promise to pay the statute of another in aid of debt. it gives
him security for performing the act with an ad-
dditional promise to reverse the debt. 1886. 106. 241
2 Mcg. 120. 1886. 106. 241.

Where the agreement
is in this form: I will pay you.
according to the late opinion it is substantial that it is substantial prima facie.

You observe that if the words and or other goods I will pay you" or change to you in or on my account the promise is ought. But in that case the promise is but a guarantee of the debt, it being obvious of the intention that t.w. was to stand as debtor.

The opinion are not uniform but the fact is settled, the only question is whether t.w. is to make a debtor it depends upon the common acceptances of such promises among traders some if the promise is ought to be changed the promise is ought. 9 T. Rep. 81.

2 B. Rep. 221. 1 B. & C. 158. 3 B. 223. 4 B. & C. 58.

L'Aubepine, and held that such a promise made before the goods were delivered was ought but the making after was not ought but I don't think whether the distinction was not a correct one. It was however examined. Buren observed that that distinction was much for L'Aubepine claimed that a promise before delivery made the promise the right debt. But by the late case it seems that unless the promise is in this form the court is at liberty in collecting the intention of the parties to consider all the circumstances of the case and it may be that unless the promise is in this form and prima facie collected yet the court will consider it a


I can rarely read over a case of this kind. A third

person or a woman of no property is about to go to Caunter
and does to a trade trust how to divide you paid within their months. The forum here is clearly original. The amount of the determination is that a promise in this form for the benefit of his person is prima facie collaterral, but it may be shown to be void: from all the circumstances, which together give us the intention of the parties.

Again a promise in this form "if you do not know when you have time to send the goods" was held due to be collateral. The promise is merely a guaranty of the debt already existing at the time. 2 Cal. R. 80. 18 Cal. Dig. 191. 1 Cal. 210. 11

So a promise by me that in consideration of your letting a house to C. he shall receive him in consideration, this is undistinctive to answer for the default of another to procure him under my promise does not discharge him from his liability on the bondment at my furnishing to him with an additional answer

And indeed it is a great rule that a promising one that another shall pay money or do one act for the act of another of which the third person is liable is collateral according to statute for it is merely an agreement to answer for the debt of another. 1 Cal. 252. 219. 2 Cal. 1285. 1 B. & S. 75. 6. 3 Cal. 18. 18 Cal. 686.

But if one stipulates for an act to be done or a person to be made by a third person, who would not believe for not doing it, the contract is original and th
promises were or liable. E.g. A promises B, on such consideration that C shall pay a sum of money & that if he does not, he ed. will. C not being already in debt & owing to this promise, it is right that if he is called on, it is collected. If he was not indebted, nor under any obligation, so that he can make no default or be guilty of any misfeasance for he has not undertaken to do any thing.

The case is similar to this. Suppose to A. to let me a house for a certain term which I engage at B. shall pay if he does not, I will. If B not being bound has no concern with the promise. I am the debtor. Rolt. 222. 3. Gilb. 3021.

If an agent buys goods at one acquaintance without discovering the name of his principle, this promise included in the business is binding on himself, it is right that he acts for another. An agent for another or between the agents & the principal yet the acquaintance knows nothing of the relation. 3 Bur. 1921. Cent. 328. 213.

And it seems that to make promise collateral, it wasn't necessary the third party should not only be liable, but had to liable, or become so at the time the promise is made. L. Ray. 1085. Rolt. 219. 222. 232.

This is illustrated by the last example, where A promises that C & B shall pay 6 if either not, that I will. If C & B afterwards are called on to pay it does not discharge my promise, and all to his may be in writing, still mine remains, for it is the single promise, and if his were not in writing it would not
In binding being collateral to within the statute, my promise was original at the time it was made and cannot be made collateral by matter of fact facts.

If a promise be made by one of several persons jointly liable, it is not within the statute, it is original, and not a promise to assure the estate of another. Then a suit against two debt, one promise to pay the whole, for it is only a promise to pay the same debt. For Difference 372, 3 Eliz. Rts. 134.

When according to the distinctions mention ed, the promise is original, the common act of indec if is the proper form, as when I order goods, and advance my accounts, that I will pay for. The action is the same as if I took the goods myself being the only debtor.

That if the promise is collateral and an writing is gross, it is to take the norms out of the statute. Indeed, after such a title, it must be a special action in the case, it cannot be said that I am the debtor. I only give an action to pay. In which case the particular facts must be stated.


2 It is laid down in the books, that a promise to pay a debt due from a third person, in consideration that the promise will extinguish the debt against the third person, is original and therefore not within the statute. For it is not in aid of assuring debt of a third person or his continuing liability, or to obtain
curtate for him. E.g., "Burn the bond you sold against 1st I swear by you or you paid?" 3 Barn. 1888, 1st S. 66, 69. — This however has been doubted. 306. 222. quoted
on one side 1st S. 66, 69.

The rule notwithstanding a fraud
in some cases an principal act in accordance with the
true construction of the statute. the 2nd point of no princi-
简洁的 determination to support it. The promise in
the case supposed is to pay the amount if 2nd. Still,
but the moment it takes effect the 2nd. is extinguished
in the promise cannot effect until the statute.
place, it is a princiual condition to the promise, and
when the promise pays the can not pay the debt of 2nd.
that is no longer in existence, it only furnishes a source
of damages, the consideration is clearly sufficient
being an advantage to the promise.

Again when the
promise becomes the purchase of a debt due from another
and engages to pay it to the party handing over it, the prom-
ise is clearly not within the statute. Thus, if you will
"it as an assignee," it is merely a purchase of the prop-
erty by the assignee from the assignor, and is not sub-
stantially different from a promise to assign the
statute of another. 1 New. 138. 2 East. 325 1864 226.

If I would fix
the obvious that when there is a new consideration arising
out of the contract or new transaction & moving to the prom-
issor, the promise is original, attains to be in the time of
a collection promise or, to pay the debt of another, for
the original debt is only the measure of damages. This
was the principle on which the case of Williams and
Crosby was decided. Thus a landlord came to claim
from a tenant the debt promised to pay the rent even
if the landlord would abandon his lease upon the goods,
and the tenant was held to be original to suit against
the statute. 3 Will. 466. 206, 3 East. 325.

That case was regarded with some jealousy, but it was clearly correct on principle, it has been lately recognized by Lord Eldon in his famous case. The consideration in that case arose out of a new transaction, by which a promise was made for the abandonment or resigning an interest in favour of the promisor, which was in the form of a promise for the performance of securing the suit. As if I should say I will pay $100 if you will deliver to me certain goods. The resignation by Pitt gave his right. Mansfield said that can be nothing to do with the statute, meaning probably that the promise was not to pay the debt of another in the continuance of the estate, the debt of the third being only a measure of damages. 3 Buhl 86, 3 East. 325, 50 H. 256, 20 Rep. 332, 24 Rep. 77.

When one is under a moral obligation to pay for a benefit received by another, a promise will bind him, as when an superintendent of a penitentiary is retained to perform certain duties in a penitentiary the over-\[\ldots\]
Miscellaneous Rules

A promise to pay a certain sum in consideration of having withdrawn a certain sum of £S. for a default, and
bating, has been held void. It binding the by bond, for
there was no debt due from £S. it did not appear
that there was any default in him. The promise was not
for the performance of the same duty. I was munici-
pal to help the particular sum promised or bound to
perform the particular duty, which the promise implied
without. 1 H. 1. 305. 7 T. 6. 204. 3 D. 51. 457. 2 B. 14.
C. 5. 208. 233. 4.

In order to bring a partial promise within
this class of the state, there must have been, at the time
of the promise made, some debt or duty against the party
in whose favor the promise was made, which was en-
tailed or capable of being or entailed by reference
or some common standard or market price, (from
the time collateral is relative)
from the value of the property in that rule of damages.
and in this action the law admits no right to recover
vindictive or prospective damages, as in case of
trespass or battery when there is violence. Such an engag-
ment that is merely to discharge the duty of another.

Day 455

I promise to pay to the estate of Eff wil advertised

I take on mean himself, in threat collateral, the how
of the last case. For the estate still continuing that is not
furnished at the time of promise made no is anything as
browned? I may be united my air

If however the debtor

had been taken on mean proceeds a promise of this kind
would have been one for him that debt would be as
furnished before the promise could be effective. For this
discharge of a debtors being taking on us by the act
is also made an extinguishment of the debt proceeds
by cause with in the second class of orig promises.

4 Burr. 2482. 1 T. R. 357, 6 id. 525, 7 id. 421.

It has been

said that when there arises a new consideration a
several promise to answer for the debt be of another kind.
Whether the arises out of a distinct new action, or not,
new to promise, or not and whether it is not discharged
or not. But the statutes would be perfectly nugatory
if they were the case. For a promise by O.K. would not
be good without a new act. An if every debt person
in no good court is good the statute furnishes its promise
to pay if 13 would delay his suit against C. The
the forbearance is a corrobory. Yet the promise in court.
It has been determined in

Can't think exactly that if a written promise is given, by
the date of another promise the date does not, is discharged
by granting forbearance to the debtor. Thus if a bond is
not against 36. 7 ft. guarantee the date, debtor it
run by and always making his claim, he has all
advantage of the promise, for that was only guaran-
tee of his ability, Thoresby. Rule 397

Abnormal, before

that according to the chronology of the state of France,
France requires the deposit of the satisfaction paid, not offi-
cial, but only to prove a new rule of evidence. Hence a judi-
cicial confession by D's of a bond knowing to keep the debt a
promise reclaiming the weight of proof will take the
case out of the state. As if to an act on such prom-
ises D's should have it, if he supports the plea
it will take the money on proof of costs.

This form of case,

held conclusion of the fact mentions the statement
that the state does not affect the inherent validity
of a contract - it only introduces a new rule of evi-
dence for if the contract was void no remedy will
be had. Peake, Ref. 15. Peake, 60. 204, Rule 258.

When

according to the rules above laid down a promise
to be binding must be written. It is still not making
for the purpose of aver it to be in writing, it is sufficient that it appear on the witness for the state does not affect the
Code of pleading, unless it introduces a new rule of evidence, Com. 187. Bull A Eq 274. 1 Buc. 75. 3 Cam. 1940
Note 157. 222.
In 152 it is not true as for all this distinction is applicable to all the different cases of contracts within
that they are not decided on upon in writing it is sufficient the appearance evidence, Com. 187. 12 Mos. 640
1 Buc. 635. 2 Buc. 126.
Hence if an action is brought on any
deck contract or promise under the statute 3 there is no
requirement of a writing in the Deck 2 except
on the ground, that unless will have proof for civilians
under the promise because there is no proof.
And the court say that they have a right to assume
on deck 3 that there is a promise in writing "Bull"
has a right to introduce such evidence. That was not
so. B to write here is a bill of sale to separate Biff
from his legal evidence. 7 L. R. 185 note. 1 Buc. 37. 8

But where a collateral promise is pleaded in favor of an
other action. It is necessary for Biff to aver it to be in
writing, the reason is that more strictness is required
in such fields, than in Deck. As a general rule assume
that this was once a course of act; if Biff must show
another to rebut it. Bull 1. 2 EEq 274. 1. Buc. 250 1940.
27.
But both in pleading or pleading such promise in
any motion it is necessary to aver a sufficient one.
And a collateral promise to pay the debt of another is also to the same effect, as within the statute in toto, not only in this part which stipulates for the pay of the debt, but the whole promise, contrary — for an interest or an entire contract cannot be severed from another, if one part is void, the whole is so. As a promise to pay the debt of another to deliver a bushel of wheat, the promise being entire, made one entire contract, at the same time. Vint. 225. 7 T. 68. 201. to 204. 1 St. 270. 212. 231

Now to determine when an unextinguishing is entire within this rule, settle to perform difficult things that is, when the promise or intention of the extinguishing requires that you shall do when or place in any future the whole contract, so that failing a part would make a variance; the extinguishing is entire if indispensable to an entire this rule. The incapable cannot, in or want of it will enable you to determine this point.

III. Agreements of the three clauses are then made in consideration of marriage.

Thus clauses you will draw in the first place do not contemplate a promise to any
but those only which are made in consideration of marriage so that a promise between two persons to marry is binding by law. Bull. Et. P. 280. 1 Lord 179. 8 Ad. 3 & Reg. 386. 322. R. 311. 190. 1 Sos. 65. 411.

This clause relates in law to agreements made in consideration of marriage by either an agent or agent in execution of marriage by way of marriage settlement or formerly provision by an agreement by the husband to settle on his wife etc. The clause relates in due only to marriage settlement agreements. 136. 11 418. 

The rule introduced by the 17th section of this law was written by statute in the case of suits, if performance of which is inter alia subject to large benefits.

It was once doubted whether a formal promise or agreement of this kind would not be binding if it was stipulated that it should be reduced to writing. This certainly is no room to allow for such a construction would enable parties to enter into stipulations. 193. 9 5. 166. 175. 176. 6 197. 1 198. 179. 180. 191. 187. 198. 45

If however such a stipulation is made as the reception of it be prevented by the proof of it's being present at the marriage itself, the effect of such agreement, etc. was met as well by the ground of fraud only & not other. It is not because there is more binding, or more entitled to the intervention of a court

While a unpaid receipt

miable in a court of justice. Fraud is always admissible in it. For written evidence of fraud is no more to be inflicted than written evidence of theft or any other crime.

Once a paid promise before marriage is a sufficient consideration to support a settlement, or a covenant for a settlement made after marriage. Thus if A promises a settlement & marries without executing it, it will be no defense for him to say that the marriage has taken effect, that consideration remains. for the sett

does not make a paid promise void, it only prevents the proof of it in support of an act. 2 Cal. 146. St. 236. 1 Viz. Sum. 196. York 177. 202.

It has been determined

that a letter signed by one of the parties is a sufficient writing or agreement under the statute if it contain the terms of the agreement. Indeed it seems it would be sufficient under any other clause of the statute for an act in form is not required once such a let

t is a suff "memorandum or note" as it recognizes a former paid agreement. 1 Petal. 179. 2 Vent. 36. Ch. 650. 3 4th. 503. 2 Rev. Ch. 3 1 Viz. Sum. 331. 11 B. 318. 318.

When however the

writing produced is in the form of a letter it must appear that the other party to whom it was addressed accepte the terms proposed in it & acted in con
temptation of them at the time of the marriage, otherwise the letter will not be binding for this is not a written agreement but a memorandum recognizing such an agreement by parcel. Since in a case where the father of an insolvent wife wrote a letter to his daughter containing an offer of a particular portion to be given her on her marriage to the daughter did not show it to the husband until after the marriage. On a bill filed in Equity, determined that the requirements of the statute were not complied with, the husband did not act in contemplation of such an agreement at the time of the marriage for he did not know of the father's proposal so that there was no meeting of minds which is so indispensable in the formation of a contract. For some mutual consent being the requisite as in all the cases. 1 S. 11. 65. 1 Port. 287. 2 F. 9. 1. 3 Port. 107. 8. 192. 1 Ford. 179.

And a letter written to one's own agent stating the terms of an agreement already made by parcel with another is according to the decision a sufficient note or memorandum of the contract. Being an evioid or an agent for the purpose of furnishing for the execution of the contract it cannot be turned an act of itself an agreement in writing of the parcel agreement which amounts to a memorandum or note in writing prescribed by the statute. 3 Atk. 503. 1 Port. 121.

Not a letter stating in general terms merely that a
IV. Agreements of the fourth clause of the case of Francis & Benjamin are, in the words of the case, contracts or sales of land, transfers or instrument of conveyance or of any interest in or concerning them. They must be in writing or some note or memorandum of them in writing to support or set at law or Equity.

I have before stated that by the expression "contracts or sales of land" was meant actual sales of lands or contracts for the sales.

With regard to the intent of the term "land, transfers or instrument," it has been determined that a thing annexed to the land is sold in consideration of a consideration according to the contract is not included, so that a hand and consent concerning the sale of it is good. There was no such thing, to be some consideration in this but it is now settled that there is annexed.
has been determined by the fact that in the nature of a chattel. The first question which arose on this
rule, was with regard to a parcel sale of the standing
in the land, which was decided to be good.
If not, was a parcel sale of potatoes in the ground
then being commenced to the prejudice of the court held
the sale not good on the ground that the soil must
be broken to get at them, so the sale concerned land.

The next question was on a parcel sale of grass growing
on the land, which the time "lause" seems to refer,
or Incumbrance, with a strained act to include.

A case occurred in Conn. of the parcel sale of the
machinery in a chile which was held good 3 P. 1
65. 6 East. 682. 11 Id. 362. 2d Id. 182. Bull et al. 282

And thus in a very common

of a sale of agreement by parcel in this country

between the owner & the occupier of lands that

the tenant shall seaehy tine from and the crops be

divided between them, the tenant并且 the crops

by the lease of the owner and half the crop is the

rent which may or may be in specific articles

or money. This makes the same in Eng. 1 P. 39. 39.

And under this claim of the rent as well as under the
former it is determined, that a parcel agreement is
not binding, mainly because it contains a stipula-
tion that it shall afterward be rendered to quiet,
and if it were then is no separable case in which the
plaintiff might not avoid the statute. 1 Vern. 151. 159.
It has been mills in Law that a promis to keep the price or consideration money of land actually conveyed is good the by paid for the contract is not a contract for the sale of land or any interest in a conveying land. the title to the land is already complete. a some promise to pay money is not within the statute. surely because it is connected with a contract concerning land.

And it has been determined that a conveyance by deed requires an implied promise to pay the value of it. What it is now settled that when there is a conveyance of land without it a promise to pay the consideration, no implied agreement can be received. There is no decision in the Eng. books on this subject, owing to their strict method of every money. 1 Root 77. 6179

Bennett Cotton in Day.

It has been determined in Law that a parcel sold by a grantor at the time of making the grant, to pay for any deficiency in the stated quantity of land was within the statute and or rather that such a promise was void at C. L. "They shall contribute." For at C. L. if a parcel agreement were made at the time concerning the same subject, be not into direct with the as if it issued, the fact of part by made to writing it is not to proceed with it the further from amount of such parcel ag. 11 C. L. 22. 1 Root 73.

1 Day, 52.

What the generally understood rule requiring
agreements for the sale of lands or of interest in them to be written contrary of some exceptions, so that formal
contracts of this kind may be enforced notwithstanding
the statute.

And it may be laid down that a hundred years is good
whereas the statute if it be proved consistent with the spirit of the
state be the rule of evidence. There is no inherent
invalidity in such contracts. If the state does not affect
an e.g. as such it merely alters the method of proof.
The agreement is not void in any case and when
there is no change of form or pay it will be
binding?

First that if an act be filed for a spe-
cific performance compels the contract in all its
parts can be shown for pay in proving the
agreement. Once a bill, being expressly determined,
that such a contract shall be enforced. 10th 221
441. 20 days. 34th 455. 35th 155. 3rd 5th. 7th
4th 6th 5th 5th. 2nd 5th 5th 5th. 2nd 2nd.

According to the court of
times cases a paneel from in this capacity is binding.
May be enforced. All Pomes observes that the state
satisfied since the promise is now in writing and
agreement. This reasoning is not satisfactory for
a confirmor no minimum. (cont)

The principle of these decisions has been much
questioned. But it is agreed that if deep
amping
confirmit the agreement, does not limit a conclusion in
point in the state, he is bound by the terms of the
there is no certainty of opinion. V R v Ch. 506. R.

It is a great
too that if Def. having in his answer confessed such
an agreement; submits to any such clause, or the cont
shall think itself entitled to make, Def. is bound
to perform as will be agreed.

But it has been a great
guestion whether, if Def. the admitting the agreement
in his answer, insists in his plea when the state the
contract can be enforced? It is a difficult determination
to it in the affirmation or its opinion is fortified by many
authority authorities. Pn. Ch. 208, 374. 1 3. Rotb. 3 when
D. says that Def. shall be bound if he concedes the
agreement unless he pleads the statute. In N Rotb. 155
Def. did not actually plead the statute, as also 1 Bro. Ch. 578
also 1 Bro. 696 when it is laid down generally to un
conditionally that an answer amounting a band ag.
to to it out of the state.

But there has been a central de
cision at law in the C.P. where it was held that until
the Def. had confessed the act in his answer to a bill in
equity for a disclosure, yet as he insisted on the state,
he was not bound in a suit for damages for the non
performance. 6 Vg. Jack. 548. Rotb. 63. Rotb. 157. 2. 3.

This same op
inion has been adopted by 2d. Birkin. 2d. 104.

Eyre & Vg. Jack. 548. Rotb. 157. 2. 3.
It is a case still more solemnly considered to be clearly argued [Bro. Cha. 559]. Dr. Hallow in his reasoning adopted the rule of Lawmanfect, and after much that gave it to his opinion that such a confusion took the agent out of the state. For the statute has not the effect of enabling voiding or altering a hand contract at all, but merely introduces certain rules of evidence for the prevention of frauds, injuries. When therefore no evidence at all is required, the contract is not within the spirit of the statute. So it may be within the strict letter of it. And he observes that the whole effect of the statute is to prevent the Duff from having the contract by hand or 'alluvium' as he might have it. In this opinion I agree with him in toto. See fn. 869. Rot. 160.

It may be proper for me here to observe that that case in the same in which Dr. Hallow declined that charactistic opinion was decided on the ground of uncertainty in the contract.

On elementary writers that this point as yet unmet. Rot. 110. says the weight of authority, i.e. the opinion of Dr. Hallow. I do not think that you will see this authority collected in any of the Pl. 127. 211. 14th. 170.1. Rot. 160. 238. Eastern. Pl. 216.

I confess that it appears to me unsurmountable whether it shall pass the state or not after the confusion, and arising from the fact that there was a fraud in agent.
and no occasion for evidence. The court should decide the case, and then determine whether it was against the party or not within the statute. If a confession be made without pleading or insisting on the statute, the court should determine whether it is against the party, and if it be agreed, the party must be considered in good faith and the statute on the party could not be made. This does not mean that the ground that the confession takes the case out of the statute, but that the statute, having been taken the case out of the statute, by the confession, can be brought back again by insisting on the statute most clearly not.

To be admitted that for the court should determine that if any party can be admitted as a consequence of a confession by itself when the statute is not pleaded, it may be admitted when it is pleaded. I think it should not be admitted at all as a device to make when the statute is pleaded as when not. The rule is so often laid down that a confession takes the case out of the statute, and it would be perfectly nugatory if relief of the statute could after being brought back again.

It is also entirely uncertain whether, if in a bill for specific performance of a bond agreement in Eq., is bound within to confess or deny or make any answer at all. This was just determined by L. H. A. in the House of Lords, of the same division, in Geo. Ch. 36th. sess. 211. 12th Contra, Vals. 156. 7th. 160. 2. 155. 2. 154. 335.

Sir. Pendle said that the only effect of the statute was to prevent the Diffs from a
a formal process and that it was not against the spirit of the statute to compel to compel the defendant to answer. (124. 170)

"In my view it is a correct view of the statute for it is not intended to protect defendant's subscription or to protect him from it but to prevent the introduction of fraud testimony by Dr. The Mercantile will throw some light upon this subject. It does not differ from several agreements either void or voidable but merely contains that no suit shall be maintained on them. The right is the only party protected by the statute. The subject is thus stated. Dr. Macintosh & Thurlow at the instance of H. Alexander held in reed that the suit is to be commenced or claimed by Dr. and that a complaint or a bill for disclosure to the at out of the state. On the other side, see U. L. Longthorpe or a now Pullin, Ch. Barley & Eldon, & King & Br. 68.

In point of practice, the Chancellor & Ch. Justice are balanced. The subject is therefore open for discussion on principle.

The reason for which by these last judges does not appear to me to be relevant. They say that to compel the bill to answer, is to defeat him to commit perjury. But according the acceptance of the state in Westminster Hall, it is meant to prevent the defendant from enforcing or acting on the bill and I humbly conceive that perjury by the defendant is more contrived by the legislature.

First there is another to consider. This says that those who hold that to compel the defendant to answer
or claim is to limit him to commutation of his, viz. That the
second reason might be sought with equal propriety if
the agreement were written. The temptation for both
would be equal in the two cases.

The statute contemplated
the formation of promise through the intervention of com-
plaint as for as there is change of its introduction by the
court, but no further.

The whole question, as regards the sale
you will observe express on this, whether a complaint by left
makes the case out of the statute. I should decide both the
question in the affirmative. It is known unsatisfied, and
will remain so in being until an appeal is taken to the
House of Lords.

But upon principle, I should think
that a complaint by left makes the case out of the statute.
I therefore must go to the House to compel doing the
pecuniary agreement. The first as he is to compel or duty the
contract. 1 Pemb. 108, the statute is to compel or duty the
contract. 1 Pemb. 108. Agreement must be admitted
or denied. 2 Bro. C.C. 566. But unless admitted the statute be inviolate or
a specific performance will not be enforced. 12 Ves. 375, 10 M. & J. 385.

I observed yesterday, that a personal agreement respecting
a sale of lands be might be enforced in certain cases
when the circumstances are such as to prevent dan-
ges of promise in proving them. or in other words
when there is no danger of fraud or paying arising
out of personal testimony.

Upon this principle it has been
determined: that a parcel contract for the purchase of lands, at a renewal sale before a master in Ch. 7 is good, for that it is no encumbrance of lands? the officer is appointed by the court, this rule seems well established.

And as it goes to show that what I have formerly asserted is true viz. that the statute does not go to make a parcel agreement but make others the makers of proving it. And any parcel contract is good which can be enforced without discovery of proving. 1 Viz. 168. 220. 1 Den. 371. 289. 1 3 Bov. Ch. 334. Rob't. 115. 1 2 Dov. 271. 272.

And upon a similar principle agreement between the solicitors of the parties in a suit in Ch. in a case of mortgage has been held good. The court enforces confidence in its own officers and solicitors as well as every past and present oath of office. 3 Bov. Ch. 334. Rob't. 115. a.

According to several opinions expressed by high authority, a parcel contract respecting an interest in land, if inoperative from circumstantial facts in proof of which there is no design of proving, may be enforced. Thus suppose a sale of house from A to B, the sale absolute between certain terms, but remain contingent in proportion, houses, sale being contingent to the payment instead of the money due to seller, he keeps the money does not account for the profits, keeps the property of his deed, etc. Thus something of a debt, subject to the intention of the parties and the court will infer a
A pact 2nd agreement that the contract was to be treated
as a mortgage to Hackwith, Talbot, and Wood.

And of this opinion, there is however no instance
of the kind, since the rule depends upon a reception of
a deed. 4 Mo. 65, Tabl. 69, 3 P. 328, 2 Mo. 417, 2
Vig. 376, 4 Mo. 526, 1 P. 93, 381, 2 M. 429.

Other decisions to the same effect
and are admitted on the principle that a statute
a prevent power ought not to receive such construc-
tion as would protect the wrongs power. Bell
and it is always to be construed liberally for the pur
of supplying the mischief of furthering the remedy.

Since if one party to a bond contract cannot perform a
greater power with the other by not accepting a bond
than would result from a mere breach, the agreement
may be sued against him without troubling the St.
2 Rob. 111, 12 B. & C. 605, 1 Pont. 171, 2, 1 Cos. 290, 6.

Since

it is a great rule that when a bond or for the perform-
of bonds is performed or is next performed on one
side by the request or with the consent of the other party,
the latter will be bound to perform on his side.

This a deed by parcel for 20% from 2 to 13. Option
by the earnest of 20% make improvement in this build-
ing and in some great expense. If this extended
to correct him but on a bill filed by 1 for a spe-
cific performance of it was ordered that abstract
execute a lease in liquid form for 20% to 13.

That 12 was a sufficient one, not enough to ground the
drew. tent as he supposed from it's lying by by
facing him to in now that when the court
will receive on the ground of funds it. once it
1 Ven. 221. 3 1 n to 160 - 2 Ven. 372. 619. 1 Vg. Ap. 378
2 341. Est. 783. 1 Post. 172. 1B. 2 3 111.

To see it is probable
that if it were not compulsory to receive that how
be void without himself if his own funds for
his accepting a permitting 13 to perform this act
was a punishment it is called so by the authorities. 1 Wood. 433
435. 2 Eq. Ca. 15. 9 1 Mod. 37. 1a. Pla. 561. 1 B. Ch. 127.
1 B. 4. Pla. 397

All Point indeed adds on the conclusion
in observe that the case does offer presumptions evid
ence of the agreement & thus diminish the danger
of injury. This however is not admitted to in any decision
since some have little in no weight. and could never
of itself support the decision. for the terms of the contract
are as entirely in the power as if no act had been done. 1 Pow. 309

Under this rule relating to point ex-
ception of ponders of 1755 it has been determined
that the delivery of poppykin of the ship in fire
principle of such ponders been as safe is sufficient
that performance on the side of the bondsman as
he divests himself of the use of poppykin to enable
him to face the purchaser to perform his part of
paying the consideration and receiving a writing
since. 2 Ven. 263. 2 55. 7 Eq. Ca. 48. 9 Ch. 283. 3 170. 2 309.
1 18. 6 1 B. Ch. 122. 7 Vg. 1 Ch. 72.
The payment by the purchaser of the consideration money or a part of it has been determined a valid part performance on his side to take the agreement out of the statute so that he could enforce it against the vendor.

This however has been doubted, because it is said, the party may recover back his money if the contract be not executed. The weight of authority however is in the other way: 3 AND


The paper is not convey by way of binding the bargain is not such a part performance as execution of the bargain agreement out of the statute for it really is not intended as part performance it is a mere formality in solemnity like the sealing of bonds and it is because it is a mere form of stipulating that the court do not consider it a part performance 2 Eq. Ca. 560 1 Bz. 175. 2 Bz. Ca. 550 12.

But Page says, that when money has been paid by the purchaser on a part agreement for the purchase of land an action at law may be maintained for damages accruing to him by non performance, he however cites no authority, and I mention it only there is more for if the question can come it must follow that the pay of the money took the hand act out of the statute.

The fact is the party who pay the money may enforce
it back in an act for money that received which would be in disannulment of the contract. 1 Dow 398.

On this point art. 726 of money a question arises, which Parch treats as unsettled, whether the receipt of money or receipt of money in part performance of a bond, may be said itself be voided by fraud.

It would seem strange that a rule should exist by which a fraud contract might be taken out of the state by key of money in part performance, and still it should be necessary to show a writing to from the pay.

For if a receipt were shown a writing to be shown, if it were only a general receipt, it could have no bearing at all on the contract, nor could anything be held from nothing. And if it was specific, counting on the terms of the agreement, the rule above mentioned, as to part pay, it would be entirely nugatory, for this receipt would be a mere pecuniary consideration within the state. 1 Dow 307. 5 Rob. 2d 1834.

A. N. W. 3d says the receipt may be proved by parole and in 3 Ed. & 4. is a case where it was actually done. Indeed such a thing may always be proved by parole for it is a fact, to be proved by parole as much as a crime.

But to take a fraud agreement out of the statute by part performance, the act done or claimed to be done in part performance must be such as would prejudice the party performing.
on rescuing under the aegis of the contract, if the contract were not violated, such as would not be cure blemishes in statutes, or such that the other party would not lose great funds by not performing his part, then would arise from a mere breach.

However a mere act performance as grounds for taking a hand aig ait out of the statute. Thus under the code of morals, if the buyer should wish to rescind his bargain, the seller could not prevent it, for he has done nothing by which he could be induced but the buyer does not remain in statute quo 6 Civil Law. 45. 7 Viz. 12. 138. 162. means lost by one of the parties or not with the act of a claim. Also it is required that the act claimed to have been done in performance be such as in the opinion of the act would not have been done, but with a view to the performance of the agreement. So if the act done be such as the party would have done even without any notice to the contract or with the court will not go to as true performance.

As if a hand aig ait, aside with a tenant to renew the lease, his continuing in the same will not be considered a true performance of the aig. It is not unusual for tenants to hold more, he did not renew for the purpose of taking possession, he has not done any act or abstained from any right which is right true performance to take the case out of the statute. 1 Civil Law. 309. 3 edith. 4 edith. 586. 7 Viz. 12. 561. 1 Civil Law. 241. 3 Viz. 12. 378 1 edith. 12 3 March 519.
I obtained that selling of property by one or more under a pa-
not a go. for the sake of house was, sufficient perform-
ance on the part of the widow, but merely giving dis-
trict as for deceiving one another. wherein it was not
assuming the debt or retaining its boundaries he
can not regarded as part performance. They assuming
introducing an unlimited to a purchase, made to the
vecs information concerning the subject, and not in
performance of any stipulation relating to the sale.
6 Bev. 35. 32, 412. 1 Bey. 36. 8, 32,
3 52. 34. 379. 6 41.

In the case of marriage
settlement agreements, the marriage itself is not
considered as part performance of the agreement
as between the parties to it. For by the terms of such
contracts, they can have no effect unless the mar-
riage does take effect, and if that were to be deemed
part performance, every act of that kind would be
taken to be of the state, and treated as it only as at
C.L. 55. 361. 3 738. 1 519. 196
4 418. 1 Purr. 359. 1 514.

But it is said that a hand agreement
extend into by a third person or the fatten of one
of the parties, is taken out of the state. by the mar-
riage provided it takes place with his consent.
Thus if the fatten of the husband or agrees by jewel
or to settle a certain estate on the wife at the marriage
takes effect, the wife may enforce the act, else
the fatten could enforce both the parties to the
marriage. 2 Rev. 379. 3 99. 297. 8. 314. 300.
This is a case in the 297 suit filed on the
grounds of past performance which is to say
is unperformed by him. When the party was for $500
to be apportioned to him for work done during certain
period of time he asked the party, she enjoyed the benefit of it but
he after six months or bills for services to be credited
according to former un-performed service on an irrecoverable
will not make the party receiving the services
benefit to enforce the court but see 1 Viz. 297
1 Viz. 304.

Since it has been determined that ending
in this case for cleaning house erecting buildings in
pursuance of a past marriage settlement as it
was sufficient performance to take the case out of
the statute. 2 Eq. Ca. 29, 1 Viz. 304.

We have not many
case in law, in the subject of \\
past of money, con-
stituting an effort of past performance. But the
latest decisions however, say if the case is
it remains made by this reason one determined
suffic to take the case out of the statute. 2 Eq. 225.

And upon the same ground principle of property,
found any written contract respecting an interest in
lands or any other subject in that, may be contradicted
by proof of a hand in whom such proof furnishes
evidence of fraud in the execution of the instru-
ment. A hand in proof is always admitted to have
in the act of an instrument, for the signing, only
a writing is proved by hand. This 1st 13 extract
for a mortgage. If having secured the absolute and
enforce to execute the discharge, clearly held that
7 should be admitted to show what the parcel agd
was, for that may as well be proved as any other
fact for the purposes of showing the fraud.
3 c. "39. 1 Peul. 188. 1 P.M. 620. 2 c. "39. 1 Eq.
C. 20. 1 Dec. 20th,

And in another case when the party could
not make (as was known x) an complaint of
from a he was admitted to prove the parcel agd?
3 c. "39.

And in another case where it is an document to an action at law
for parcel, for the action is not founded on the parcel
agd, but it may be indirectly at a parcel, it
is not
one of the instruments by which the parcel is brought
about, so that proving it is nothing more than
proving the parcel itself. He had much use for this
principle in C. of the time of the great land
affair on 18th 2 Dec. 51?

Under Art. 89 G. 3 c. 1st of indebt-
agd. will be upon an implied promise to pay for
the use & occupation of land if it was an
ful promise made for the rent. that may be given
in evidence for the purpose of ascertaining the
value of the rent or amount of damages. So that
the party may prove not only an implied parcel agent
but facts from which the loss will imply. an
agd. 8 c. Repeal 327. 2 Bl. Bil. 12 49. 1 T. Bl. 378.
1 Wilt. 214. 1 Hen. 2 Bl. 235. 2 E &. Bil. 20. 165.
We have no such stat in Car. but our courts have
accepted the rule of the Eng. courts, i the same wid
drince may be removed here as in Eng. that I do
not see the need of the stat at all. It is not action
to remove the sale of lands or of any seq'ys in con-
erning lands. It is merely a remedy by which an
who has permitted an other to occupy his land or may
reven his rent, 6 b. 228.

My. C. & A. it would not lie for rent.

Dott was considered the proper action whether action
was by suit or feoff. I have seen no other reason
assigned it such that suit was the higher remedy,
it does not appear to me so. Un A. is certainly
the most remedial action known to the laws, how-
ever the rule is well established. Matthew 34. A. 286
Cov. 8. 62, Cov. 6. 598, 414, 3. 0. 185, 152, Bull
A. 37, Peck, Cov. 241 n Comm. Cov. 504, 6. 9. 7,
20.

Agreement of the fifth class contemplated by
the statute are those which are not to be performed
within a year from the time of making. In the
same, hard evidence is not to be admitted in support
of an act in an act which is not to be performed
within a year.

So that if an promise to pay money
in de-servant not 13 mes', on two years hence, it is an
act to within the stat.

In the construction of this statute,
it has been held that this clause does not extend to
any agent effecting lands. I suppose because the preceding clause contained all the provisions intended to be made on that subject. Since we have declared such a clause to be of no effect when it was to be performed within a year unless it was written.


But when by the terms of a plain agreement the performance is to take effect when the happening of some contingency or else may or may not happen within a year, it is not within the state. Thus a person to pay money on the issue of a ship is good because it may take place within a year. Salt. 2:78. Bull. 2:280. 3 Burr. 1278. 1 Sa. 386. 3d Salt. 2:278. 316. 6:72. Carter. 2:24.

On the same ground a person promises by act to pay a certain sum as $100 to B on his marriage is not within the state if the promise to have $100 on his death is, both on the same ground. 3 Burr. 2:280, 1278. Bull. 280.

If then the terms of the agreement are such that they may occur within a year, at any rate, to be performed, they are not within the state. But the actual performance is not required till after it occurs.

And to make this contract binding there is no need of the contingency actually happening within the year, for the agreement must be considered as binding in all aspects. Though the contingency in the arrival of a ship from Spain occurs she is not seen until after the year elapses.
State the age of a contract within the Stat. from support. 

3 Bunn. 1481. C. 128. 173.

Thus there is no time to time unless within the statute, which according to the cases, the time, are not to be performed within one year. As if I promise to pay £100 to be paid in one year, if it is within the statute. 3 Bunn. 1481. Find. 16. 134.

And even as to age in this time it has been determined in Court that when the promise is made upon a certain 

consideration, it is not within the statute if it is to be performed according to the terms of the agreement or in one year from the time the consideration is completed or consummated. Thus a promise by one to pay for breeding his son five years is not within the statute. But if the contract was more than for breeding 50 if the promise, to pay £1. because it would be ill. If however the key was to be made by a master it would be good for that is within one year from the time of consent complete.

1 Rost. 89.

Thus an unassigning of this point in Eng. books that show to me.

Omitting the 7th clause of the Eng. Stat. I have now to mention. Certain rules applying indiscriminately to the different classes of contracts contemplated by the statute. if any one of those rules is not of great application its singularity will be mentioned.

I would mention that the construction of this statute as of all other statutes is the same in Co. 3. or at least, that the
the mode of enforcing which may be said to be left in the two courts. 1 Ford. 24, 3 A. C. 230.

Our first

enquiry is. What is an agreement in writing or a note or memorandum of an agreement in writing?

It is not

easily decided, but I think it clearly ascertainable from the authorities. that every writing which is intended to furnish evidence of a contract is a written agreement or a note, or memorandum of

it within the meaning of the statute.

Since it has

been determined, that a letter written by one of the parties or acknowledging the contract or stating the terms of it, is a note or memorandum of the agreement, 1 Ford. 179. 2 Bro. Ch. 32. 3 ib. 318. 3 Selw. 73

1 Vernon. 201. 2 ib. 322.

Then when there is a note or memorandum of an agreement, that may be made contingent upon, or by reference to other documents or even to intrinsic facts. The known

is to be understood of those cases only in which the writing makes, or gives reference to some other documents or facts. They are engaged to have

owners' hands, which are described in such an actual or recorded, reference may be had to the deed or record to ascertain the subject. But such reference

could not be made unless the instrument or memorandum itself had reference to it.
Further to exemplify the rule as it relates to reference to certain facts, I agree in writing to convey land to B. for the same price that I gave for it; and proof may be admitted to ascertain what that was. 3 B. & C. 318. 1 V. 803. 12 B. & C. 238. Robt. 107. 115.

But when the written agreement refers to something uncertain by which it is to be made certain, if it is not made sufficiently certain by such reference, no legal evidence can be admitted to make it more certain. If an act is to convey land described in a particular instrument, and it is proved to contain no description of land whatever, the act is void, because uncertain, for the party claiming under it cannot resort to other evidence to ascertain it. 1 V. 803. Robt. 107.

And an advertisement either written or printed by one of the parties containing the terms of the proposed act is sufficient not to make an instrument in writing to bind the parties. Thus an advertisement that it will convey such land to such agent to the person who pays him $1000. B. with the money in hand may amount to a conveyance. 1 B. & C. 299. 3 B. & C. 276. 1721. Robt. 14.

It is true, indeed, that it must substantially be proved to have been made by him whose name it bears, but so must a deed or any other instrument.

And it is a general rule in the construction of this statute that the consideration.
this as well as the human must appear in writing. This rule is founded on the construction of the word agreement, which is defined to mean all that enters into the contract or other test. 3 East 106 ib 307. Robt 116 207.

There is an exception made in the rule in construction of the last clause of the Eng. stat. relating to the sale of goods of the value of £10 or upwards. This consists of which must appear in the writing, but may be proved by parole.

This exception arises from the phraseology of the clause which is different from that of the other clauses of the stat. in all other points of the stat. the terms used are "agreement" or some note or memorandum of an act in the last clause the word "promise" is used instead of act. 6 East 307. Robt 117.

An instrument in the form of a deed intended to take effect as such, but failing from the omission of some requisites, or by a change in the situation of the parties, may be considered in law as an agreement as evidence of an agreement in Eq'n. Hence

under such an instrument a deed with such an unnoted or without such acknowledgment, act to such an instrument will not be allowed as a deed? Yet Ct. will consider it as an act or colomish in writing to make a good & valid conveyance, & will enforce greater to perform it.
So also when a man gives a bond, bound to a woman whom he afterwards marries, conditioned to convey bond to her. The sum of what is contained in the bond, for the personal part, creates a statute in present. But in Eq. the condition would be considered as a covenant to convey which it would enforce. Rob. 109. B 8. 7. 242.

Every agreement imparts the propriety of mutual aspect of both parties. There is a munificence by one party on his part, in his book, stating the term of one agreement, will not be regarded as an agreement, or note or memorandum in writing, for it is not an agreement, nor is it a letter from one party to another. 1 Pitt. 497. Rob. 109.

Our next enquiry is what is a signing within the statute.

It has long been determined at law that not only a subscription at the bottom of the instrument, but the name of the party to be bound, written in any where the instrument is a sufficient signing, if it was intended to give authenticity to the writing. Thus 'A. B. agree with C D. written by A B. was an absolute sufficient signing. Stev. 399. 2 Day. 1376. 3 Lev. 186 q Viz. 1539. 4 B. 38. 1649. 1179.

But when the name of the party in the body of the instrument is not to have been intended to give it authenticity, it is not a sufficient signing. Thus a party to have written, scribbled with his own hand, this serious when, 'To pay King's Tax I also to pay all be this.
was not a good signature, being affixed to a treaty
when person to not intended to give authority to the
whole instrument. 1 P.M. 771. 1 Pown. 285. 1 Fob. 166.7.
1863 182.

This was formerly a deal of confusion in the construc-
tion of the word signing, since it was once thought
that one party making a provision in a written doc-
ument was sufficient signing, but that opinion has been con-
vinced. 1 Van. 2 20. 1 Pown. 165 6. 1 P.M. 770. 1 Pown. 284.

But a mere signature as a subscribing witness, the par-
ty knowing the context of the writing, is a suffi-
cient signature to bind him to any stipulation in his
part recited in it. As when the mother of one of
the parties to an intended marriage, signed as a sub-
scribing witness a marriage settlement agreement
in which it was stated that she was not to have the
knowledge of the context, & being living to the mar-
riage, she was held bound by the instrument as an
agreement in writing signed by her to oblige
to fulfill the stipulation. 1 Wils. 318. 1 Ky. 6. 1 Pown.
284.

The question which occurs in this decision is, did
the mother intend by her signature to give effect
as an authority to the instrument, the agreement being
between the persons as principals? Is this it may be
answered, that she is to be considered under the cir-
cumstances as having attested that part which
related to herself.
By whom must an agreement be signed. The
that provides that an act to be binding in law
must be signed by the party or his agent duly
authorized.

Therefore it is self-evident if the party against whom the
money is sought signed it, if it be proved that the
same was accepted by the other party, or that the act
was assented to or approved by him. So that it
is not necessary for the party to sign it. 1 Buc. Ch. 1644. 91.
163. 1 Buc. Ch. 353. 1 Eq. Ca. 20. 2 Cl. 32. 7 Eq. Gen.

Thus, 1st. If a man signs an act, he is bound to sign
the writing without also requiring it of himself; the party
was also bound by him a part where the money was due.

It has been said indeed that it is also bound the
amount not signed, and that it could enforce perform-
ance. But the wording in support of this position
all ye to think entirely unsatisfactory in common
1 Pow. 287. 1 Eq. Ca. 21. 2 Ch. Ca. 164.

But still if

the party who has not signed bring his bill for
a specific performance agi. the party who signed
be is bound by the act for he then recognizes and
virtually affirms the contract. Indeed a suit of
Self would more enforce it, unless the party apply-
ing would perform his part. 1 Eq. 82. Ab. 124.

It has also been laid down as a rule in great towns that
convention, subscribing the name of the highest of
which in all cases is equivalent to signing with his own hands, for he may order another to write his name; 2 CIV. 4. 238. 1st 124.

When the writing is signed by an agent, it is not necessary that the existence of the agent by act or writing, be expressly proved by law. The statute requires the agent to be in writing, but not the creation of an authority that remains as to said. Thus a mere draft can be a contrivance written without much written form. 3 Mod. 127.

Fry 1st 257. 1st 64. 65.

For it is necessary that the instrument be signed at all. It is sufficient if there is no agent, written on a note to the effect. and the agent is acknowledged by someone reasonable written on a letter that is signed. Thus when it is written signed on a letter in which he acknowledges the agreement, it was held a good signature to the agent's name as written on a draft paper. 2 318. 3 141. 582. 3d 121.

Indeed this point was decided in a case where the letter was written to the party own agent.

The mere writing of an agent by his own hand does not dispense with the necessity of signing. The statute requires not only that the agent be written but signed. It was once that there a man's will his own hand to be signed or writing it himself was not sufficient signed but it is now seen as not to be. 1 3d 170. 1st 121.
Of the consideration necessary to support a contract. A contract is defined to be an agreement between two or more persons on a mutual consideration. According to this definition it is of the essence of a contract at C. L. that it be founded on what the law terms mutual consideration.

A consideration is the material cause of the contract or undertaking; or, it is that on account of which each party is induced to give his assent to the act. 2 B. & D. 1 P. C. 330.

Consideration as known to C. L. can of two kinds, good and valuable.

A good consideration is that of kindness or mutual affection between man and man, arising of natural affection and censure to his son; this is called good consideration as contrasted with valuable. 2 B. & C. 122; 3 E. 83. 1 Pont. 337. 1 P. & C. 361.

Since a good consideration in an executory contract is sufficient between the parties, but in a quitent or after some prior franchise for a valuable consideration, the consideration would not support the contract. Thus, if a father in censure of low natural affection desired to make a gift to his son, the conveyance would be good as to the extent of at the time of the conveyance the father was in the state of censure, the son could not hold to the exclusion of creditors, whom claiming on stricti juris. And if the father was afterwards to make a conveyance to a son a prior judgment
for a valuable consideration, the purchaser will hold
to the exclusion of the son. 2 Bl. 297. In point
this subject under the head "recital of conveyance,"

Since an executory contract from act is a good consid-
emry in many cases to enforced in T. But in the in-
formation of this court is in a great measure disturbed,
any no preria rules can be laid down on the subject.
1 Ten. 67. 2 P. Wm. 176. 3 P. Wm. 417.

A valuable consideration, one
which consists of something that satisfies promises,
words, or money, goods, real estate (which prepared
the marriage, a settlement made before marriage for con-
themselves in good and every era. Wood. 243. 3 Co. 82. 1 Bl. 291.

And upon
the principle a promise in consideration that are becoming
my surety for a debt that I owe, for belonging my exist-
et to her own an exist. it good as to pay money or to
inclination. 1 B. Wm. 482.

Under the view of the subject
it becomes necessary to examine the two kinds of con-
tracts known to the C.t. viz. special and simple
for by C.t all contracts an with the case on simple
of T. Rep. 357."

A special contract is one which is
created by specially, i.e. by and a writing under
seal, the contract is termed special because it is
evidenced by specially in the legal community of
sealing. 1 Bl. 291. 2 B. Wm. 240. 568.

A simple contract on the other hand
A contract
by hand, + in writing, not sealed, are in point of
respective, precisely when the same footing at C.L.
A writing, not sealed, in writing, is not considered as
constituting the contract, but as mere evidence of
handwritten, no contract of if it would be known
unlawful + do it. But a specially must be decided on
when to perfect same of it.

Writing not under seal is
not to be equated with the age, to be mentioned
as if writing entirely in hand, and then the writing
is deduced in evidence.

In C.L., however, instruments con-
taining appeal from any written evidence which are sealed
or not are treated in quite a different. There has
been much discussion of the question, how far this
rule extends. Bills of $1 & negotiable notes are treated
as in cases like simple contracts.

But an estate, although
farming, note is known to be a specialty, implying a contract
which, itself, cannot change the parties or facts, not
favored in the form of action prescribed by our old
statute, denominating the action case, yet forming

or one which is evidenced by personal property or by a
writing not sealed. It is the seal, then, or the act
of it which determines the character of the contract
at C.L. for the C.L. knows nothing of the distinction

...
simple contract is clearly not binding without some declaration of a new and additional fact, which
must support an action. "In modo pacto non est actio."

In a moral point of view, a contract may be just as binding as one with that in conscience, but
the former are now enforced by law. In the principle
that the security of law must enforce a duty of in
perfect obligation. 2 Bl. 445. 2 Vart. 14, 2 Bl. 307
309. 1 3d 326, 3 33. 5 T. 143. 1 303. 11

Thus in our common

confusion introduced by the concepts of argumentation
and by the C. of P. B. K. in the case of Pillar and van
abogde, 155. 5 will be observed that a written con-
tract (without mentioning seal) is good as C.t. without ex-
cept. 3 Bl. 16. 1. 5 also 1 Bl. Carn. 446. 2 T. 142.

But the propos-

ition is in the nature that it is broad enough to clearly
not supportable, it is too broad. The notion of a
contract to writing does not disprove with the major-
ity of considerations.

Blackstone appears to argue in the

proposition, but the example put by him does not

support his argument. For instance, a promissory note

for which it has been negotiated and the question does

not arise between the sign. Parties, the consent must

appear equally as if the debt been no writing in the

case. That is, if the note be between the sign. Parties,

the
it is true that where it has been negatived the con-
sideration cannot in general be questioned; yet the
rule is founded in the great principle of recognizability
so important in the law. More, which is different from it form an exception to the great rule of P. L.
So that it does not follow that by negativing a pro-
ject in writing the recognizability of such is suspended
with it, as will more fully appear on examination of the
following authorities. 1 T. Rep. 121, 357. 1 H. 101, 155.
2 T. Rep. 92, 175. 7 T. Rep. 335. 1 Cor. 341. 2 id. 242.
2 T. Rep. 171.

And in strictness as well as in judge of
law a conveyance is as necessary to a valid contract
as to seal, &c. Thus to a verbal bond or a single
bill there is a conveyance in law, true in deed.
Hence it is not bound to prove it admissible in evidence.
The evidence, with the copy, shall admit of such
instrument over the want of consent. But it is
not necessary to prove both of those facts from that no consent
is necessary to the validity of such instrument.

Therefore why P[Plaintiff] is not bound to prove a consideration, is that
the solemnity of the instrument implies one, or from
that solemnity the law implies one. And the law
cannot concur of the same, being established by
his own act. Such an argument would be in
contradiction to an implication which the law
from own instrument in his own hand, &c. to
That the solemnity of the instrument implies a considera-
tion. (Vig. 514. 3 Binn. 1637. 1 Ford. 334. 2 Binn. 14.)
The result of this observation is simply, that on principal, &c., when a consideration is necessary to the validity of any contract at all, it is always necessary to the invalidity of a contract. And that, by necessity of consideration appears in the instrument or some other writing in which it is part of the contract. (Note, 1, Law. 95.)

That the rule that a contract is necessary to any contract applies in its full extent to all contracts only, &c., when the law says that a contract is necessary to the validity of a contract, it in fact means only that it will not enforce contracts that have no consideration, so that the rule applies to such contracts only as can to be enforced by law.

A contract without consideration, voluntarily entered into assentation by the parties themselves, or by delivery over the subject to their hands, is good, &c., between the parties themselves. As if I promise to pay money without con, &c., I am not bound, the promise cannot enforce the contract, if however I promise I actually deliver the money, I am bound. The promise has no occasion to run for performance, &c., the law will not reinforce a contract thus voluntarily entered into, &c., it will not reinforce it long as it remains unfulfill.
the statute of frauds [197] such contracts. When we say because there was no consideration, but it has the parties as it finds them. "in statu quo" Doug. 20 71. Sta. 255. 1 B.r. 238. Esp. Dig. 577. 7 Co. 40

As to the mode or ways in which a consideration may arise in a cause. It has been said that it can arise only in one of two ways.

First from something advantageous to the promise or the party undertaking to perform the act, or to pay the money. Or secondly from something disadvantageous to the promise or party in whom favor the promise is made. This rule is too narrow. 1 F. 326. Comp. 299. 294. 1 Bl. 342.

In the first place then it is agreed that a consideration may arise from something advantageous to the party undertaking or promising, etc., when it engages to pay money for certain goods to be delivered to him by B. Each is to receive a consideration for what he performs.

And by the way, by C. T. the quantum of consideration is not material, I am naming you will observe of the essential require- site of a contract. The law does not regard the proportion between the compensation and the undertaking; it is immaterial how disproportionate the money let to the other, a pepper ear is a valuable consideration. And by
however has been determined to be of no value to" not in a case 2. 1 M. 230. 2 Esy. 518. 2 Venn. 213. 2 Pott. 152.

Tell me insignificant acts are not deemed in law to be considered at all. Thus a promise to pay a mere a sum of money bound to be paid not in 365, county or borough in 24 hours. 2 Pott. 206. 20 Esy. 93. 1 Clev. 355.

But every thing to be done by him to whom the promise is made becomes binding in accordance with its meaning, so is said to be subject to being of consider. Thus a figure of a man promised to keep the sun up, if left undisturbed him to bear the weight of his encumbr. 2 Esy. 671. 1 Pott. 90. 1 Clev. 771. 1 Pott. 343.

And the

been stated in such a case that the mere relation of a man of

merit, not sufficient to support a promise. The bond

must eaves, that left a. his tenant 1 in case it

entitled to carry away certain things from his farm, as hay

and corn, etc. This decision in B. R. 127. 157.

On the

other hand a consideration may occur from some

thing disadvantageous to the promisor, or party in

whose favour the enacting is made. This a deli-

very of a bond is to be cancelled, or a promise that

will be in this act only, if no advantage to C. but seis.

advantageous to it only. & performed to the promise.

First

is not to be inferred from the rule that taking the con-
education or in the one hand to the promise on the other the whole transaction is to be disadvantageous to promise it is not necessary for the validity of the same: that it be determined in every case that if no consideration wants be good unless he had made a bond long and the rule is namely that the act to be done should of itself be alone be an advantage to promise. Thus by voluntarily buying the land at last his estate of but that was really if no disadvantage to him if it was the transactions same of C's paying him the amount of $5. Nov. 4, 52, Ex. 3242. As E. Gell 3249 Ch. 178, 152. 346.

I think that according to rule formally support universal, a sufficient consideration is not given except in one of two ways viz. from some thing advantageous to the promiser or disadvantageous to the promisor.

From this rule and as a consequence from it it is established that a contract is not supported by a consideration altogether free from debt. Because it is not at disadvantageous to the promise or disadvantageous to the promiser. An consideration of A's having formerly leased my member without my personal agreement when he was agreed I promise to pay him a certain sum of money my promise not binding. Then is no substitute on consideration whatever. It is now made in consequence of a new consideration agree to in addition to one to the other then is no promise such as duty and my promise is not the proceeding case of the case.

On suspicion that it having formerly
damn any pertinacious act for me and I promise to pay
been something in consequence my promise is not binding
for that is no benefit to me or any advantage to him so
risen by way of consideration out of my promise that
is my promise is not the procuring cause of the card
warrant. Prov. 5. 301. Czo. B7 701 885. 2 Bull. 73. 1 Revel. 11
3d. 2: 17. 95. 1 Prov. 328
But when the card is not altogether paid however that
may be so in fact it will be so. Thus she brings
consideration that Before 200 servants I paid out
promiss to some from himself. In indemnify himself
all encouraging, this promise is binding because the
promise is binding because the
you are to continue help. To pay rent so the consent
is not entirely lost. Czo. B7 94. Czo. B7 207. 2 Bull. 75
3 Palt 96. 1 Proc. 349. 50

Like you said above laid down that a con
sideration already 70 277 will not support a promise
is too narrow for such a consid will In good if this
was a previous legal duty incumbent on the promise

Thus if one in consid of a previous duty to promise to pay
the sum cost apply pro the is a previous duty add
volume of promise to pay 15 certain expenses incurred
in bringing the child of e. It being made the duty of
parents to bring them children by 27 B7. 15 work
bound for 15 discharged e duty paying what
at might have been concluded fr. l Bul. 1 Bull. 113

So also if

This was a prior moral obligation on promise it will
be sufficient to support this promise. Even if a promise is made to pay a debt based on the statute of limitations, it is binding. For a statute is doubtless made a moral obligation to keep his words. But consider the lesser will support the promise. 1 Pet. 3:36, 1 Pet. 2:39, 1 Cor. 2:22. Comp. 2:90, 2:94. 1 Pet. 3:37, 1 Pet. 3:38.

And upon the same principle, a promise made by a ration to pay for the past services of his natural child is good, but the act is lapsed. 2 Cor. 3:7.

As a servant, he must will support a contract if the consideration is given. But the request of the promisor, for the subsequent promise coupled with the promise request by legal relation: this supposes, if it had been made at the time the request was made. As if, you having waited my servant at my request, I afterwards promised to pay you some money for having done it. The promise is good. 2 Pet. 2:16. 3:16. Col. 2:2. Acts 10:5, 1 Pet. 3:18. Col. 2:4, 2:5. 1 Pet. 3:36. 2 Cor. 4:6, 4:7. 2 Cor. 5:20, 5:21.

It has been determined, that that a man strange to a mutuality act done by another will not support an action proceeded on a contract formed when it in his own favor; i.e., a mutual promise not by one will not support as a consideration, a promise made to another, because the promise does nothing. advantages to the promisee or disadvantage to you to himself. Indeed, the act, nothing at all, in man strange to the consideration. This it is en.
The rule herein stated has been relaxed in modern times, where a new instrument is the basis of the contract. Thus, if A, B, C, and D, execute a pact that A shall pay to C $100, it occurs within the rule, if C cannot recover, the instrument is between A and B and the action must be brought by C. B. 3 H. 139. 1 Ch. 235. 3 B. & P. 348. 3 King. 72. 3 B. & P. 1092. 12 M. 206. 3 Bl. 38. 1685. 5 Beam. 2080. 1 T. & C. 1559.

The reason why a third party cannot maintain an action in his own name on a covenant in a deed to which he is not a party, is because of the solemnity of the instrument.

Between a personal contract, it seems now settled by the case of the third person for whom benefit the business is made may support the action. 3 B. & P. 148 note: 1 Ch. 140. 2 Cor. 219. 13 M. 117. 1 John. 140.

Notwithstanding the numerous cases that have been decided we find that all of these have been answered with authority rather than principle, as in other words we find little meaning in the subject.

Now I should say, that the principle on which the bounty can arise in case of the
hand, agreement is, that he is considered as adopting to
ratifying the contract by his subsequent assent, par-
cially, as if an unauthorized agent should purchase
goods, or the purchaser were afterwards ratified by the
principal.

But in the case of a specialty that is im-
possible. In the case supposed, it imports to be added
or covenant, between A & B. If C cannot by a sub-
sequent agent, or by any act, from the solemnity
of the instrument make himself a party.

And where

a suit is brought upon a bond wherein, the promise
should be Void, or having been made to himself
the judge of proof of a promise to another for his
benefit will support a declaration in that form.

And notwithstanding the continuance of opinions
which has prevailed in relation to the distinction who
has been intimated, it is universally agreed, that a
consideration moving to an person from another
shall not a promise in favor of a third person may
relate to the former. This a promise to A, in con-
nexion of any act done by him, to pay a sum
of money to this additional is good so that the dough
be void, on this. And it seems also agreed
that a promise of that sort, for the benefit of a stran-
ger would not support an act in his name. This
is an arbitrary distinction in a case when the laws
make no differences, which cannot in support on
principle. Indeed it appears now that no such w
When a promise is made in consideration of the performance of a duty or action, two requisites are necessary to its sufficiency: 1. The promise must be such that is provokeable, as mere to sue, or for a certain fixed period of a year, &c. 2. It must be from an action in which the promise or the party claimed to be liable, is actually chargeable or there must be at least some colour of liability for failing if the action is completely good. If a promise were to be no consideration, Co. 6. 206. Esp. Dig. 95. 1 Pau. 353.4.

Never in the first place a promise does a duty in consideration of a duty or performing to sue, no time being affixed. If a not being time and to be fulfilled is not good, the said not being sufficient.

But if the promise were not for a year or any fixed time or for an uncertain time to suit, the promise is good. The consideration being such that the court will judge as to the corresponding time. Co. 6. 19. 155. Dutc. 108 Esp. Dig. 95. 1 Pau. 353.4

Now the reason of this differing is this. When the time is not definite nor limited the promise is at liberty to sue at any moment after the promise is made. The condition is a matter of no concern in practice. But it is otherwise when the promise is
In the second place, the forbearance must be in a case in which the promisor or the person claimed to be liable is actually, or at least in which there is a colour of liability.

Thus, when a promise was to pay or another debt in a certain time, even from that promise one who was bound, if the creditor would forbear to sue him for a certain time, it was, before not binding, for there was no colour of all. The forbearance was of no advantage to the promisor or of no advantage to the promise or creditor, the matter being under no moral obligation to pay the debt of the discharged person.

On a similar principle if one is enticed in a void promise to promise to pay money, made in consideration of his discharge, the promise is not binding, that anything indented there was no right to think in custody of it was only a discharge from false imprisonment, a duty of the person enticing to perform immediately, so when one enticed is made as a debt evidence by a debt at issue in an inventory of the goods, Ed. 1 P. 73. 4 P. 196. 1 Pown. 354. 5.

Hence 73. 3 P考核 96. 1 Pown. 354. 5.

But a promise in consideration of
liability is good if this is a colorable liability of this sort, about to be sued. For whether the liability be actual or not, the party has a chance of recovering and by the forbearance he suspends or abandons that which the law claims valuable.

This is an important fact. A judgment that the defendant is a debtor, or that appears to be in debt, is a judgment that the defendant is to pay the debt on consideration of forbearance to pay it. The judgment is false good for the promise, might by property for it is not known what the court may be. (1) A mind may explain in the particular case of the property that the law considers valuable. (2) (141) sec. 172. (3) (170). (4) (386).

It is said by Sir Powell that when the consideration of a promise is the forbearance of a suit against the promise, himself, to the cause of action is not inquired into, because the promise acknowledges the liability. (170) (175).

But this rule:

I take it cannot hold when it appears in the deed that the suit from the was altogether grown up, as even a promise is stated to grow, known to, or consist in, that it will not so far a trust as to be insufficient.

I should think that in any case this inquiry might be one of within the suit was altogether grown up or not. The rule applies to one nothing more than a rule of evidence, so that the considering it as prima facie sufficient.
and this is shown upon the supposition that it entirely does
not amount from showing that the action for
bother was groundless. I think, on the contrary, the con- 
verses of the Purse's position in such supposition, at-
least.

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

1. When that which is stipulated on one side is a
consideration of the performance of that which is stip-
ulated on the other, the consideration are termed mu-
tual. As when A agrees to pay B for doing certain 
act, so provided he does the same, then the performance
is a condition precedent to B's right to the pay, being
the term of the contract, or that A is to pay in 
consideration of B's performance. The performance must 
be evidenced in a suit between the same pay. 2d Knuts.
114. 3 Lebk. 35. Rob. 106. 7 Co. 10. 1 Bl. 121. 274. 275.
1 st. Bif. 240. note.

I think that if a suit is brought on 
accordant, the party must prove performance or it
is equivalent to it, or tendering making to perform-
tant was prevented by the other party, or that the other
party was about when his prisoner was not able to
the performance, for any of these will be equivalent
performance. 2d Bif. 120. 1 st. 638. 645. 1 St. 1736.
D'Arcy. 257. 1st 182. 2 1866. 686. 1 East. 209. 205. 619. 2 Mc.246.

2d The second class of contracts as distinguished
referred to the different forms of their consideration,
is composed of those in which the performance or the duty is to be concurrent.

If one party cannot perform, or cannot perform, or cannot perform the performance or service for which payment is or is to be made in a time or at a given time at a price, the duty to perform without the other, nor
this to trust the other, is that one may demand performance or that which is equivalent to
it: 1 Sam. 320, 1 Chr. 203, 617, 629. 2 Es. 240, 7 R. 125, c. 15, 761, 8 c. 366. 1 Sam. Bl. 369.

If the

agreement is that one shall do an act, for the doing of which the other is to pay, the performance is a condition precedent to the obligation of payment. This follows from
the rule already stated.

But if according to the

terms of the contract, pay is to be made on a day which is to arrive or pass before the time of performance, the doing is not considered as a condition precedent, and on the day of pay the cause of action will lie before the day
of performance arrives.

Thus in consideration of your engagement
to build me a house, I promise to pay you $100 at some future time, you are bound to build the house, but whether built or not you may sue for the money at the expiration of the time, if the house is built or not, so that it may be proved that the money was paid and the house built at the same time on the same contract.

1 Sam. 320, awb. 2 Es. 240, 1 Chr. 351, 617, 629, 327. 7 R. 125, c. 15, 761, 8 c. 366. 1 Sam. Bl. 369.
The rule is the same in the case not supposed, where the time of paying is fixed; whether any time is fixed for the performance or not. If the money is not paid, the party to pay is liable whether there be been performance or not. 2 H. & C. 233. 1 Summ. 320.

But if the money paid, for the pay must be to arrive at the time stipulated for doing the act, performance is a condition precedent and where a suit is brought for payment, performance must be proved. This distinction, as well founded obviously in intendment,law, &c., as found in common law, is in contradistinction to a contrary doctrine. 2 H. & C. 230. 6 & 7 Bal. 186. 2 & 3 Will. 240. b. note 12 and 240. c. 2 McK. 186. you may in a contrary situation. Dyn. 76. 1 Rob. 322. 113. 116.

In both these classes an option in which one who is bound to, or bound by, mutual or incooparate, i.e. independent, i.e. non-entangled or non-entangled or entangled. Thus, it must be considered that the technical words "mutual" should in this class be applied to the promise, when in the first it has been debased or rendered to consideration.

Promises are said to be mutual or incooparate, when the condition taking or engagement is in consideration of the undertaking or engagement on the other side. This is said to be a contract in which the consideration is mutual, and where the promise is for performance which of course is a condition precedent and the promise is not.

But in this case, performance is not a precedent condition and either party may sue the other without earning performance, so that such action may be clai-
pursuing between the same parties at one & the same time.

As it is agreed if you promise to build & pay 80000 you may sue without rendering any portion, for my promise was in consideration of your promise to pay, not of your performance. Again if promise to deliver a load of wheat in consideration of my promise to pay, the promise is not in consideration of the delivery, but of my promise to deliver. How I expect one may sue without rendering performance.

[Referenced page numbers]

This latter distinction however is not desired in C.I.G. if Peete is obliged to render at that court, he must sue for performance on his side as rendering to perform to or his hire is determinable. The ground of this difference should be well understood.

It is not on account of any difference of construction of such contract in a court of Eq, that the proceedings there are different, but because the adjudication of that court is entirely discretionary, and settle the intent of Eq. says the intention of the parties is precisely what a court of law declares it to be, yet they understand that the judge, undefined by a court of law in this case, is conclusive, and it will not compel any party to perform, I leave him to get his remedy at law. The court of Eq. settles the whole matter at once to avoid a multiplied suit, which a court will always do if practicable.

[Referenced page numbers]
When the aoc is in this form which by the way is not very uncommon, I promise to pay you $100 on such a day, you transferring Stock to me. If you promise that will Stock to me on such a day, I promising to pay you $100.  The memorandum absolute being void.

The expression of such a guarantee to occasion doubt or dispute, and I have seen a written decision declaring such promise independent, but I take it not to be law.  The only correct paraphrase of such a contract seems to be. I promise to pay on condition you transfer to me on your delivering.  It means provided you deliver on or condition you deliver.  This appears to me to be the plainest, most obvious construction 2031 Br. 1912 in that case such promise is declared independent.

It is obvious that the an defendant this is according to the weight of authority as well as principle.  So that an cannot be without assuming performance on his side.  660 Loll. 664, 1 Fort. 382, 12 edw. 585, 24. Ed. 770, 1 T. 761, 5 ib. 372. to 375.

What the construction of this language can be indefinitely I conclude to vary and the form of contracts is numerous that the particular form while I have explained may affraid you unclear. to discover the intention of the parties.  In some cases, the court would observe that the question whether suire or defendant is to be determined from the spirit of the aoc and not the nature of the construction.
in other words, the intention is to be inferred from the order in which the promise requires performance. Upon an examination of the statute, one cannot tell from the order in which the statute lays down the two situations that from the order in which the intention of the parties requires performance. Doug. 665. 1 T. Rep. 665, 7 & 136. 6 P. 571, 6 P. 371. 1 Brown. 370 a. n. 1. N. Y. Rep. 645. 24 a.

I would further observe that mutual promises must both be binding or neither will be so for it is one of the first principles of contracts that to make an agreement binding it must be reciprocally so.

The contracts must be of such a nature that in each, as to time, both sides, i.e., it must in fact be in a debt. This rule is often misapplied. It is not true that one contract cannot be bound and the other is, for this is in many cases in which the one is bound the other is not. For if one adult after an infant, contract, the adult is bound the infant not so if an adult contracts with a firm. The meaning of this rule is that
the contract must in its turn import to bind both parties, otherwise there is no mutuality, no mutual consideration which the law requires. stalk 14.


The argument to the sufficiency of consent. Johnson in general that the mutual act of binding property with another in consensual understanding, to do something with it or to furnish some labour upon it is sufficient binds him to his engagement, as to the mutual act is gratuitous.

Thus, if deliver property to B, who engages gratuitously to deliver it to C, the delivery to a containing kind, B. So if a companion, as J. Rutt says it down, engage gratuitously to build a house. Kent says an actual for the purpose an engagement, to him, as is bound. But when the contract remains entirely executory as if the mutual act was not been done? he could not be compelled to receive. 6th Ray. 909. 910. 9 10926. C. 1. 1667. 5 T. Rep. 143. stalk 26. 3 stalk 11.

The rule as just laid down is indispensable to the preservation of common honesty among men.

The preservation of domestic peace or the honour of a family has been holden in the contract, a sufficient consideration to support an agreement. This when one had a natural son or other children entered into an agreement with his other children to prevent disputes as to the estate, it was holden a sufficient consideration, being to prevent future litigation and the consequent publicity of family dishonour. 1 beth 3.
so also the confirmation of a doubtful right, has been held in a stuff. consideration. This rule applies to ag to the parties to which an instrument that cannot be a lessor, but consider it doubtful as when the opinion falls. 1 s. T. 10. 12 T. iv. 553. 2 v. 284.

It is not necessary in any agreement that the consideration be expressed in direct terms as a consideration. It is sufficient if the consideration can be collected upon the face of the instrument or whole agreement. If the moving cause can be discovered, it is such as the law demands suffice it will be good, whether mentioned in terms or not.

This in the famous, e.g., between 2 Baltimore and Pirm, there was no express words of promise, yet it was obvious that the moving cause was the settlement of boundaries, which if "unavoidably below to be sufficient" attos it was not formally expressed in the consideration. (v. 250. 368 p. 1st.)

At O. L. fraud in a contract by specially does not in quite vitiate the contract. The fraud in the execution of the instrument does by entirely destroying the obligation.

The reason of the distinction is, that when the promise is in the court; merely, there is no want of a just the obligation creates the instrument the intended, to execute, and attos he ought have been discharged as to the subject of the contract. the validity of the instrument prevents his owning it.
And the party to the suit is burdened with the conduct and good faith of the accused, and cannot defend himself against a suit on the ground of fraud in the second, though estopped by his own fraudulent conduct, and thus whether he was deceived by actual fraud or misapprehension. It is only remedy in such a case would be action on the case or some collateral action.

But when the fraud is in the deed, whereby, obligor may aver it to defeat the action, the instrument is not the one it purports to be, that was no defence, as where it was wrongly made to obligor. Nevertheless, he might still it, and not set his seal to what he intends to.

When two bonds were procured, the one double the amount of the other, when the obligor had examined both, and to retrench one, another was shifted in its place, so that the sign he signed seal the instrument which he also set his seal to. In such case it obligor is allowed to set the fraud to pervert it by fraud, as much as if it had been obtained by dupe, so was actually a forgery. 2 Eliz. 364. 1 Bac. 574. 2 Co. 369 (11 Eliz. 27). 5 Eliz. 4 Eliz.

The law will relieve against a misstatement for fraud in the consideration, that is, unless the fraud be besides. A count of C.J. must inform a specialty in this of at all. But a count of Civil can appertain its relief to the justice of the case.
...and a balance of flour at 10c. per lb. for delivery at the next unsold.

It is not necessary to show that the actual amount of the note is the same as the amount for which it was drawn. The rule in 1 Cr. 290, 2 Dov. 105, is that the rule of law appears to have been the same formerly, in relation to contracts express, as to real contracts, and that it is not to be applied to contracts actually entered into on both sides. The rule has been held to mean that the whole price must be paid, and that in this case the vendor must take his remedy on the case that the form is the rule.

But in the case of joint contracts, the rule has been greatly altered by recent decisions. In some of these cases, the rule of law is that as far as the parties are concerned, it may be considered as settling the balance. The rule is that joint contracts are not affected by the rule relating to joint contracts, so in such cases, such joint contracts may be voided in a suit for payment, although the contract is executed on one side.

And the rule now is that when there is a partial payment, as in this case.
value of the action left may show the person to misrepresent the damages. Though if the person were told i.e. if the cause were mere puff stuff, of no sort of value, the person may be shown by way of defense to defeat the action. 1 Corvi. 39. 193. 9. 8 John 39. 653.

Then are a number of practices existing one of the subject of funds in favor and aid for which I must refer you to "Thou art the Cen.

The Cen. a total funds in the consideration of a specialty has been considered a good defense at law. Brown courts have repeatedly decided. 1 Black 58. 305.

But it is agreed that if there is a partial funds in the case of a specialty, it being of some value, the Cen. must be an Ety.

Thus, still a partial instruction to the Cen. viz. that says the funds in a specialty is total yet if the obligation is not in suit or if when there are several all are not in suit, relief may be had in Ety. because one party cannot compel the other to sue, and thus obligations may be held over his head until all his evidence of the funds is out of the way.
Of the interpretation or construction of contracts.

The object proposed in the interpretation of contracts is mainly to ascertain the intention of the parties, and a contract known to have been made with a view to effectuate an object that intention (Powl 370, 371).

Thus a contract is to be carried to the full extent intended if the words can be so construed as to effect that intention (Powl 372).

In the construction of contracts, words are generally to be understood according to their ordinary, popular and most known signification, unless there is some reason to the contrary (Moore 109, Powl 373, 7 et. seq., Powl 313, 1 Powl 373).

Avoid of from that if a man agrees to buy 10 20 lbs. of salt he must to have the 10 lbs., for lbs. is a common measure. But if the agreement were to buy a hogshead of wine, the hogshead goes with the wine, for this is the practice of dealers and what is the common understanding among them when such contracts are made (Moore 86, 10 Powl 373).

When the word month is used in a contract, according to the English rule, it is understood to mean four weeks, or a lunar, not a calendar month.

But if the term "twelve months" is used it is construed to signify a year, that is twelve calendar months. Whereas if twelve months in the plural is used it would be construed 28 weeks, or 4 weeks in the only (Powl 373, 6 Co 61, 2 Co 124).
Uncorrection of quantity or sometimes as they are uncertain at the place where spoken or used as of the time. Bucket, which in some parts of Great Britain signifies 32 quarters or others 38 + 1/3 linen in some 25. The reason of the rule is that the parties can't be considered as using those terms with reference to the common understanding of them at the place where used.

Still if money is payable by contract, its denomination are to be understood according to their import at the place of payment. As if a contract were made in London for the pay of £1000 at Dublin, the contractor would be to pay £1000 Irish. So if such a contract were made in Egypt for a boy? in London the term pounds would be understood to refer to the supposed intention of the parties. Vol. IV. 125. 1190. 1190. 1170. 1170. 207.

And when the language of a contract is ambiguous, the intention may often be inferred from the subject, effect or circumstances, or from any or any of them.

Thus on to the subject. We have a strong case in the covenant of quiet enjoyment in a lease, as it is generally interpreted, the covenant of warranty. This covenant guarantees a quiet enjoyment against all legal troubles and all the personal disturbances and claims by every man with the construction is that the lessee does not refer to tortious entries as wrong done, but only against the claims of all higher titles. The covenant of the covenant is that the premises or lease shall have the right
to hold the right of property in any were element of high
in itself, it is of no such only that the warranty is made.
So that if grantee or lessee is insured by a test person
or testament is committed, the warranty is not liable.
Co. 3. 25. 2 Ely. 212. 2 Sm. L. 218. 1 Elph. 517.
3 El. 389. 8 Co. 91. Oct. 32.

To also from necessity that a con-
tract may occasion the effect them fail an instant
may operate as if it were in form & substance an as-
signment of a different species.

Thus: it is a rule of law
that one joint tenant cannot instance another, both
being said to have any it for tout, but a deed made
for that purpose will take effect as a release. So, a
contract made by a creditor not to sue his debtor will operate as a re-
lease. To this in this cases we ad which an strictly
in the nature of consent an existing an reverse of
release. 2 Sm. 96. Co. Ely. 352. 2 King. 574.
3 ib. 298. 1 D. 446.

On the same principle an instru-
mment in the form of a deed a common assurance may
operate as a will or deed. Now no one can by such
grant a proviso to the effect in future so that if a
such a grant should be made, it may be considered as a will.
from the apparent intention that it was so
to operate.

Again the intention may be contrived
from the effects of different construction. Thus if con-
triving a contract according to the ordinary meaning
of language will mean it in stricture of privilages
a sufficient consideration may be put upon it. So that what
which an 
considered as words of condition may be con-
"Consideration." At 623 Mason and
Larr.

To show

a contract be granted to one for instructing a child
for other service to be done, the grant is conditional
that it is not so adequate for a 
instrument to the subject
matter, that is, the consideration will sh.

And if an

s


And the question

attaching to the transaction may be considered
important, to explain a contract otherwise doubtful or

constant against the intention of the parties. As when

an annuity was granted, &c. per concilium impexus &
immembrum, the grant was construed to mean profession
al service or counsel.

So if one holding property in his
right for his wife a grant of all his goods it shall
be construed with reference to those which he held in his
individual capacity only. 3 Mere, 271. 18 Crit, 355, 18.
Sec. 635, 5. 871. 87, 765.

And, a case that occurs more
frequently than any other. a release containing the
"consideration of some particular claim, followed by gen-
words of release, as in full of all demands?" The theory
is, that the latter grant words of release are to be qualified
and restrained by the former words of 
consideration. 2 Nov, 71.

Thus, when
A bond of £20, ag. B. for £200. and to lift a legagy for £2 to ¥ B. where it runs $ to ¥ and was look a receipt for.

"And it is the legagy to ¥ B. and release him of all demand to the £20 of B." This was but to not to release the legagy's debt.

So if a met was "in D. of £2. £5 in full of a met schoar a D. of all demanors, agt. him," the receipt is instructent the £5, the guilt were being considered as a consequence of the particular metal. 1 Eq. Ca. 170. 3 Chit. 277. Ca. 170. "I & Rey. 235. 4 Bae. 290. 1 Trow. 971. 2.

But where the receipt of a particular sum is a acknowledged,without more, that is, when there is no particular claim recited, the guilt were with have their full effect. Thus" nos to "in full of all demand do," for no other intention can be inferred from such language. Cowth. 117. 1 Shaw 159. 3 Chit. 277. Contra, but not law. 2 Shaw 289.

But if after the application of the rule of construction already laid down, the inference still appear doubtful, the agreement is in guilt to be construed most strongly against the party bound least favorably for the other party. For the words are used by the obligor who is presumed to be care of his own interest, he ought rather to suffer than gain as an unary must lose. A Co. 76. Black 140. 161. 171. 289. 1 Scott 197. 2. 267. 6.

This rule however is not universal for when there is an ambiguity in the condition of a final bond, the words are to be construed most favorably for the obligor because, although the words are his and they can intend for his
benefit by adhering since from a penalty, which the law never favors, for avoiding it with prudence it is
avoided if possible. 1 Lev. 17, 8 Co. 22, 22.

This, it is said, if an
is bound in a personal bond, conditional 510 to paid at a fort.
when there are two such parts in a year, the money
is payable at the last, whereas, if the obligation had
been by single bills, promissory notes, or committments, it would
have been payable on the first. This difference of con-
struction is the effect of the penalty. 1 Lev. 39, 7, 1 Lev. 17, a.

Furthermore, if one is bound in a personal bond to make a
payment into full estate by or according to the advice of 4.
who is a receiver or addit, if you please. If he
be an estate according to the advice of 4. It is
is discharged whether the estate be sufficient or not.
Even if the conveyance is void? From which you will
abuse of the construction at law for 4. It is
would cause a legal conveyance and not from
the penalty without a remedy, but the construction
in 4. is the same as at law - 5 Co. 93, 6, Perk. 77, 189, 59, 10
189, 59.

Another exception to the general rule is, when that rule
is reversed in weight, occasioning a construction injurious
in such persons. Thus, if it makes a lease to be with
out limitation of time, it is construed to be for the
life of 4. But if tenant in tail make a lease for
difer general, it is construed to be for the life of the
lessee because in the event of lessee, surviving minor,
it would otherwise tend to the injury of the issue in tail.
who are entitled to the estate as soon as the business in

time dies. The lease must therefore terminate in whose
death, unless the combined most favorably for your
would be, for his own life. 1 Scott 42. 1 Pow. 400.

* When legal language is used in a contract it is regularly to be understood according to its legal acceptation.
for then in many cases in law which are technical, it have a signification different from the usual given them in common parlance. Thus the word "hires" followed by the epithet preservative appurtenant
of the 500, 500. 1 Roll. 253. 1 Pow. 402. 402. 402. 402.

Thus if an estate be

limited to be for life, and after his death to his heir as long
as he shall continue to pay a certain annual sum, the limitation returns to all of his heirs forever whether
linear or collateral, i.e. as long as the remainder of
his remains. Because the word "hirs" is not a descen
tio person, but a quasi-collective, and is always
to be so understood when technically used. it thus shows
the quantity of interest taken, which is an inheritance
which cannot be given by any other word in a deed. 1 Pow.
402. 2 Roll. 253.

* Subject to the note laid down just herein,
to the two last paragraphs. Words are to be construed
in the most comprehensive sense in which they are

generally understood. Thus, a covenant of seisin may ag,
the claim of all men. means all persons. If joint

ainty may as well or those held in

ers in 400. 1*
Contracts are to be construed according to the
true intent appearing on the whole contract, the
above to some particular words used in it.
Dow v. Gal. 43. 615. 1 Pow. 203.

If the thing
stated to be is not done or delivered at the time
the contract requires, the value of the thing at
the time support is for performance is great
instead of damages, as if it entailed to deliver a load of wheat
on 1st July, at that time which was worth $2, and 13
may as the contract in d: f. when it is worth $1, he
was entitled to it when worth $1., that was at the contract
for that $2 shall be the rule of damages. Dow v. Gal.

There is one excep-
tion to this rule when the value of the article increases
after the time appointed for delivery has passed, in such
case the value at the time of trial or recovery is to be
the rule of damages. For the Off might have kept
it until that time and Off has prevented his chance
of realizing the sum in market. As if in the case above, the value had been $1 in July, $2 in Sept.
The rule of damages would be $2.

"Suppose in some
"case it was proved that in Aug. it was worth $3.
I find no case of the kind in the books, says old Good
But I presume on principle that $3 would be the rule
of damages. You will observe that all these rules
are made to favor the Off or party who suffer
by the non-performance. 1 Vinn. 217. 1 Eq. Ca. 221. Thos.
406. D. Burr. 1610. 2 Vinn. 3924. 2 East. 211. 1 Pow. 409.
If several instruments are made at the same time, between the same parties, and respecting the same subject, just matters, they can all be considered as parts of the same contract, to be construed to be taken together, as parts of one instrument. Precisely like the different parts of one entire contract.

Thus, if recite, an absolute unconditioned deed, to be 13. To thing, makes a description declaring, that if certain ho's are made by such specified time, then the deed of st. To be void. Then instrument, constitute a mortgage.

So, the rule would be the same in respect to a single bond. A single recite, a description importing that on st. Plenty of certain sums of money, the single bond, all to be void. Then writing, one only distinct parts of the same instrument, constituting a single bond. 1 Pow. 210. 2 Vint. 5 5 18.

Of the modes by which a contract may be dissolved, annulled, or waived.

I would premise, that until the terms of the proposed contract are accepted on both sides, the act is not consummated; of course, unless both may decline to offer to be bound. 3 J. Rep. 153. 1 Minv. 1344.

But an offer on one side being made, and acceptance on the other, becomes a contract. i.e. one offer and acceptance constitute a contract, so that either party may bind it other by performing this part, or by
trading, performance according to the terms of the

But if an offer be made and accepted by
the other, cannot be paid by any of binding the bar-
gain, or a future time is fixed for the performance, the
contract is complete; the property is vested. That is the
right of it is transferred. In other words, if any party
to a present or future possession is acquired at the
time of contract made. 2 Nov. 2 Bl. 447. 14 Jan. 1833.
363. 7 T.R. 58.

Thus it is again that ed shall have 800
by 1800 for doing the contract to be performed on Sunday
next, or if for no other time fixed but that they may notify
to the party from the moment or period within four
months of the hour on Sunday. If the other two
months, the money on Monday.

But if an offer
being made on one side be accepted on the other, noth-
ing more is done. If the party elects, there is no
complete contract. I.e. if there is no pay. In such
cases no future time appointed no binding. If the party
refuses to take, there is no contract, rather it is void;
at the time of making it common sense
being, that if no future time is fixed the contract
is to be performed instantly, and if the parties
have not set otherwise, no one time can be said
to be the time of performance. 2 Bl. 447. 28 Nov. 1833.
2 ibid. 318. 1 Dec. 241.
So also if A agrees to sell certain goods to B, promises to show how to finish them at such a price and gives him time to consider, that is, B to give notice within 40 days, within such time, at twenty-four hours. If B gives notice after the said 40 days, the contract is void. The law will not allow one party to be bound alone. In this case, therefore, it is not bound by B's acceptance unless by a new contract, so that he may take advantage of the loco spem detrimenti. S T. Bk. 653 (29th Ed. 1853).

Before a right of action has accrued on a simple contract, the parties may rescind it by mutual consent, by refraining from mutual dispute or by mutually agreeing to rescind it, for there being no breach the mutual intent which is the essence of the contract is withdrawn. If one party may make a claim upon the other, as in the case of the horse to be delivered on Monday, as before stated, the parties may rescind the contract before the day comes, by notice, Com Dig. 2d 13 Civ. Ch. 283. 2 dow. 162. 23 Bac. 265.

But after a right of action has accrued, by breach on either side, it cannot be discharged by subsequent notice in any way, but by release by deed unless by a new act of writing or by an accord and satisfaction. Thus if I lend the horse at the time I have to you do not pay, if I agree to discharge the contract.
by hand only. I cannot bound. This is not a mere
true invoicing of a printk, but a discharge of a
right of action consummated, which requires no
voluntary, if lower than mine bond. Nov. 11, 12, 13, 16, Valo
17, 25, 18.

It is known a rule of law merchant that on a receipt
of a bill of exchange may be discharged by means
that even after the bill has become payable. An
principle there is no distinction in the case. This is
a positive rule of the Law Merchant, first governent by thin
principle, which governs this contract in general.

Senn. 235, 247. Chit. Bills. 33, 4 54, 94, 37

An agreement may in
case be waived surely, by a long connive in both
sides to execute or claim under it. This an agt.

return. 2. Lord Broun to recede certain com-
mons, lay claim only for 25 years, when a bill was 

for performance. From such date of silence to claim
under the contract, it was fairly intended by the
contract to have been at an end. And the inten-
position of that court being discretionary, it will
not refuse such stale contracts when both parties
agreed to be called on. Nov. 11, 12, 13, 16, Valo
17, 25, 18.

And an contract con-
summated it is enacted may be restrained, but that by
one of the parties only, if there is a provision to that
effect in the said contract. This is left a saving
of the cases of 13. they were delivered - paid for. It
having been agreed that a man might retain them within a year if he did not like them. In our advice then and I refer to accept them. the court held the contract was at our end was in consequence of this provision and that it could not maintain one act of insult. Is it for any reason required for the pay he had made. 1 Corv. 4:15. 1 Thes. 13:2. Rom. 2:6-20. 1 Corv. 8:1. 1 Corv. 23. 2 Corv. 14:5. 1 Corv. 25:1. 3 Esp. 52.

There is a rule on this subject laid down by all. Despite the propriety of which I cannot raise objection. Thus if a man to a particular property of B at such a price as I should mean, with a promise to future execution. the party themselves consent in the mean time without it. because says he they have appointed a third person to perfect it. I do point out to the ground that A is interested in the contract but he if not the truth is, he is referred to merely as an instrument, as if such person were to the amount price, this therefore cannot be lawful. 1 Corv. 4:15 16.

But a contract may be declared as such after the right of action has a course upon it this may be either expenses or interest.

In a pledge where is regularly an acquittal done by deed. As to an where is effected by conveying or by burning to or an end of the instrument. for this annuls the contract it may be termed invalid it.

So also if he who is to be benefited by the performance
of the contract. And in the performance, the other party is relieve or discharged. Thus, at contract to bury 13 $1000 if 13 will build such a house. If a favorer 13 from building the house, in any manner, 13 is discharged. 8 Co. 91 2. Co. 206. Co. 23. 374. 1 Dov. 265. 411.

A case in this case that I are now supposing, the party whereas to perform, but is favored by the other party is in the same condition as if the agreement had been fulfilled by him. in all other, he may maintain his action to recover the said sums. 1 Inst. 110 b. 6 1 Dov. 410. 420.

Again, a contract may be assarded by one of a higher nature for the same thing. The new contract according to legal language merges the old one. Thus, a simple contract debt may be merged in a bond and if proved to amount it merges the security of bond or any other instrument. For when one insurance for a bond, the instrument is not to give a two for a debt or to furnish a two fold remedy, but merely to substitute a higher for a lower security, that end may have a higher not one extinguish security. It is to make the existence of the debt mere complete. 6 Co. 155. 3 Bl. 13. 134. Bull 17. 155. 3 Inst. 251 1 Dov. 23. 1 Amp.

But such is not the effect of the higher remedy, or contract is contract into by a strange. Thus, at being insinuated to 13. oven his bond to 13 for the same sum. The new security is not merged. Hence, while one on it is the same.
and a contract of a quasi en
mean is not distinguished as credit by means of the coin
mean. Thus, when induced by one the contract, I again
promise to pay, or when induced by note give another
for sometime. Credit may be written, 1 Barr. 4,

It is to be observed
however, that when the second contract is induced on a
substitute for the other, at this it does not strictly mean
the former, still if the fact can be proved I may plead
the latter by way of a credit & satisfaction, or when
one promising note is given for another, a for another
mean it is induced on a substitute, one of that way
make a great defence against I cannot plead it in
be a new merger. 2 J. & K. R. 26, 8 E. & B. 251, 5 E. 232,
& Co. 117. St. L. 260.

And, as further when a contract of
know without is induced in a knowing on any like by way
induced on at credit & as to acknowledge. The
mean is not merged for it is not induced by this means to
be turned into a specialty. This suppose one to receive goods
bailiff to enable to act. It then to acknowledge the
receipt of such goods. A man, in a civil or labor of the
would not prevent the party from pursuing his remedy
by action or the previous simple contract if the claim
may then be given in evidence. So if a bailiff
makes such an acknowledge he may be sued in
A contract by deed is not to be annulled or discharged by any new contract, or by consent of both parties; it can be discharged by any fraud, agreement, or acquiescence, or by the actual "consignor and consignee," i.e., every contract must be satisfied by something of equal value. 6 Co. 44. 2 Wils. 86. 536. 1 Smund. 291. note 1. 1 Ch. 62. 254. 9 Mod. 144.

Indeed, it is laid down in all our books, that an actual satisfaction must be made before the debt is considered to be discharged. If a sum of money is not paid, the court cannot punish the delinquent by a fine or imprisonment. 1 Ch. 62. 254. 9 Mod. 144.

So it is said again that an actual satisfaction cannot be placed in discharge of a covenant, but that the act of a covenant to satisfy.
in full of all damages accruing to you in good faith.

When the right is duly created by a contract in the same person, it is a matter of course discharged at law. As when the debtor is made 87:4 or 87:5 for in such cases the only person who can sue is the creditor, and a receipt in this way at four of law prevents the debt from being discharged 60:12. 515. 3 Bar. 197. 1 Dav. 276.

The rule is that in the same

when the debtor is declared incontumacy, so that one cannot sue him in any court but at common law; in the meantime regularly. 1 Pau. 138. 9. 444, 21:3. 218. 8:3. 218. 3:8. 218. 4:8. 218.

In their own homes relief may be had in 87:6 or 87:7 to do justice to these persons who have claimed. Thus if there is a deficiency of goods, a creditor might compel 87:4 or 87:5 to account for his own debt.

A contract

may be discharged also by act of the legislature which either modifies the making of the contract and the performance, as if it went to perform a voyage which a subsequent act declared illegal as by our embargo; or if of war &c., the contract is discharged. 1 Pau. 193. 8 Mot. 57. 2 P. M. 218.

So also a contract

may be discharged by the act of God or inevitable accident, as when a ship commenced to have all the timber trees standing at the time during
by tempest, when we are not held accountable for injury
meant to the ship, nor does the weather render any
other ship, that there would not destroy the timber.
It could not be supposed that he intended to incur
an inevitable accident, as in the case before
mention of a contract for a voyage to Virginia.
10 Mod. 268. 160.98. Nov. 35.

Go also if an article
bailed as a whole to 13. and the whole cell. in if you
are destroyed after bailment without fault of bailer
he is not liable. i.e. he is discharged from his obliga-
tion to return them. Psalm. 54. 8. 1 Pow. 44. 8.

If again on a bale is a bond condition to convey
bales one or more, before a day certain, & he fails before the day
comes. the penalty is saved. that is, he is discharged
under the penalty the Ck. will compel his ship to
receive a conveyance. 1 Eq. Ca. 17. swe. 117. 8. Pow. 258.

The act of a third per-
son cannot regularly discharge or vary the terms
of any contract, the 2-way relate to him. Thus when A
gave a bond conditioned that B. should appear on 8 days
notice to such action. and that he would satisfy
the jury to ag. him. Would appear but on 8 days
notice. Was not to ag. him. It he did not
satisfy it. He was not bound. 1 Pow. 45. 8, 17th. 2.

Of hovemt
contract is to take effect be cancelled or be
changed or
voided by the terms of it. by his act. his act makes consi-
quence as it was agreed. As if the agreement that
I should hear the goods at such a time or place put. the parties are bound by the terms, he forfeits if he refuses to pay any the costs &c. as charged.

1 Pet. 2:15, 16.
Prerogative Writs

Mandamus is a writ of that class that seeks to enforce any act which cannot be otherwise required.

Mandamus issues from B. P. to any court from the highest in the State. The object is to secure relief in cases where a writ in chancery is not sufficient.

This writ is granted in those cases only where it relates to government or the public good without which there would be a failure of justice. It is used to prevent officers from the failure of justice to a subject of justice than being an order specifically made. 1695. 506. 3471. 1267.

This is a writ which may be granted to any person or officer which concerns the public by which he is rovided. 11 Coke 93. 1 Ch. 661. 5 Bac. 529.

This is a writ

demandable of common right if the court is bound to grant it, if proper evidence be adduced without injuring the party. 3 Bac. 528.
At law to compel one off'to hold elections, to call meetings when by law it is their duty, they cannot it, to return a person to any description of corporate officers. Stat. 1003
1157. 1 Sav. 91. Camp. 672. Roy. 69.

It will lie in favour of off'to
also hear or be unlawfully displaced to return them. N.C.W.
77. N.C.W. 176. 176. By this will persons in
authority may be compelled to do their duty, or in proper courts, parties to. 3 N.C.W. 571. 3 N.C.W. 555. Stat. 113. 552. 552. Cal. 229.

It may arise to bring to require them to deliver back,
assets to their successors when they are dismissed from
office. 1 N.C.W. 305. Camp. 662. 662. 2 How. 879.

It is not fairly
any definite guilt who what officer concerns the public,
d out which person may claim to be restored by a court,
this must be collected by example. 5 W. & N.C.W. 579. Camp. 175. 11 68. 98. Roy. 211. 2 Bulk.
172. 1 West. 143. 153. Roy. 78. Camp. 571.

This will will
lie in favour of an off't's art in proper court to return
him to practice when he has been "thrown over the bar,
1 N.C.W. 829. 1 West. 11. 1 West. 75.

The office in this case must
be of an established from never motion. But it is not
to be understood that the office must be a public one;
it is sufficient that it is an annexed one it has for amount

When the office is merely of a private nature, the unit
will not be granted. But it may open in favour of an
officer of a Turnpike etc. for those companies, as incorpo-
rated. 1 Esp. 666. 1 Salk. 440. 1 Wirt. 143. 3 B. & C. 528. n. In
England, offices of stewards of manors, library companies,
are open without the rule.

But it will never open to refuse
an act by a circuit court before it is settled, whether there
have a right to go to act. 1 Wirt. 266. Esp. 665.

It will never
be granted to compel the doing of an act, when the doing
that act is discretionary. 2 Stra. 481. 2 B. & C. 478. Esp.
668.

If such persons are deprived of rights of the same kind
each one must have a suit for himself, they can't join

This suit is not usually
granted in the first instance, tho' it sometimes is. the
common mode is by suit. to show cause why a mandamus
should not issue. 5 B. & C. 532. 3 B. & C. 111. Bull.
et al. 199. 208. If the probable cause is a matter of nato-
ritiy it may issue in the first instance.

It is never gran-
ted but on affidavit of the party applying. It is never
granted unless upon affidavit of him and when the suit
issues it goes not to prevent a default. Bull. et al. 199.
Esp. 670.

It is not directed to the officer or other officer of the
law, but to the person whom duty it is to do the act. Salk
699. 701. 1 Salk. 55.

If upon a able to show cause, suff't cause
is not shown, it will be granted 3 Bl. 111. It is usually if
read in the alternative, directing the person to do the act
or show cause why he has not done it. If defective
reaffirmation, he is second mason being there.

By 6.2, a

notice could not be traversed but now by Stat. of other
conditions out in most states, it may be 1 Vict. 111. 2 Th. 32.
Doug. 138. 5 Bac. 544. 2 Bacon. 481.

The notice being by 6.2

conclusin the party was shown to his action in the case
of the return was false. 3 Bl. 111. Est. 1848. 4.

However, by

the stat. q. c. June, ch. 10, "may traverse the return, but to
fie to his action." If the party brings his action in the case
at 6.2, the question whether the return was true
or false is tried by jury. Ifproof given for damages;
a presumptory manslaughter is inferred. Provided the same
court tried the action 118. 430. 3 Bac. 544. And if a false
return is made by such, the action for it may be
sought on either of them. 3 Bac. 544. Caut. 171. 2.
Est. 1885. Doug. 744.

And the action lies as well for a sup.

privacy sui. or for a false return. - If the suit is denied

to several done is opposed to the false return disclosed


If the return

of the return is insufficient on the face of it, a presumptory

reaffirmation will open of course. 10. 2 Bl. 501. Est. 1885. 3 Bl. 111.

And if as after a presumptory rule to return the suit, suitor

is made, an attachment issue for contempt by the suit


The contract is incurred by fine or imprisonment or both, sometimes, especially, and if the party is guilty of any disrespect or his return be not paid, he may be punished by attachment for contempt. 4 B. & 1 S. 138. Co. L. 146. 3 B. & C. 111.

"In case every town is a company, may be sued. A county is not to be excepted. If there be no company to deal in, he gets a warden or the county treasurer to keep it. If he returns not money, a mandamus goes to the justice to levy a tax."

Suppose a town club will not receive. I'd sue. The court would present认真学习 at law, but that will not sustain his title. What will not interfere because there is no contract between the parties. But by 6th, I'd think it makes an ip pacto compliant accompanied with an affidavits. A summary is just if proper jury to the clerk then cause. Why mandamus should not issue if he makes no sufficient return. A mandamus then issues in the alternative. If this return is still insufficient then must writ of a mandamus. If the clerk returns sufficient reason at the false or that no claim has been delivered to him, it is conclusive at 6th. It will not be tried on affidavits case is then back to a bankrupt court issue, with no affidavit or complaint. This process is sustained by statute so that now the return may be handed at this immediately.
Applications for a new annum may be made to the court if in session or to one of the justices in vacature. It is always accompanied with an affidavit in writing.

1 Salk. 697. 1 Stew. 56. Tit. III. 3 Rec. 244. 11 Co. 97. Salk. 171. Tit. 808. 1 Salk. 236.

As to the authority of a court to punish for contempt, if it be to punish for obstinacy to a process or writ, the party may be confined until he does it, or it be for life. If the confinement be for contempt in abusing or disturbing the court, the imprisoned must until the reinsufficiency of the court, the known justice holding them supreme from day to day that the offender might be punished.
Prohibition

This writ is usually found from B.R. to prohibit in prior courts from trying or deciding cases out of their jurisdiction, or from deciding from the establishment more of proceeding. This writ may in some instances issue from the court of B.C. att. B.C. 3 Bl. 112. 1 W. 114. Bl. 100. 12 C. 60. 6. 58. 10. 15. 1 H. Bl. 476. 2 K. 2nd. 1408. It is directed to the inferior court and to the party prosecuting in it. 3 Bl. 112. 10 H. 2d. 45. Brown, c. Nov. 1. 2d. 28.

The mode of obtaining it is by a rule to show cause why the writ shall not issue, due notice instance by an affidavit of the fact upon which it is claimed. But when the fact is manifest upon the record there is no need of an affidavit. 1 P. 11, 1276. Nov. 79. 10 L. 5. 249. 10 H. 2d. 45. 12. 11.

Whether it must be granted as a matter of right is, whether the great opinion is, that it is discretionary with the 6th. Bl. 77. Ray. 3. 2. 92. Lab. 33. 10 H. 2d. 45.

For the purpose of obtaining the writ, the party applying in the following facts are urged in evidence of the matter which is the ground of issuing the writ. 3 Bl. 113. Which if the matter asserted, is as to a sufficient question of right, the party applying is to obtain in prohibition. 1 Bl. 125 2 Bl. 111. 12 B. 2d. 148. 6. 7. 36. 11. Med. 151. 2. 3 Bl. 113.

It lies in some cases when the inf. court has jurisdiction of the cause Ex when a. it has power regulating the proceeding, in such cases the inf. court deviates from the regulations
This can better want if your addition are said to be the only ones in which a prohib. can arise. V R. B. 104.

Fifth case suggested by suff. court trying after the rule to secure if the cause is insuff. The writ commences the suit not to hold upon the party not to present.

To declare in insuff. is to present an act by filing a declaratory or opposite party upon a fiction not traversable that the latter had proceed, in disobedience to a prohib. before granted.

This declaratory suggestion, that is thin proceed with the sufficiency of the cause is thin plea, in this action (3 Bl. 113. 4. L. Yor. 248 m.) d if found suff. proves with nominal damages ir an the eff in the act, I if insuff. proves in for eff in this action, I on writ of consultation is refused, it is for this court below to proceed with the trial. 3 Bl. 114.

And if after a prohib. has been issued, you think it is contrary to law, writ of consultation is accorded? L horn. & 517. 3 Bl. 114.

The party prohib. may take a suit knowing the suggestion from a the fact an which prohib. was founded the suit is founded for him an consultation against 3 Bl. 114.

Neglect of this writ is punished as a contempt, with fine & imprisonment—see the discretion of the court. 25. 13 Bl. 297. L Yor. 262.
and if the party prohibits commences a new suit
he is punishable as for contempt. sec. 599 ch. 411

On the attachment for contempt. Diff'rent cases and
days rests. The contempt is further punishable by fine
for the public officer. 2 93 c. 262 v. Text 34 b.8
sec. 97. 9 9. 3 c. 360.

In s. w. the suit is joined
by the S. 6th day vacating the 6th justice on any two
2d. Justices have the power of joining it. This state
accepts the cong. law on this subject. Act 6th 347. 8.
This will is made to release reliques when
receision is made on a grant be prejudice on deft. when for
some suff. reason he ought not to pay it. 1 Rob. 307. 10.
2 Lew. 273.

This is the case when grant itself ought not to have been
obtained, or when deft. can show something which will
change him from disability on that grant as proof sufficient.

In such case the deft. who has the call is not warranted in judg-
ing of the validity of the release be in discharge of the call, that
and give in the only remedy. As call. gur. is applicable.

The whole action was not. Part 36.

If debtors imprisoned
on rep. is librated on account of the call, the creditor is discharged
of his liability — and if he is afterwards joined with the call
he is entitled to add gur.

If deft. has had no stay in court; if gur. has been rendered an exception in otherwise such
minor without his granting an court. gur. will be granted.

In how, if binding an action on note, deft. pay the debt and
takes a discharge to deft. afterwards, taking gur. by default
it is. Deft. may have an add gur. The court considering
him or not having a stay in court, since he was justified in
binding deft. under such circumstances. The deft. in said
gur. may also receive what he has paid on the note.

The suit
lies also when gur. has been obtained by former to be discharged
An add. gur. shown determined for deft. not
only vacates the suit but also gives damages for the injury sustained by Eff by means of the suit. 2 Pet 274.

It contains a superseding of the suit to await a final judgment upon it.

On taking suit this suit is brought against the principal cause of action and in consequence of it by opposite parties.

This suit discharges the debt in suit from prison. This bond serves as a security substitute for the prisoner. And in this case the suit alone is a final judgment. This bond is the only remedy of the Eff in the action.

In King the suit is granted by 6 & 7 B. C. in 65 by the same judge, this is from custom which is not acceded to by 13 Rome supposes that it may be granted by a judge of any court if a state did not in time.

This suit is not granted of course both at the discretion of the judge who examined the facts. There is the position or decision on the justice of the petitioners claim certain.

If a money is by chirograph or by a promissory narrow by the other party promissory note attaching interest. If this judg. you ask them, he is entitled to an acids given on the ground. His money having had a stay in court.

If the judge is one who has the power to dispose of the suit and the debt or pay, only one suit can be collected. If the suit is one which has been satisfied the suit may be pleaded in this suit the suit, the suit of the civil suit

And if a partial payment of one suit the other is barred and for
any thing more than the costs, remedy may be had by averting
of one who has taken aside recovery, and I take out of it, and
of a debtor to any of them, which arises from the view of the
creditors may have aiding, you, and the credt, if it be proper with

If an absconding debtor
has before in absconding taken up a debt of his, that debt
was between the hands of one of them, such debt was brought in a
suit against absconding, debt is obliged to pay the sum in the
hands of the debtor, the debtor is indemnified as the
creditors want, instead of being declared to and given up to
the debt. Do not the estate in this case remain in the hands
of the debt? Post 30.

If in foreign attachment does not by
calling on garnishee to discharge him, he has any proof of
the principal, procure himself from advancing other evidence
of the fact. Post 13.

If a bond given by two joint obligors
is resisted by one, who has left the state. The remaining obligor
is bound in the bonds, and it is, on the which proof of
the bonds is brought in, that bond of the bond is and given
by the court, if proof in proof is brought within the state. If
not, out of the state or new trial may be had.

When one of two joint obligors has left the state, service
on the one remaining is good as well.

The party, if not
affidavit by the party applying for relief, apprised of
a rule of it is granted for the other party to appear and
on all the facts stated by the applicant. If the party sues
with this rule affords, denying the facts on which the
award,
quar. may be had to try the facts. If he does not bring them, the suit will be set aside.

The suit discharged the boy.

The court ordered the boy.

proceedings in it, the whole matter after that lay on the land. If such in any
in the suit or trial of and your business claims, take a thorough discharge. If it proves him the money
is on the land he deserves, good to this suit except

Shibb 2 3 3. Mr. Jone, 376.
Habeas Corpus.

By the writ a person deprived of his liberty may be brought before some judge for some special purpose, 3 Bl. 129, and either on his own application to be released from confinement at the appr. of some other person having a right to require his appearance.

1. The writ of habeas corpus is used to remove a person from one circuit to charge him with some new action in a court within the state. 3 Bl. 129.

2. Habeas corpus is a writ of habeas corpus is used to remove a person to another circuit to charge him with some new action in a court within the state. 3 Bl. 129.

3. Habeas corpus is a writ of habeas corpus, is used to remove a person to be tried in a court of common right. 3 Bl. 129. 1 Mod. 198. 3 ib. 30. 2 Mod. 198. 3 Bl. 129. 1 Mod. 198. 3 ib. 30. 2 Mod. 198.

This is frequently called habeas corpus in common cases. It suspends all proceedings in the circuit below in any suit if proceedings are void on the return of the writ. 3 Bl. 129. 1 Mod. 198. 3 ib. 30. 2 Mod. 198. 3 Bl. 129. 1 Mod. 198. 3 ib. 30. 2 Mod. 198.

4. Habeas corpus is a writ of habeas corpus, is used to remove a person from one circuit to charge him with some new action in a court within the state. 3 Bl. 129.
release of the prisoner. It was formerly held that it brought
an escape of a person in custody. Commentaries 17. 28. 1 2 18. 3 3 4
2 23 2 3 3. But this ill-considered opinion was overthrown,
it is fully settled that if parties in an escape of a person in custody,
are to transit business, or to transact business, in his person, or on his
account, without the consent of the court, his liability
for his escape otherwise noted. 1 406. 6 10 14. Oct. 217.
2 29 3 3. This suit is proper granted to bring
up prisoner from. Doug. 4 103. 3 2 3.

5. The principal suit of habeas corpus is the suit of subjiciens clauso. (1 63 1 3 131) This gives to a person
holding another in custody, that he bring him up, too,
sum to discover whether the court shall accord con-
scion to him.

By this suit a person may be discharged
from any species of illegal confinement. 1 92 3 87.
2 74. 3 131 1 3 144. A person imprisoned by virtue house of Lords, for contempt cannot be
discharged by this process.

The suit issues at 6 2 2 of B. A. 178. 2 by a fiction of privilege from both
4 17 1 2 12. But in case of any crime then two
jurer counts could only take suit for his appearance
in a criminal court. 3 2 2 17 198. 2 4 142. Em 856.
2 52. 3 131 2 2 4 2 49. 2 9 48.

But now

by 2 16 1 1 2 the full benefit of this suit may be had, in all its
6 2 2 of this court. The prevailing
opinion is that it cannot issue from four 6 1 4 in vacation, but
it is not settled, 3 Bl. 132. 2 Mod. 198. 3 Bac. 3. 2 Halk. 69. 147

This writ is directed to the person in whose favor the body to be produced is detained. The cause of his detention is in the court or in the case requiring may be discharged, admit to bail or removed. If the court or the cause requires may be discharged, admit to bail or removed to prison. Stat. 350. 2 Halk. 618. 3 Bl. 132. 1 Vict. 320. 161.

The stat. 22. 3 Halk. 2. regulates this writ. This regulation was adopted in this country, indeed it is mainly declaratory of B.C.L. By this writ, the writ can be issued by either of the 3 judges in cases to be issued by either of the judges of one of our courts, if signed in their names, or signed by the 6th. 60. 354. 3 Bl. 131.

By whatever act of a person may be committed, it may be issued by this writ (3 Bl. 135. 6). But it was found in favour of persons committed on accusation or as for treason felony, etc. Stat. 14. 10. 13. 249. 3 Bac. 9.

And it can as well to relieve persons unanswerably confined by individuals as those confined by a public officer. When the person confined is under a legal disability, it may be sued out by his or her friends; as in cases of persons confined in pursuance of legal process, as Bac. 18. 11. 53. 2 Div. 12. 8. 5 Halk. 21. 96. 1 Eng. 60. 88. The act by any relation or friend or one of his is not specially authorized by the person confined, and prima facie is entitled to the writ as his own person but in behalf of the person.

A girl who was 20 years of age was
told to go when she chose upon the hearing. 1 13. sec. 606. A wife fled from her husband; her property he kept; not
enough the court refused to order him to bring it to her; she
hated him to go where she pleased; he threatened the court
with an attach if she refused him. 1 13. sec. 606. 1 13. sec. 134

When the return is suff. the court will not allow it to be
traversed, but leave the party to his remedy; but if the return
was to pour false, it should rewrite to rein the offer. 2 1 13. sec. 55

The return may be suff. by not occurring, when there was cause of imprisonment, but that it was
never to occur, or when good suff. bail is offered. This
must be alleged without traversing the notice. If true the
pris. may be discharged, for it is now settled that in
available cases bail must be accepted. If suff. all the
officer after imprisonment. In this case the court
does not send the pris. back to the offer, to be tried, but
bails him on the spot.

If one is confined on a notice
after conviction, yet the wint lies, if it is claimed nono
it appears that the court which made pris. had
jurisdiction of the matter.

Disobedience to this wint
is contumacy, i.e. punished as such by fine, imprisonments,
cloth, corporal punishment. 3 13. sec. 10. 1 13. sec. 31
1 13. sec. 143. 56. 4 1 13. sec. 466. 1 13. sec. 231. 2 1 13. sec. 128.
Law of Partnership.

Note that a surety to a joint

partnership via: Young 356, 371. 4 & 182. 5 Eliz. 265. 182. 1 W. 56. 37 & 54. 
144. 558. 17. 2 8. 6. 2. 27. 2 8. 1 R. 17. 8.

He who agrees
to share in the profits of business makes himself liable to the losses for the lesser, first in 1 Matt. 17.

Partners are often of the

partnership profit for any other torts. 171. 1 Viz. 358. 27. 1 Wm.
18. 39. 2 Viz. 17. 20. 1. For the suff. 2 intestes partners do not contract with 1 Matt. 34. 37.

The profit of a dead partner

vests in his Est. But the surviving partner has the right of

suing to collect such of the joint profit as is not in debt.

Dept. 149. Exp. 115. Debt 1444. The benefit 2 8. of the latter can

not join. Com. 155. 114. 2 8. 245. The ex. the right

drawn under a liability to seek with 2 8. of the dead partners

Watt. 49. 5 & 10. 340. If surviving partner may join in one

dec. a demand according to him or survivor 2 a demand

according to him in his individual capacity seeks. See

Cham. 4 8. 3. 5. Judge E. thinks a surviving partner can not

do this now. It it was fearing that he sought. 8 5. 12 8. 3. 5.


If the surviving partner is unable to replace

the surviving, if 3 the firm, the Est. of dead partner is liable

Watt. 285. 8. But in this case it was true customary to pay

a bill in debt after the Est. 5 8. 11. 8. 2. 2. The 2. Reval thinks the

no insecurity. According to 2 8. 1 0. 8. 68. 8. This opinion has

been formally the retroactively applied on the law by the

Dept. 85 in Watt. 3 8. 60.

It has been said that the surviving partners...
for the absolute control of the joint property. 1 V. 245, 267, 1 B. 245, Mal. 49, 124. This idea I have endeavored my
inaccurate, for that would amount to complete ownership. 1 V. 245, 267, 1 B. 245, Mal. 49, 124. The law recognizes
for my settled in our courts, that the joint tenant on the
by some of the inconvenience of joining the separate judicature (since in this case, one we sell in his own rights,
other than in that of his cotenant - the one is liable to the,
down to the other) this former is void, with the right of
selling as much of the joint property as is in motion. 12
49, Bomb. 47.

If at 138. transeunt businus ev in separate
houses, under an app. to share in each other's
profit, each is
liable as far as relates to things personal for the other, or,
the thing is an unjust stipulation between them to the con
trary. Doug. 371, 2, 1 St. Bl. 327, Bomb. 814, Mal. 27, 73.

For

the

two

of two tenants obtains an act of assent, vacating the
former's

in

estate, the estate by a tenant of the other can

be still

liable for the.

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two or more for joining together their money, goods, or labour under an
agreement that the gain or loss shall be divided proportionately.
Matt. 17. 10. "Rog. 96. 3. P.M. 204. 10. 8, 87. 79. Rog. 271. Gain steps to
be shared according to proportion, in what the respective parties

If a man advances money to a trader, he may make himself a secure partner — the criterion is this — if the profit
or loss is to be shared by him. But it is a loan — if it cannot, in default of agreement on the
accidents of trade, he is deemed a partner. Matt. 27. 8, 31. 14. 5. 221.
A. 99. 27.

Each partnership may be specifically decreed in 6th. 11th. 323.

Part. 3. 4th. concurs, manipulated by the
2. 22. 178. 72. 89. 303. 2. 219. 196. 41. 15. 6. 15. 96. 129. 3. 197. 16. 116. 2. 219. 248.

If no agreement is made to the con-
tinuance, the profit or loss must be shared equally, unless the
is an agreement to the contrary. And if they make an agreement to the profit only, their shares in the loss shall be in the same ratio stipulated with respect to the profit, to ensure that

may make himself liable as a partner without having entered
into a contract of partnership, by furnishing another to
his name, account, or such goods 20. 318. 195. 62. 388. 199.

To make a person a partner on the ground of their sharing pro-
it steps they must be jointly interested, not only in the fin-
ancial gain but in the future sale of the property. If there is a 190
agreement that he shall purchase a cargo in his own name that
of one of the partners, buys goods for both parties at the same time, the partnership may be changed in favor of his goods without any mention of the partnership. Matt. 62. 3. Mark 383. 2. Tit. 499.

When that one of the partners of a ship, the major part of the goods consists of his goods, may be changed in favor of his goods without the mention of the partnership. Lec. 935. Matt. 75.

But the major part must give security in the 6th of Abnd. for the safe return, vid infra, Matt. 767. Lec. 935.

Shipowners' security in comun. Matt. 759. If the ship be covered by a stringing, the ship will lie for any part or shares, even if the security be not given. Matt. 389. Mark. 34. 7. Tit. 979. Lec. 261. Mark. 640. This is contrary to the rule of Lec. 765. Matt. 260. 8. Lec. 118.

But in parts owned of a ship, where the ship is not maintained, the partner will lie for his part ag. his partner. Lec. 15.


Partowners of a ship may maintain the joint ownership when they have by the law of Eng. by selling their respective shares Matt. 76. But by this L. mar. the court, in clear without a claim of sale, the one voyage is made. Orch. 3110.

If one of such parts owns objects to a voyage proposed by the other, he may arrest the ship, and compel the others to give security for the safe return by force or out of abnorm. Matt. 77. Lec. 383.


on such security amount may be maintained in the 6th of Abnd.
In the last case, the part owners who engage in the voyage are not entitled to an act of the profit, bent. Matt. 79. Luke 230. 26:26. 6:36

If two partners in trade, walk away, they dispose of the whole partnership property. Matt. 80, 185. Comp. 245. If one becomes bankrupt, every benefit saved to by the other, not knowing of the fact of bankruptcy is good. Comp. 245. Matt. 140, 144.

A partner incurs of assuring money given to the other for his share therein, because that after his assignment, or entitled to one half of the stock, therefore the other party was voluntarily discharged the note. Comp. 412.


That the master, by virtue of his hire, may maintain the ship as a stranger, for taking away his ship with. Luke 10. Matt. 81.

Partnership is founded on contract. Matt. 100, 1. It cannot be formed without the consent of all the parties. Each of whom must assent to the receipt of the parts for his partnership. Matt. 149. Hence in the death of one partner, his hire. He is not as such a partner with the survivor, unless it is provided in the partnership contract that he shall in Matt. 238, 33, 1 is not but, in law, with them? 1 Cor. 265, yet

This signifies of our partner. In being a bankrupt. Matt. 296, 41. Luke 2177. But they on account, in event, with the other. 1 Cor. 463, 8

When the respective parties contribute equally in many labours,
the profit are to be divided equally. Matt. 10: 5. Later cases, when they contribute unequally, see 2 Cor. 9: 6.

Parties can lend to one another in their own private concerns. And if any help happens by an omission of this kind, it is the fault of the parties. Mat. 113: 4, 5.


But if there is an absence of custom or agreement on this point, see Ch. 28: 9. Barn. 12: 16. 12: 21. 102: 15. 829: 15. When the law is silent.

If a partner exceeds his authority in any transaction, not occasioned by the fault of the partner, he must bear it. But in grief to the profits of each partner, unless contrary to carrying on the trade. Matt. 113: 11.

After a dissolution, as before, the partners whose in all can have a specific lien on the books, and for the balance due to him from the other on the partnership asset. But this cannot be enforced by the private suit of the other partner. Matt. 12: 5, 9. 2: 16. 178: 13, 16. 207: 11. 304: 26.

The dissolution of partnership does not sever the joint not of the parties in partnership, except in the case of a joint stock. The partnership has no other rights agst. the other than to demand the balance due him. Comp. 249, Mass. 146, 145. 6.

Upon a death the partnership
by the statute or in the will of one, the executor or administrator of the survivor, or the trustees or J. P. of the surviving, or the next of kin of the deceased, or if the survivor hold during the survivor, the survivor to do it was done before subject. Mass. 146, 145. 6
comp. 249, Del. 321, 1 Ky. 742. But the Ee in 1 part
with the survivor unless the partnership contract pro
vides that he shall be

Never also after the death of one partner,

If one partner
takes more than his proportion of the stock, the other may sue upon his separate estate for the difference in the cases of separate estate for the difference in the cases, 1st. 255. 16 V. 143. 7th. 3d.

As to the allowance made to BK by partners under St. 5 Geo. 3, 15. 2. 3.

If money due to the partnership lies idle, after the death of one of the partners by a third person, the surviving partner may lawfully eject for it in his own right as a

tain an action on an illegal contract made by one of them, it
was made without the knowledge of the other. 3 T. R. 254.
Mat. 168.

If two partners incur losses in an illegal transaction,
down of them pays the losses out of the joint estate of the other,
the former may recover a moiety of the latter in
indebtedness. 5 T. R. 318. 13 Man. 2069. 2 H. Bl. 379. 3 Ves. 153, 107. 107,
Mat. 166. 80.

If two partners are concerned in an illegal transaction,
who incurs a penalty, the King may pronounce with
the owner of the estate the above penalty, the thin convert
an penalty need. 6 Cr. 263. 93, 6 Cr. 266. 171, 101, 9, 171. Mat. 161.

So it is, if one of the partners is concerned in such a manner
as to the partnership, Mat. 161. D. 1 D. 23. Mat. 183.
Cr. 619. 28. But this was never, to suppose the action partners
being to the transaction.

A contract, by its nature, in violation of the law will not create a partnership,
but it is in the form of a partnership, contract. Mat. 195. 201.
59. Annuity, of many who is about to come in or treating for the money,
worthful. But if the same time, at the same time that the
money shall also have a portion of the profits of the time,
the annuities the annuities in this case are not partners, the

A contract, by its nature, 20 yrs. between J. Muncey (their only,
claiming ex parte for that length of time) in advow to a bill,
for annuities in 26. Mat. 213. 12 Vin. 276. Gell. 8 P. 204.

As to how long the set of limitation affects the credit of J. Muncey,
If two partners agree to pay a sum of money out of their own private cash, they must be sued jointly in the debt.

1 N. Bl. 236. Mat. 239. 

In any joint or joint partners, they must be sued jointly.

In a joint partnership (Matt. 239.3, John 11.8) if there is a formal contract, advantage may be taken of it in existence under the joint debt. See Matt. 820. Prov. 152. If in debt it is pleaded in all cases. See Matt. 820. Lev. 19.30. 

If two partners in debt alone on a formal contract (2 Bl. 247. Matt. 440) it is pleaded in all cases. See Matt. 440. 5.34.5, 20.5. 

If two partners in debt on a written joint contract (3 Bao. 320. 6.37. 9.19. 2 Bl. 47. 152. 34. 111. I. 

If two partners in debt alone on a formal contract (5 T. 651. 290). But after a natural one may sue alone on a contract if two jointly. See Matt. 239. 11.17.18. 

If two partners carry on business alone. If two partners carry on business badly, they may recover badly. If two partners carry on business well, they may recover well. If two partners carry on business, they may recover badly.
The discharge of a transferee
the estate of the debtor does not discharge the partner, the latter
remains liable.

Abandonment to whom payment is, unreasonably
duly made, in a community of husband and wife, makes the
creditors to come upon the joint or separate estate, but against
both except for the deficiency if both the other creditors are.

From partner being one % of stock
lands a trust prior to the trade with the knowledge of the other, it
becomes a debt in favor of extinguishing creditors to the extent
of or husband, this debt may be proved ag to the joint estate, even
if it is done without the knowledge of the other partner.

From the time of the partner
misuse between act & B, it is arg that A pay all the debt to
act. Having the ag & delays collection for a great length of time
in, still not deprived of his remedy ag & both remain Eq & E.

In act, acts subsequent to
the time of delivering goods on a contract, may be proved an evidence
that they were done on a partnership act. But if there
was no partnership at the time of the contract, no subsequent
act by any person who may afterwards become partner and
make him liable on that contract.

A partnership is not liable for the debts of one partner, maximam in fur-
ishing himself with his part of the goods, stock.

598.
Partnership may be dissolved at any time by the consent of all parties; but no one can dissolve it without the consent of the others within the time limited for its duration by the original contract. Where no time is limited, any one may dissolve it by withholding himself from it, without any notice given to the prejudiced of the others, or at an unreasonable time, as often a particular business is begun, &c. Mat. 273, 5.

Dissolution may take place in several ways or 1. By elusion of time; i. e. by lapsing of the time for which the partnership was continued. Mat. 275.

2. By a decision of all the parties after a complete liquidation of all the business. (36).

3. Partnership contracts for a single dealing is dissolved by the dealing being completed or closed. Mat. 276.

4. By arbitration if the parties, by their submission authorize the arbitrator to dissolve it. 16 Edw. 570.


6. A partnership done in voyage may be dissolved by the master, as the voyage is continued. Mer. 283, 5. 1 Vin. 153, 1 Edw. 134, Book A. 2, 2017.

7. By the death of one. Mat. 294.

8. By forfeiture or as a consequence of arson or felony. Mat. 219. civilly deed of part confused with this to it is.

The death of one dissolves the partnership as much between the survivors as much as if the partnership were dissolved. Mat. 294.
or arrangement of mind (than being a prospect of merit) does not
disolve the partnership. 1 Viz. 85. Mart. 295.8.

Partnership by

formers taking loans, are not in Equity completely dissolved by
the death of one partner. Mat. 298.9

The partners are joint

tenants yet for advancement & continuance of commerce, the
is no survivorship between them. The survivor of one
but is born with survivor. 1 East 363. i.e. the survivor
ship in interest - for this purpose by ch. their interest to
be secured till their rights survive the survivor. Mat. 152.
140. 6. Coq. 174. 294. 5. 302. 3. Salt. 44. Show. 159. Edw. 118.

The rule that there is no survivorship between partners is
formulated in the 1st. Mat. 299. Co. L 182. 7.

If on the death

of one partner the other continues the trade (with partnership
stock) (implying) the latter must act with the rep
nunation of the former for the profits made by continuing it. 1 Edw. 141. 10 Mart. 20. 2 Eq. Cas. 455. 75. 2. Mat. 301. 3.

Both partners being dead on a bill for one quarter of
the partnership or action is no partner in Eng. 6 Bev. 6th. 217.

If one of two partners signs a note in his own name only in her
transaction, both are bound by it in Eng. 2 Viz. 277. 92.

Even one partner himself all usually 2 Oct. 19. If in an
Eq. 4th Ch. 3 of two partners, partnership goes on taking all
sales, the other partner is entitled to a share of the assets, pro-
portioned to his share in the goods. Doug. 657. 50. Salt. 294. 1 Shaw. 70.
One partner may have interest, &c. of the other from 
the time of the partnership, after the dissolution. 2 T. R. 475. 1841.
205. But if one 
came in, if there are two partners, the sum 
not being paid by the partner who does not hold in abatement may receive the whole prejudice 
of the two others, from the one sued. 3 East 200.

An obligation to pay to one of two partners, all the sums which they shall pay to the other, 
as a debt, the obligor to pay, is advanced to the creditor by the death of the other. 3 East 282.

If one partner is charged beyond his proportion to his 
gain, giving him a lien upon the partnership, 15 Car. 367, 1 Esp. 62
ac. 8, 1 Tr. 374.

A contract with both partners cannot be enforced 
between them alone, they can only with it after 6 with drawn from the partnership. 7 T. R. 254. 3 Mac. 532. 1 T. R. 291.

When partners

in trade are sued, the sum of settling the estate is to be 
repaid by the joint partner to the payor. (Lord B. 2 T. R. 289, 5 Bro. 69, 231.)

of the 68. ch. 3d. the private estate of the partner (in the first instance.) to the partner of their respective debts. 5 Dem. 111, 8 T.
Ref. 152. M. 243. 4, 36, 7, 9. 150, 1, 2, 3, 215, 16, 18, 329. 2 Vin. 293.
2 Bro. 69. 15. 240, 1, 3, 11, 1 180, 5, 27.

If there is a surplus of the private profit, it is not liable (2 Bro. 69, 119.) for the debts of the 60. 2 T. R. 151. 1, 2, 3.

If there is a surplus of the private profit, it is not liable (2 Bro. 69, 119.) for the debts of the 60. 2 T. R. 151. 1, 2, 3.
One partner cannot mean byassign. a part of a sum of money
and by the other on the partnership act. unless the true bal-
ance struck. Esp. 967. Matz. 211. attaining if the money and the
partnership profit. Bate 153.

After the death of a partner,
the partner authorized to receive the debt, i.e., cannot bind the
other by giving a security in the name of the firm, since
1 Bk. 155. 2 Bk. 618. Matz. 278. no conveyance from one of them binds
the other by new contracts. Bate 238. Bk. 30. But in this ca-
note is necessary as to third persons. Bk. 30.

One partner cannot bind his co-partner by deed, without a power for that
purpose by exec. rent. 7 R. 307. 2 Bk. 215. 3 Rec. 208. Cen.
671. 5 Bk. 29.

Before the partner becomes bankrupt, the profit from
both joint or private, is held indiscriminately for every debt into
joint or private.

If one of the partners is indebted to his joint en-
tricity, no more than his part of the joint profit, can be sold
favored relative to the pay. of his debt. If more than his part be
taken as to the in it. cannot be sold on the in it. Bate.

At sale of his part under
money making the firm share but in joint with this other
partner. 11 Bk. 366. Doug. 414. 2 Mod. 279. 1 Shaw. 175. 2 L. Ed.
871. Latk. 392. 2 Bk. 160. 3 Rec. 25. 12 Mod. 2150.

If one of such
partners contracts as for himself i.e. without disclosing the
partnership, still if the contract is in fact made for the
partnership, proof of this fact (the it was unknown at the time.

of the contract, to the third person with whom the contract was

made) will render all the partners liable. 12 Dun. 725. 7 B. & Cog.


1 Bum. 2.

A contract made by one of such partners, relating to the

partnership business, binds the rest. 6th. 537. 23. an act.

to the partnership is dissolved, a contract thus made, will bind

all, unless public notice of the dissolution is previously given. 7th.


Finis.