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DISCARDED
The Sheriff is an officer of very great antiquity, his name being derived from two Saxon words, Sri (Shire) and the Secue (Bailiff), an officer of the Shire. He is called in Latin the vice-comes, as being the deputy of the earl, comes, to whom the custody of the Shire is said to have been committed at the first division of the kingdom into counties.

In England, Sheriffs are appointed by the King from a nomination of three persons from each county, selected by the 12 Judges and other High Officers of State. Formerly, they were chosen by the several inhabitants of the several counties.

By virtue of several old statutes, the Sheriffs are to continue in their offices no longer than one year; this rule, however, is frequently suspended, with which, if Sheriffs are appointed "duemarie mensae bene plaustis." If so is the form of the appointment.

In Connecticut, Sheriffs are appointed by the Governor, one for each county, for the term of his office during the pleasure of his creator. So that the office can determine here only by death, resignation or removal.
Sheriffs.

When saw the sheriff must reside in the county for which he is appointed or if he removed out of it, he forfeited his office. Mr. G. thinks that rule would be adopted in Connecticut.

A sheriff has regularly no jurisdiction out of his own county, or if it is necessary for the purpose of completing an official act that he should go out of it, he has authority so to do for that particular purpose. E.g. as if it should become necessary that a person be removed from Litchfield county jail to the superior court now sitting in Hartford county. If the sheriff should give a writ of habeas corpus for that purpose, here as no officer could take him from the jail but the sheriff of Litchfield county, he has authority to complete the act by conveying him through Hartford county to the place of the court sitting.

Also if the sheriff of Litchfield county should be required to attach goods in this county belonging to a debt living in New Haven county, he may go his full authority to go into the latter county there complete the service of the writ by leaving a copy of the debt above.

Also if a prisoner in the sheriff's custody should escape & flee into another county, the sheriff or his deputies or officers on fresh duty may retake him in another county.

The sheriff may at common law appoint deputies.

In modern times, who become his servants, therefore may execute all the ordinary ministerial duties of the sheriff, the necessary here being that they see a plain fact put in.
By a recent act of the legislature of Connecticut, a sheriff cannot appoint a general deputy without the approbation of the court of common pleas for the county for which he is appointed. But he may without such approbation appoint a special deputy. A special deputy is one appointed to do some particular act or service. He has no authority to execute any writ but such as have a designation endorsed on the back thereof by the sheriff.

So also the sheriff of one county may appoint the sheriff of another county his deputy without the court's approbation. The deputy is removable by the sheriff at pleasure. But this deputy cannot act out of his own county. Neither any other person than a sheriff can be appointed out of the county. This rule is founded on usage if is sanctioned by the statute.

The deputy is removable by the sheriff at pleasure, for he is merely the agent servant or attorney of the sheriff. But while he continues in office the sheriff cannot alienate his power or take away any of the incidents belonging to the office. Thus if one is appointed deputy for the county of S. The sheriff cannot appoint his authority to any one town, nor to any particular person. In certain cases under our new statute the sheriff of the county of S. may render an complaint being made to them give a deputy, suspend the exercise of the office for a time, or disqualify them for ever after holding the office.

In Eng. the deputy or under,
Sheriffs  
in that of the sheriff. Indeed, suits in Eng. are never di-
rected to a deputy-sheriff but to the sheriff himself, if the dep-
uty is authorized by a general or special warrant from
the latter.

Capt. 27.  
In Connecticut suits may be generally be direct-
ed to the Deputy as well as to the Sheriff, as they may be di-
rected to the deputy alone. As that the deputy is here trat-
ed as a public officer, if he makes his return of endor-
sement in his own name.

Mar. 237.  
And it has been decided by
the superior court in Connecticut that a suit directed
to the sheriff may be served by his general or special deputy,
that they be not particularly described in the direction of that
whether it be mean or final process.

A covenant by the under-sheriff not to execute process of

A certain description issued or as it is against law, contrary to his

duty, which is that he shall execute all process offered him.

The duty of the sheriff being itself derivable cannot be dele-
ted to another. This rule holds true in Politics as well as in

jurisdiction. The Deputy therefore must do his duty in

person, that others may lawfully assist him.

Hence it is that an acest made by the assistant of the
deputy is good. That rule however must be taken with some
qualification as will be seen hereafter. The authority giv-
en by the Court above personal of original, may be dele-
ted but when given by statute it is otherwise.

Of the under-sheriff is guilty of a neglect of duty as suffering an es
serves the sheriff may have an action on the case against him for the sheriff himself is liable over to the jury, in the process. If however, the sheriff had an outstanding bond, he may bring his action on that ground and his other remedy.

A gaoler is also the sheriff's servant appointed, if necessary by him. This gaoler is a deputy for a certain purpose, viz., to keep the goal. The sheriff is an officer keeper of the goal or common prison in his county. If none has right to appoint or remove the gaoler.

The sheriff has regularly no right to

[Obs. 2. 0. 2. confine his prisoners in any other place than the bon goal.

[Both. 1. 6. or prison, this being the place appointed by law for their

[Sec. 3. 1. 8. custody of keeping. — If therefore a sheriff should confine a

person in a private house, or any place other than the common

goal, he would be liable to an action of false imprisonment.

except where he was necessitated to do it, as if the goal was bro-

ken open, blown down, burnt, &c.

The sheriff being as before obtained, an officer keeper of the

[Sec. 4. 8. goal, cannot himself be arrested in any civil process. He can-

not be confined in any goal out of his banns, for that would

be unlawful, he cannot be confined in the goal in his own

county, for all he is the governor or keeper of it. He cannot

sell himself at liberty. If a deputy sheriff should arrest him, he would

instantly discontinue his authority by removing him from office, or if

a constable should arrest him, he would, could not commit

him into prison, for this must be done by the gaoler, who is a mere

servant of the sheriff, and sensible at any moment the sheriff should

please to do it.
Sheriffs.

The liability of the Sheriff for the acts or defaults of his deputy or under-sheriffs.

96a. 98.
Gen. 89.

In many cases liable for his acts or defaults; the act of the servant as under-sheriff, being considered as the act of the master or sheriff or master himself. See 4th law, joint fee.

Hence it is that the sheriff is allowed to take from his deputy's security for the faithful discharge of their duty; that is, it is on the ground of the sheriff's own responsibility to the court in the premises. The security taken in the nature of a bond to save the sheriff from future harm or loss.

The sheriff it has been said, "is in many cases" liable for the acts of his deputy. It is a general rule that the sheriff is liable for all civil purposes, and the acts of the sheriff, but for the criminal acts of the deputy, he is not liable. For the criminal acts of the deputy are not constructive acts of the sheriff. To emphasize this distinction, if a deputy to whom the writ is directed refuses to execute it, if in consequence of which the officer suffers damage, the sheriff himself is liable. And so also for a false return. But if after the deputy had made the arrest he commits murder, or an assault or battery on the body of the defendant, the sheriff is not liable, for he is never liable criminally for the acts of the deputy.

Again, it is very clear that the sheriff is not liable for the
private acts of his deputy. It is sometimes a question whether the
privy acts of the deputy, it is made a question whether if the deputy
under an execution against A, and instead of seizing the
346. goods of A, by mistake a other reason, lies upon
347. note (the goods of B), the sheriff not being party to the act), whether
348. The sheriff is not liable as the deputy has not pursued his
warrant, or whether the only remedy is not against the deputy.
349. 2 Wh. 332. It may be considered, as an unofficial act, if the
350. act, the sheriff is not to be liable. Unofficial, because the act
does not direct the sheriff to levy on B's goods, but on those of A.
The deputy's pretending to act under authority of law is no reason
why A, the deputy, sheriff himself should be subjected.
351. 9 Wh. 303. If A, law, the sheriff alone is liable for a neglect of duty in
352. in the deputy, thus if an under sheriff or gaoler suffer an escape or
353. then of them are liable in a suit to the Dpty in the prisons; but the
354. sheriff is — of the reason is that at Aom. law, the under sheriff and
355. gaoler are neither of them officers known in law — if besides they
are total changes to the Dpty in the prisons. —

But for a tort committed by a Deputy in his official character,
356. as well as the sheriff is liable to the party injured. — The sheriff
357. 41 Ch. 47. is liable because the act is committed by his servant, if in his
358. 31 Ch. 321. official character. And the Deputy is also liable. Mr. Gaunt
359. 85 Ed. thinks, because the party aggrieved may consider the Deputy as
a mere false fever. By a fort is meant an actual misfeasance of not a mere non feasance; or neglect of duty, there must be a false then a wrong done if not a mere negligence one, to make it a fort.

Thus for a voluntary escape permitted by the deputy, the deputy himself is liable for that is an actual fact, but for a negligent escape he is not, that being nothing more than a mere non feasance. As also if a deputy had an execution in his hands if he runs to buy it he is guilty of a mere feasance merely. Yet if he buy it upon a wrong person he is guilty of a misfeasance, if he is liable as well at the sheriff.

In Connecticut however the under sheriff is liable for a neglect of duty, as well as a tort committed in the execution of his duty. If the sheriff is also liable in both cases as at Common law. The reasons of the deputy's liability is, that he is more known as the officer of the law. The sheriff here being directed to the deputy, he is known to the court as being a known officer, whereas in England it is otherwise, the court is more directed to him in that county, he is not a known officer if the deputy is never directed in this name. Indeed Deputies are so well known in Connecticut, that they may bring suits in their own name as deputy sheriffs against 3 persons as is every day done by them on receipts taken for profiting.

It has been once or twice observed that the sheriff is an office in the name of the God in the county for which he is appointed. If of the oath, in the death of a sheriff, if before a successor is appointed a person escapes, no one is liable. It is clear that the old sheriff cannot be liable for acts committed after his death, nor even his estate.
Sheriffs.

for those escaped before his death, for non entry into case person.

It is equally clear that the new sheriff cannot be liable for acts committed before his death appointment. Neither can the Gour be

for the death of the old sheriff his power just parts ceases.

Therefore it is said before no person whatsoever can be made liable for such an escape. In such a case as that, if the sheriff prisoner

actually escapes, the Offic in the point has no remedy, except by

replacing the prisoners. And the Gour does not within the Offic

Med. 14. can do this left a new sheriff be appointed, as he could not be a

committed to person, there being no sheriff in existence
to receive him.

[italics]

Sec. 320.
Coff. 76.
Hans. 393.
[italics]

Sight, as required, he may still proceed to complete the service, for

The service of the execution is an entire act. It is said that the holds

not till he has completed the service.

The sheriff is not liable for the fault of a special deputy appointed at the Regent of the Varnet.

Sec. 609.
Sheriffs.

...of the authority and duty of Sheriffs...

For the subject which I am now considering is entitled "Sheriffs", yet I have thought it considered under it all persons who are authorized to execute process.

In England the sheriff is a judicial, as well as an executive of ministerial officers. As a judicial officer he holds a county court in his county, and presides in it.

In Connecticut the sheriff has no judicial power; he is principally ministerial, the past executive.

A judicial officer is one that hears and determines causes and is called a judge.

An executive officer is one who executes law by virtue of his official character, power, without any command from a superior.

A ministerial officer is one who executes law under the command of a superior. The judges of our courts are judicial officers. The Governor of the state is an executive officer. Sheriffs as before observed are principally ministerial, but sometimes executive officers.

The police will not be treated of first of sheriffs as conservators of the peace, in which character they are purely executive if not judicial officers; as ministerial officers.

I As conservators of the Peace they act by virtue of their general authority. They are the first executive officers in the county.

A sheriff will rank to any person therein during their continuance.
Sheriffs


He shall have the sheriff's power to commit
premises committed to prison, throughout his own county, all per-
sons who breach the peace, or attempt to break it, if they do
in the character of conservator or keeper of the peace.

He is also bound to dispose of persons at all
Treasurers, Treasurers, felons and other criminals it commit them
10th. 436, to jail for safe custody, and he is also bound to defend the
County against any of the king's enemies when they come into the
Land. And he is also bound to defend the County against
And for all or any of these purposes he may demand command
the sheriff committed, at common law, every person is bound
to obey this summons who is above 15 years old, under the
degree of a Peer if upon warning given they neglect to attend
They are punishable by fine and imprisonment.

By the Statute of Connecticut, the sheriff is bound to de-
press all riots, tumults, noises of unlawful assemblies, if for
such purpose he may command the sheriff to attend.
This seems to be merely in accordance of the common law. And the
same law authorizes him to apprehend all breakers of the
Peace, which is no more than the common law authorizes him to
do. This statute says he may command all suitable per-
sons within his county, being of sufficient age and ability;
if in case of their disobedience of his command, they are finable
not exceeding $34 dollars at the discretion of the sheriff.

And the statute has given to constables within their respec-
tive towns the same authority, that it has given to sheriffs
II. As Ministerial Officers. Sheriffs are bound to

96. 49. execute all legal process regularly directed to them, if refused,
Aid. 74. they are by Common Law subject to Power of imprisonment
Rev. 60.
97. Stats. 385.
98. likewise liable in a civil action in the case to the party

99. injured.

Our Statute also declares that when a Writ is tendered
100. Stats. 385.
97. ed to the sheriff or other officer, he must if demanded give
101. Stats. 385.
97. a receipt for the same, in order to facilitate the proof of
102. Stats. 385.
97. the fact of delivery. And if an demand he refuses to do
103. Stats. 385.
97. the Off. may call on other persons as witnesses to set
104. Stats. 385.
97. their names as witnesses to such delivery. This also applies
105. Stats. 385.
97. to constables in their respective townships: It is very rare however
106. Stats. 385.
97. that a receipt is demanded for an original writ.

107. 69.
108. Const. 485.
109. known officer as a sheriff, general deputy or
110. 604.
111. 604.
112. 1821.
113. 1821.
114. 1821.
conspire, is not bound to shew his writ to the Deft. be
115. 89.
116. 89.
117. 89.
cause he arrests his body, as levies on his property, as the
118. 89.
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222. 89.
Sheriffs.

No individual is obliged to submit to an arrest without having some evidence of the person's authority to arrest him. If the person should attempt without furnishing this evidence, the defendant may lawfully resist him. In case of a regular officer, this evidence is furnished without showing his warrant; but in case of a special officer as he derives all his authority from that particular act, the warrant which contains the evidence of his authority must be shown if required.

But in many criminal cases any individual may without warrant arrest the offender. Here the person arresting cannot show any warrant or authority, but still the principle is here preserved; for as to that purpose every member of society is a "private officer" with full power of authority given them by law to arrest the offender, if the law of the land which gives this authority every man is supposed to know.

The sheriff or his deputy may at common law command and the jailer commission thereby in the execution of his office. This applies in Connecticut as well as in England.

But we have a statute declaring that in case great opposition shall be made against the sheriff in executing lawful process signed by lawful authority, or in seizing the lawful writs and process, or in case there are suspicions that such opposition will be made, the sheriff is authorized with the advice of one assistant, 384 of justice of the peace to raise the militia of the county. And the statute further declares that the sheriff shall not return "that he cannot do execution," but all military officers of
Soldiers are commanded by the statute to obey the sheriff's orders; if an order or refusal the officers are punishable not exceeding $50. If soldiers not over $10. This is a distinct provision from the law for civil cases. Law all persons in the county were bound to assist, but by this statute only the military force. The same authority is also given to constables in their re.

The sheriff is bound to execute all legal process regularly directed to him, but the execution of it must be regulated by the mode prescribed by law. He may not therefore break open any outer door, or window, or dwelling house to arrest the body or take the goods of another, for the law considers a man's house as a castle; if the breaking might expose the family to robbery. The reason of this rule will doubtless sink away, as it is no longer a right now existing, if the rule remains established only by authority.

If then an officer or sheriff or other officer breaks the outer door, or window, of a house for the purpose of arresting the body or taking the goods of another, he is a trespasser. But agreeable to a dictum in Coke, if some old authorities, the arrest is good, the the office becomes a court of law. This dictum Alle.

Henry 2d 17th edition, for that a person should acquire a civil right by the violation of the law is against the fundamental principles of the science. The modern practice of the courts of Westminster Hall, is to set the device aside if the person directed an action against the officer; if it be decided in civil remains unsafe. The third question has never arisen except in this.
one case. Mr. C. considers this as well as the practice in West-
minster Hall 262 law.

This privilege of the outer door and windows

of a mansion house, is to be construed strictly, for as Lord
Mansfield says, "not to be extended by any analogues
equity to any intimation." However, an officer can get peace-
ably into the house. For, if the window be open, he may break
then chests look on any inner apartments for the pur-
pose of arresting the person, or taking the goods of the deft.
but he has no right to break open any of them without first
having demanded admittance to them.

This privilege of the outer door and windows extends only
to the person, family, goods of the owner, or person dwelling in
the house of the owner, if not to any stranger. A's mansion-
house is his castle, if not the castle of B, if that one B is in the
house of A, if the officer is refused admittance, he may break
open the outer door to for the purpose of arresting him; for A's
house is no kind of protection for B. These are the principal dec-
tions relating to this subject as to civil process. But Mr. C.
doubts the propriety of this privilege in any case, if considered it as
altogether arbitrary, these being not the least shadow of reason
existing for it at this time.

This privilege extends only to the case of civil

process, if not to criminal. For if an officer has a criminal proces-
the mansion will not protect the criminal, he must however
in this case demand admittance, before he has a right to
break. But the peace of the family is as much disturbed as in
civil cases of the house as much exposed to threats of robbery.

12 6th 13th Morn. 6th. Any peace or good behaviour, the officers are allowed to break open the outer doors or windows.

To also in a prosecution for a forcible entry of detainer, which is of a mixed nature, partly civil of partly criminal, the officer is allowed to break open outer doors or windows.

And in criminal cases there need not be even a warrant to break in a known officer to justify breaking the door of the criminal, for once a person has committed a known felony, an officer on any legal order to make a search may break into an individual's house or without, warrant may break outer doors for the purpose of arresting him, if even demolish the house if he cannot be taken without.

To also to suppress an affray or to prevent a breach of the Peace, any officer or private individual may break into the house where it is.

So also if the "offender" is an immediate pursuance by an officer of the Peace, outer doors to may be broken to arrest them.

So also in a case of danger in the home of persons resides, "sine nomen" in spiro in spirit, the sheriff may justify breaking the outer door or window of the house of a defendant he desires him, for the Writ commands the officer to turn all persons out of put the whole into full of actual possession, consequently the sheriff had all power necessary for the purpose. Besides in this case the law does not consider the house as belonging to those in possession, but
to the offer in the present, for he has had a determination of the
cause in his favor.

So also in any civil process the door of a Barn
Oct. 86 not adjoining the house may be broken open, if it is not a component part
Webb98. however near the Barn may be, if it is not a component part
of the dwelling house, it may be broken open. It has been con-
tended that the state of a merchant is privileged, but chiefly
notables that unless it is under the same roof with the man-
istration house it may be broken open.

If the Sheriff's bailiff having entered the
House lawfully, is locked in, the Sheriff may justly breaking
the door open for the purpose of setting him at liberty.

So also of a person after having been actually arrested, e.
Webb 98. 10th. Oct. Bred into his house, it affords him no protection, for as he is an
inscrutable the aforesaid door may be broken open to retake him.

This point has been decided in Eng. in a very strong case, and
Deed opened the window to converse with the Officer, if the
latter touch'd him, this was adjudged to be a good arrest of
the officer therefore justified in breaking into the house to retake
him.

Thus in ordinary cases the an arrest made by breaking open
the aforesaid doors or windows of a dwelling house is illegal, yet if
while in such illegal custody the aforesaid charged with
another arrest, such last arrest shall be good, but this must
be no fraud or collusion first to arrest the party unlawfully &
then charge him with another action.

Web 98. By the English Statute 29 Can. 2 1/ by a statute of Court.
it is provided that no civil process shall be served on
Mon. 4th, Sunday; therefore any civil process served on that day is null
and void, the officer serving it of course guilty of false imprisonment
of the person arrested, punishable by indictment.

But where a person actually is in custody, he may be
retained on Sunday by virtue of an arrest warrant,
for the retaining is nothing more than the means of conti-
uing the officers custody.

The subject naturally leads to the
law of ESCAPED, which will here be considered.

The Escape is where a person being under a lawful ar-
rest, if restrained of his liberty, either and violence, or directly
enables such arrest, as is suffered to go at large without due
course of law.

It is essential to the existence of an escape, that
there be an evasion of a previous legal arrest.

Of the general nature of arrests.

Every arrest in civil cases must be made in pursuance of law
ful authority; an arrest therefore made without such authority is
absolutely void, if no arrest at all.

Where an arrest is made by virtue
of a writ or warrant: the rule is thus: if the court from which an
writ or warrant the said officer has jurisdiction of the subject matter, the
arrest is lawful. If, however, the person so arrested is suf-
fered to go at large without due course of law, it is an escape.

On the other hand, if the court from which the writ issued had no jur-

 Sheriff.
jurisdiction of the subject matter it follows that the arrest made under it is valid: if it be the debt going at large, does not amount to an escape, if the officer first making the arrest is guilty of false imprisonment. Examples: Suppose a single magistrate in the city of Connecticut issues a warrant for an assault on battery demanding more than $15: if returnable before himself, then it appearing upon the face of the warrant that the court had no jurisdiction of the subject matter, the arrest will be void. But if the demand of damages is $15, or less, if there should be a misnomer in the warrant, yet the officer must serve it, if the arrest will be good; for the court has jurisdiction of the subject matter.

The above distinction, however, is not universal; for there are certain cases where the court has complete jurisdiction of the subject matter, yet the arrest will be illegal if void. As if the process had no signature of a magistrate officiating to it. If so in conn. if there is no certificate of the duty having been paid, then the arrest under the process being void, the prisoner going at large is no escape.

Es. 328.
376. 334.
382. 315

So also if before the time of making legal service for the next court had expired, the officer should serve a warrant returnable to a more distant court, such service would be illegal if void: for no officer is permitted to overleap a court. It follows then that the debt going at large is no escape. The rule laid down in the 2 of 3 instances under this head presupposes a 'good' suit: if therefore the 3 examples just mentioned are being exceptions to the rule are more properly qualifications.

In Connecticut, unless proper service does not usually arise from the
Court applied to for recipt, tho' it sometimes does, I always say. Most of these returnables to our county barons are signed by single magistrates, but when first before a single magistrate, they are usually signed by those who hear them. —

The general rule of law here.

Therefore is not sufficiently large broad to reach all cases on mere process in our practice. The general rule of law here is modified on the English practice where the same county issues the writ who try it, as far as the law. Having rule extends, it applied is thus: Where then, "if a writ is issued by competent authority, returnables to a county having jurisdiction of the subject matter, the arrest is legal," if the going at large is an escape. As if a justice of the Peace in Northfield county issue a writ to be returnables served in the county, I returnable because the county Court of the same county.

But on the other hand of the process is issued by incompetent authority, or returnables to a county not having jurisdiction of the subject matter, the arrest is void of course the going at large is no escape. — If the prisoner is resigned up during the time of the operation in the first close, it is no escape.

A law says an officer having made an arrest on final process cannot delegate to another to give a right to hold the prisoner in custody, during his own absence. If therefore the officer does delegate this authority, right. He is guilty of an escape, for no contemplation of law he had at the prisoner at large liberty. This point had been recently
decided in England. It is uncertain however, that the decision
would be the same, if the question should arise; but it is presumed it
would still differ from what it is in England, much as an jun
due is directly in opposition to the principle established in the
English decision.

Two strings (as has been observed) are necessary
to constitute an arrest. First it must be in pursuance of
lawful authority. Secondly it must be an actual arrest.
If a regular arrest is there can be no Escape. The first of these
two requisites viz: that it must be made in pursuance of law-
ful authority has been stated above. The second will now be
considered, viz:

I. There must be an actual arrest. Bare words without
action make an arrest; there must be an actual touching of the
body, or what is tantamount to it, a power of taking immediate
Ex. 604: the imposition of the body of the party is submission, trusts of the
Bam. 63: just where the Officer took the Saif; he being at some distance
that he arrested him by virtue of a Warrant he had against
him; if the Saif having a fire in his hand kept the Officer at
a distance till he retreated into a house, it was
to be no arrest. But when the Officer met the Saif
an horse back, if said to him, "you are my prisoner" upon
which he turned back & submitted, this was determined
to be a good arrest, the Officer never laid hand on him,
but if on the officer's saying these words he had fled, it would
have been no arrest until the officer had laid hold of him.
If while one is under an arrest at the suit of
the custody of the sheriff, or until the suit of 13 is decided.

5th. The officer against the debt takes delivery, if not facts amount

this to an arrest on the last suit, as in other suits the debt is consid-

ered as immediately in custody under this suit. If therefore

often such delivery the debt does not last, 13 may have an action

against the officer for an escape.

II. An arrest must not only be actual, but regularly of legal

Char. 604. By made, otherwise generally speaking there can be no escape.

605. Thus in all cases the arrest must be made by virtue of a

legal writ or warrant, if there is no writ or warrant the

arrest is not legally made, the prisoner he held to have been

actually made.

Char. 604.

The strict rule of the law requires also

Char. 605.

that the arrest be made by authority of the officer to whom

Char. 606. The suit is directed, i.e. the officer must have been paying. But

he need not be the hand that arrests, nor present, nor in sight of

the party arrested as where the officer sent his assistant presently

who made the arrest he being at some distance out of sight;

the arrest was held to be good. It is sufficient if the officer is man

at hand, if in plain view of the same officer.

The officer is not he.

Char. 607. If for an escape of one who is arrested on Sunday, for the ar-

rest aid this day being void there can be no escape.

As it seems, if the arrest is made by breaking an outer door

Char. 601. 5. As window it is not. Therefore Milby concluded the prisoner is

going at large is no escape. This is not a settled point tho

it seems to follow necessarily from the arrests being unlawful.
The three can be no escape where there has been no law.

2 Mcn. 23.

24. The county sheriff, yet the officer is in any case liable to

May. 28. making an arrest when he might have done it. If therefore

10 Mcn. 251 an officer having an opportunity, neglects to do it, he is li-

26. 256. able to the court in an action on the case. See the Duff. The

1942 Esp. 477. have an opportunity to arrest, the court, if omit to do it at that

Rep. 477. particular time, yet if he afterwards arrests him he is not

liable.

Of Escapes

Escapes are of two kinds, voluntary and negligent.

19 Mcn. 196.

360 414.

19 Mcn. 36.

371. If then the sheriff or keeper suffers the prisoner to escape

for a moment, leave the limits of the prison it is an escape. A sub-

sequent return of the prisoner makes no difference, the

officer is still liable, he is guilty of a overt, of nothing ex-

cept forth will discharge his liability.

A voluntary escape is one which takes place

with the consent of the keeper or of the officer making

the arrest. If therefore a sheriff arrests a person when fi-

nal process it permits him to go at large before commitment

for a moment, it is a voluntary escape. The same if the

keeper permits after commitment. See Justice Blackstone

3 Mcn. 415. definition is not sufficiently broad, for it includes only

such escapes as are from the prison only, not those be-

fore commitment.

A negligent escape is one which
happens without the consent or knowledge of the officer making the arrest.

I. Of Voluntary Escapes. If a Sheriff or Gaoler ac-
mits to enslave one who is not by law includable, he is guilty of a voluntary escape. Truly the Sheriff or Gaoler styled the
prisoner to step once the limits of the prison as yard, but
for a moment, when he has a keep, with him, still he is
guilty of a voluntary escape. If he can permit him to go
out of the limits for a moment he may for a day or an
year. If he can permit him to go a foot over the yard a mile or 10
miles. The object of imprisonment or servitude is not
for punishment, but a certain mode of compelling the
Debt to discharge his debts. For this reason it is that his
transcending the limits is considered as an Escape. In jux-
aposition on such process is here contemplated.

If the officer after arrest on final process permits the
Debt to go out of his custody for a moment, he is guilty of a
Voluntary escape. For if the arrest is interrupted for a mo-
ment, it may for a day or for a day, it may for a year.

Persons committed to processes under an criminal process,
are to be kept within the walls of the prison. But those committed
on civil process may on procuring security to save the Sheriff
from loss at his discretion destruction go at large within the
limits of the processes, which limits are fixed in each county
by the respective county court of common pleas. If any slight transgres-
sion of these permitted will be an escape.
It has been once decided in England that if an accused on
final process is brought up to Court on a Holcomb Warrant in
testimony, the officer is guilty of a voluntary escape. — He
would consider this one of the most remarkable decisions
which ever entered the human mind. — Monstrously absurd! it
does not the law itself clearly allow such a case? Does it
not compel the sheriff to execute it? Can it be possible
that the same law should adjudge him guilty of an Escape
in doing an act which he is compelled to do?

But if the officer, who thus brings up a prisoner on
an warrant, grants him any unnecessary leave
he must bring the body to the Court in a convenient time
of the most reasonable way. — If a warrant is issued by the
superior Court setting an Stuartfield bounty to bring in a
a prisoner from St. John’s Island, of the sheriff’s own
by New bedford or Newport, he would be guilty of a vol-
untary escape.

The same as a similar rule at times where
an officer has made an arrest on a final process, if he not
committed the defect, but indulges him with an unreasonable
time, here he is guilty of an Escape.

So also if after arrest, if before commitment the officer
suspects the prisoner to go at large abroad with a hookey, he
is guilty of an Escape.

It is a rule of the same law that if the
sheriff marries a woman committed on Eecution, he is guilty,
of a voluntary escape, if it is of no avail for him to attempt to prove that he has kept her in confinement, all such testimony being inadmissible.

If a prisoner having the liberty of the gaol yard manifests a disposition to escape as by one who grasping the tunic, it is the duty of the sheriff to remit him to the walls of the prison, if he does not he is guilty of a voluntary escape. Notice however of that disposition must be given by the sheriff to the sheriff.

If the prisoner who has the liberty of the yard before he had manifested any such disposition, the sheriff is guilty of a negligent escape only.

The sheriff is never bound to grant the liberty of the gaol yard, nor a bond of indemnity is offered to him, yet he may at his own pleasure, with him, if the case, in his discretion, he may rely on the bond of indemnity in case of an escape. There is no provision in law or statute law requiring him to do it, but as I before remarked he may do it if he pleases, which is taken is valid in law.

If the sheriff has actually admitted a prisoner to the liberty of the gaol, he may at any time he pleases, remit him to the walls of the prison without assigning any reasons for so doing. I thought may justly that he remitted the liberty on the return of the court in which process he had voluntered permission him to go at large after the first arrest. 28 R. 7.
II. Of Nigligent Escapes. These are such cases as happen without the consent of the sheriff or officer having the care.

3d. If the prisoner escapes his restraint by fleeing from the officer without his consent, or by beating the officer or using any violence towards him, it is a negligent escape. So also if he escapes thus the insufficiency of the guard it is a negligent escape. Indeed if the prisoner escape in any way the officer not confining it is a negligent escape. There is no manner of difference between cases so mean hereof, if on final process.

If one arrested an

3d. If the prisoner is permitted to go at large even for a moment, the officer is guilty of a

Officer is guilty of an

Escape. And it makes no difference whether the hogg is merely arrested or not committed to prison or whether he is actually committed to prison, it is in both cases an escape.

But at least two cases on an

2d. If a mesne process, if not actually committed to prison,

2d. If mesne process, may be permitted to go at large without subjecting the officer to

3d. If the prisoner goes forth coming at the return of the writ. An arrest on mesne process is nearly the same as compelling the officer to appear in court. The custody is not intended as a sure hinge to obtaining payment, but simply to secure the officer to hold him to bail. The custody of a person arrested on final process is intended as the convenient means of compelling the
SHERIFFS.

Said to discharge the bond, if the person is not committed to gaol at the moment, either before or after the commitment of the officer is guilty of an escape.

In Connecticut the rule is still more liberal, for here in cases of so-called merest process, the officer is not guilty of an escape in permitting the prisoner to go at large, if he had him in his coming during the time of the execution.

But if the officer, third arrested, in the same case, is not forth coming during the time of the execution issued on the judgment, the officer is guilty of a voluntary escape. And at home how the officer is guilty of a voluntary escape if the prisoner is not forthcoming at the return of the writ.

The two last rules hold only in cases where the person arrested are mere persons and not actually committed to prison; for if the officer arrested an actual person is actually committed to prison, the permitting him to go at large for a moment is a voluntary escape.

We have a statute in Connecticut in omission of the common law on this subject.

Thus we see the principal differ-

ence between an escape on part of an actual person is, that the former is followed up by a commitment, whereas the latter is not. What will amount to an escape on part thereof before commitment, will not an actual person. When the quest of an actual person is succeeded by a commitment to prison,
and the prisoner is afterwards suffered to go at large, the plaintiff does not by pursuing it with his original action against the sheriff or the prisoner keeps out of the way.

The plaintiff's remedy against the sheriff where the debt accrued, if arrested on a suit for debt, is by a special action on the case. In this case the damages are merely pecuniary, they not being liquidated by judgment, they are to be proved. In Connecticut, this action may be commenced against the sheriff or any of his subordinate officers guilty of the escape.

For an escape on private premises the plaintiff has his election of two remedies against the sheriff: he may at his option maintain an action on the case, or he may by virtue of two ancient Eng. Acts 12 Hen. 3, ch. 153, Sec. 2, bring an action of debt against him.

But there is a material distinction between the rule of damages in these two actions. If the plaintiff brings an action on the case against the sheriff, the jury are at liberty to give what damages they please within the whole debt, cost, or what they consider his special damages to be. If these special damages may amount to the whole debt and cost as the case may be. If the escaper is not amenable to the justice of the State of as where he keeps out of the way, the jury will give the whole debt and costs.

But if the plaintiff elects the action of debt against the sheriff, the jury are not at liberty to give part as they please, but
Sheriffs

must give the whole sum for which the prisoner was
charged in the original action.

The statute of connect

seems to require that in case of a voluntary escape from

left 32

the prison, whether an error in final process, whatever

the form of action may be, the right and in the original

process shall receive the whole sum for which the left

was charged in the original process. So if this instruction be correct, the statute gives the same damages

on voluntary escapes, as are given in England for escapes

on final process.

Of Rescues

One arrested on mesne process but not actually committed

1696. 416

case is rescued, the officer is excused in England: that

1697. 417

can be said for an escape he may plead his return in

1698. 373

law, as by way of justification, if the reason given in the

1699. 610

books is, that an prisoner process he is not discovered to have

the prisoner committed then with him.

But where one is arrested

on final process, no rescue is no escape except if in resenting

final process he is supposed to have the prisoner committed

with him. May may you not as well suppose the prisoner

committed with him in seeking means, as well

as final process?

But of after a final committed one

1602. 87

is committed to prison, then rescued it is no excuse
Sheriffs.

MLR. the rescue by public enemies. A rescue by
Grants or Rebels is no excuse for the officers, for he is
Neb. 459 supposed to have the power of the county near enough
1531. 12. at hand to resist them. Thus in the case of Lord George
Gardens riot, it was found necessary to make a special
act of Parliament to save the Manor of the borough from
the actions of the Creditors, whose deliors were set at
liberty thereby.

This will contain a commitment whether
the action was an venue or a final process. If the action
was a final process, it holds equally true as well before
as after the commitment, but as venue it holds true only
after the commitment.

In those cases of rescue, from which the officers
610. 617. is not bound or caused, the right has his election to sue either
659. 610. the office or the rescuers. But Maj. H. Gould of Cambridge
730. 737. ipso facto that if he succeeds at the rescuers, that he may
109. 109. sue against the sheriff; for by commencing an action
against the rescuers he avails the sheriff of his right of ac-
tion against them, if on this ground it is that these two
gentlemen claim he ought to be discharged.

The proper action against the rescuer is an action
East. 486. against him, it is not in the Cape, but some books say
East. 170. in the Cape of Cape. This is not true; but that is
109. 109. not true here. Rescues in the Cape are never concurrent; if it
is the fiction of law that there is ever concurrent with
Rescues, Rescues in the Cape of Rescues is not amiss, con
Sheriff.

return, he recovers of the rescuer, he may in an action against the sheriff for a false return, prove that there was no rescue. — Mont. 224, 2 to 175.

It is laid down in the books that the sheriff may have an action against the rescuer. But Mr. Gould con- cludes that this obtained only where he was liable with the rescuer to the Dyff. in the proceed. I do not see what process he is not liable to the Dyff. he cannot maintain an action against the rescuer. There is no instance to be found where the sheriff had ever judged the rescuer for recovering one accused on more process.

If a sheriff brings out a pris- oner on a Writ of habeas corpus, a rescue is no supreme, Exc. 610. whether he was committed on more or final process. 3Am. 482.
The reason assigned is, that the sheriff having had no notice when the body was to be brought, might have guarded against a rescue by of compelling the papers committed.

It is a general rule that after a person accused on fi. mal in mesne process is committed to prison, nothing but the act of God or public enemies will excuse the sheriff in case of a rescue, in the latter instance, if an escape in the former. It is laid down in Bac. & Ald. That fire will excuse him, but this is not Law; for a great weight of authority is to be found in contradiction to it. This seems to have been the idea in Parliament at the time of the great fire in London in 1666, for they
conceded it necessary to put an art on the shrieval officer, to prevent the
sheriff from all liability to creditors for goods of the
unprovisioned debtors as were set at liberty by means
of the fire. This point had likewise been recently
decided in the Supreme Court of the State of
New York, who held that fire amounted to otherwise
than by lightning would not excuse the sheriff.

Of the difference between the consequences
of a voluntary and negligent escape.

It was generally held that in case of a voluntary
escape on trial through the prisoner was absolutely dis-
charged of the debt on his liability to the
sheriff. This was an unaccountable rule if it is clearly
not law, for the debt as the nature of the case may require
may arise a new action of debt against the sheriff, in
an action of debt founded on the statute, on which he
was originally committed, or for some period of years
may arise a new execution, or by the statute 9 Geo. 3,
he may have a new execution against the prisoner, or
if more of these proceedings are necessary, he may re-
take the man on the old execution.

If the sheriff has


put a voluntary escape where the sheriff is bound to answer
the offici cannot, if this warrant may be
directed to any person. The reason why an escape warrant is necessary is the prisoner must be returned to court. But if the sheriff is guilty of a voluntary escape on final process, the party may set the debt on the original execution itself. But in this case it is not necessary that it be returned; on the contrary, he may have a new execution to take him. He may have a court against him, which last is frequently preferable, because in that he may recover the debt on his execution, whereas in the other cases he cannot. Mr. G. thinks that in neither of these cases escaped warrants are used in Connecticut. The usual practice here is for the sheriff or keeper of the prison immediately to pursue the escapee without an order, as advertises him to have him arrested, in which case as any one may arrest him under the advertisement, or he may pursue both modes at the same time.

25 June 176
36 Pt 6:2

In all cases where the sheriff commits the escapee after commitment, the escapee cannot escape the sheriff, for then he is

38 Pt 14:3

patiens iniurias; but besides it is a settled maxim in

86 Pt 33:2

the law that no person can acquire a right out of a wrong or violation of law by himself, nemo dolente non vindicet se.

28 June 176

Indeed, if after a voluntary escape, the sheriff as soon as

38 Pt 26:2

he re-inter the prisoner, he is guilty of false imprisonment

64 Pt 76:2

and it is a clear rule of law, that a bond taken by the
The sheriff to save himself from the consequences of a voluntary escape is void, as being against law, it being given to induce the commission of an offence. Indeed it is a universal rule, as applied to contracts, that an undertaking to do an act in violation of law is utterly void.

When the escape is negligent, the sheriff may rescind the prisoners, or he may have an action on the case against him, because he is immediately liable over to the party in the action. And if the sheriff may do before the 6th act in some part against him. But in this case if a bond has been given to the sheriff, to secure him against the consequences of a negligent escape, he may sue upon the bond: for the bond is allowed to be good by law. So that in this case the sheriff has 3 remedies. And it has been decided in Connecticut that a person escaping may be detained an an escape warrant in another State from that in which he was committed to prison.

If one arrested on a criminal process, or escape he is punishable by fine or imprisonment, if he is doing it he breaks the process, he is at least, liable guilty of a felony.

The officer who after committing a felony, suffers a negligent escape is punishable by fine, as having been guilty of a misdemeanor. But if he has been guilty of suffering a voluntary escape, he is punishable as the circumstance.
Sheriff.

...inal himself is. If the Escaper was a murderer then the Office is to be punished as a murderer. But if the Escaper cannot be found, the office is only punishable by fine and imprisonment for it would be unjust to impose on the Escaper, in such a case, for what the principal himself has never been convicted of.

voluntary

...e case of a voluntary escape, the Sheriff has been compelled to pay the debt to the party. Mr. P. does not see why he may not maintain an action of Indemnity against the Escaper, as for money paid laid out for the use of the latter.

And it was twice decided at Jersey Point that where the Escaper was voluntary on the part of the party the Sheriff, as had been sued, was compelled to pay over the debt to the party in the original process, that the Sheriff may maintain the action of Indemnity, after the fact. But in two subsequent cases Mr. Henry on had decided the above decisions not to be taken as the ground of officers being parties to crime. Mr. P. thinks the two decisions at Jersey Point to be the most correct, one of which was by Justice Gates a very able lawyer, of the others by Mr. Justice Gould.

The Sheriff ought to have an action in this case for he has been compelled to pay money for the Escaper while in prison and on the conclusion the latter ought to refund it to him. All the objection is that the Sheriff has been guilty of a breach of law, or an offence. He Sheriff had com...
SHERIFFS

omitted no offence. This under Sheriff has it is true, but
is it not clearly settled that no acts of an under Sheriff shall
affect the Sheriff's criminality.

After a negligent Escape
the Sheriff retakes the prisoner on fresh suit, by which is
meant a retaking before the Pff. commences an action at

2 Cent. 2.1.
2 Prov. 12.5.
1 Prov. 10.6.
1 Prov. 9.15.

the Sheriff's liability to the Pff. is discharged. Where
a Sheriff retakes on fresh suit in Court band, if an ac-
tion is afterwards brought against him, he must plead
the retaking especially, but in Connecticut he may give it
as evidence under the general issue.

But of the original Pff. commences his action against
the Sheriff before reception, a subsequent reception will not
excuse him. for the Pff. by commencing his action attaches in
No. 52. himself a right of recovery if no subsequent act of the Sheriff con-
and the

sent a voluntary return of the field.

But in case of a voluntary escape on final charge, a
reception in fresh suit, does not excuse the Sheriff, for
the latter, for this is equivalent to a reception on fresh

But in case of a voluntary escape on final charge, a
reception in fresh suit, does not excuse the Sheriff, for
the latter, for this is equivalent to a reception on fresh

the rules is the same that the escapee was on medi
Sheriffs

29th March, if the escaped from prison.

It is said that the Sheriffs had no right to discharge a prisoner committed on Extradition order even for payment to himself of the contents of the Extradition order for the benefit of the Dpf. If therefore he does receive the amount of the Extradition order he changes, he is guilty of a voluntary escape. If the reason assigned is that it is the duty of the Sheriff to keep the Dpf in safe custody until he is discharged by due course of law for the Sheriff is not an agent of the Dpf to receive his monies but an agent of the law. My inference however as a consequence of the rule, that if the Sheriff should pay over, or tender the whole amount of the Extradition order to the Dpf, that on action brought by the Dpf against the Sheriff, only nominal damages would be recovered.

The escape by a prisoner having the liberty of the yard, it being a neglect on a voluntary return before action brought against the Sheriff, will save the latter's liability.

But in these cases i.e. in cases of a neglect on a voluntary return before action brought, the Sheriff may prove an nominal damages on the bond of indemnity given for the custody of the prisoner, if the reason given is that the condition of the bond is broken.

But after a prisoner has thus escaped from the limits of the prison yard, whether he resided to a Bondsman can compel the Sheriff to receive him into custody
again the Sheriff may act at his pleasure. If the reason why the Sheriff cannot compulsorily receive him, is that he has been guilty of a wrong, the Sheriff subjected himself to an action.

But after the breach of remedy against the Sheriff, 217:45 the Sheriff is barred by the statute of limitations. The Sheriff cannot subject the prisoners Bondsman, for the debt due on the obligation, in case of a negligent escape.

The Bondsman

Therefore may be released by statute, Sicere, against the debt on a judgment obtained against him for the escape 1925:152 of a prisoner, where the original creditor's right of action is barred against the Sheriff by the statute of limitations.

Under the count for a voluntary escape against the

217:7. Sheriff, the plaintiff gave no evidence of a negligent escape, 217

217:24. That will support the declaration, if the debt on this part may

lead to a voluntary escape, any defense that he might
to a negligent escape, if this without amusing.

This mode of pleading is not used in Connecticut.

Here a voluntary escape is deduced as an escape, of a negligent Escape as a negligent one.

For a voluntary Escape, the under

Sheriff is liable, as well as the Sheriff himself.

But for a negligent escape, the Sheriff only is liable.

The rule is the same in England as to the Sheriff that

217:6. From there

If then the creditor or Off in the Escrow, gives the 217:6.
Sheriffs.

...al for a voluntary escape, as he may do, the sheriff shall not be responsible. See 152.

If after an action of Debt brought against the sheriff for the escape of a person committed on execution, before plea pleaded, the original judgment on which the escape was committed is reversed, the sheriff may plead not his record, and this discharge his liability.

But if judgment rendered of execution actually issued against the sheriff, a reversal of the original judgment will not release the sheriff from his liability.

False Returns

If a sheriff make a false return, he is liable to an action

in the case in favor of the party injured, by it. If this rule holds, it is not only as to sheriffs, but to any public officers serving under them.

If the sheriff make a false return, when he has actually made no service on the defendant, the latter may maintain an action against him.

In Connecticut, when a false return is made, the defendant may plead it in abatement, if the sheriff be in this case the suffering party, may have an action against the sheriff for such false return.

The foregoing rule on this subject is "that in all cases of a false return the party injured, whether party, or defendant, has a right of action against the officer making such illegal return."
The sheriff make a false return of "non est inventum."

The sheriff may maintain an action on the case against him.

If the escape is by insufficient means, the sheriff is liable.

Under this statute, an action may be brought against the sheriff by an action at law, but by an appeal to the superior court in the form of a petition, and if the petition is perfected by the sheriff, he may have an appeal to the superior court. The reason why an action will not lie at law is, that the form of the statute is such as to preclude that mode of relief; whereas a sheriff is not liable at common law.

In general, however, the liability of the county under our statute is nominal only, for it has been decided that if the sheriff escaping is responsible, the county is responsible; if he is not responsible, the creditor can have lost nothing by the escape, therefore the county ought to be only nominally liable; if indeed actual damages are all that is given.

This is one class of cases in which Mr. G. thinks the responsibility of the county is substantial. Thus, if the prisoner escaping is responsible, but by means of the escape defeats the duty of his remedy which would otherwise have been effective. In that case it is
Mr. Gould's opinion that the county would be liable for the whole debt.

The sheriff as well as the county is liable, by

Section 224 of the Code. The insufficiency of the public, if the escape was

actively prosecuted by any suit in him or the county.

**Miscellaneous Rules.**

If a creditor voluntarily discharged from custody a debtor, cit. 2430, and in execution where committed or not, the creditor can of

obtain, 2430, the execution. The sheriff, income, his

should take the goods, or before any other remedy against him,

also 625. The reason is that the imprisonment is in satisfaction of the debt, if the creditor by reason of discharging him relinquishes all

further claims.

And then the sheriff should discharge the debt.

1. of 530. 7

530. 7 it is in consideration of a new promise to pay the execution, yet

6. of 526. 7 he cannot retain him on this execution, nor

7. of 424, 7 but can maintain an action on the new promise, as bond taken for this purpose

may not be enforced as an original judgment.

If the new agreement made by the debtor in consideration of his discharge, should be defeated by himself, when tied up,

when

6. of 526. 7 for some informality in the agreement, the original debt

is hereby extinguished, if the debt remains no longer liable

on the original judgment.

And it is now a settled point that

Posting a bond conditioned for the rendering an execution a pecuniary

once taken upon it if voluntarily released is void as

being against law.
If two joint debtors are taken in execution a voluntary release of one from custody by the off. or creditor is a
release of both. The consequence then is that the one released and not his co-debtor can be taken in execution.

But under the Law Merchant, the holder of a Bill

2 Will Bl. 1236

2 Blk. 1235 of released him without actual satisfaction may sue

218

another of take him in execution. If he releases him

2 Will Bl. 1236 without actual satisfaction, he may sue a B accord fo

2 Will Bl. 1238 till he has tried the whole. But in this case it is to

204c. 421 be observed that the indorsers are not joint debtors for

138a. 47 they are distinct if independent indorsers, each one

26. 67 is a new drawer of the bill. And Mr. Gould supposes

138a. 61. if they were joint debtors, that the Law Merchant

26. 61 could once way to the Common Law. And it is a matter that

26. 61... give title to a suit on the bill of exchange, if it appears to proceed against another.

26. 61... give title to a suit on the bill of exchange, if it appears to proceed against another. The rule is clear in the cases of

26. 57. of a sole debt imprisoned on execution died in prison

26. 61. The debt was forever extinguished. If the person given

26. 61. was that the off. having stated his highest remedy

34. 31. ought to abide the consequence.

But this rule was never a

34. 31. adverse to the principles of the common law for it is in no

34. 31. wise analogous to a person having two remedies given

34. 31. to him where by electing one, he waived the other. The

34. 31. imprisonment of the body is deemed a mere pledge

148. 143 for the security of the debt, if paying the prisoner die,

148. 143 without the fault of the creditor, the latter can never be
considered as having reserved his remedy, for the loss of the pledge does not work an extinguishment of the debt which it was intended to secure.

But if one of two Joint Debtors die in prison on Ex. 560. 56. 560. it does not work an extinguishment of the debt as to the other, but only as to him who died.

But by the Statute 27 Geo. 1. it is declared, ex. 27 Geo. 35. 35. that, where a sole debtor died in prison, Ex. may be sued out against the estate, as the sole debtor had never been imprisoned.

A bond given by the prisoner to the Sheriff, conditioned that he will abide a true prisoner, until he has paid the debt, fees and expenses, is void, as being against the statute 23 Geo. 6. The Supreme Court of this State seem formerly to have adopted the idea, that such a bond is void only as to the bond. Mr. Lord 12. B. 12th.

I could not think it void as to the whole, for it is an established principle that if part of an entire contract is void, it renders the whole void.

The 26th of a Joint debtor

Post 155. only operates to discharge his body from custody; for if he has any estate, or afterwards acquires any, it is liable to be taken for this demand.

Mr. G. thinks an estate may be broken open in order to arrest provided it is not a part of the unless house; it thinks that the part of a club is sleeping in the store around make
Inns and Innkeepers

At law, any person may exercise the employment of an innkeeper unless it is inconvenient to the public. For they are established for without license. And he who thus assumes the character of an innkeeper, becomes liable to the duties attached to it.

But common nuisances may be from their minds become common nuisances. At law, if the keeper may be indicted for a common nuisance in such cases at common law. It is to he observed that when the number is so great, those innkeepers whose inns have stood the greatest length of time, are not to be indicted, but the new ones last established, i.e., those innkeepers who set up after there were a sufficient number; hence become a nuisance. The way that the public suffers an injury in these cases is that where the number is so great the keeping of each is of course small, if no one considers it an object sufficient to make proper arrangements of accommodations for travellers.

A com. inn also by being disorderly may become com. nuisance. In this case, the keeper may be indicted at common law as for a common nuisance. As where the inn was called "Heaven's Brothers Inn," etc.

But in Connecticut, no inn can be lawfully established unless licensed by law. This license is obtained for one year only, from the County Court in the county where the inn is set up, which license figures upon the
recommendation of the civil authority, selectmen, constables,
and Grand Juries of the town.

No person unless he is thus
licensed can keep an Inn in Connecticut. And if the
same thus established become too numerous, the Judge
cannot be indicted as at common law, for the court has di-
mensioned it.

An individual established an Inn without licence,
entertains people, he is subject to a penalty of ten dollars
for the first offence, 20 dollars for the 2nd to 4th, and
any offence, till the offender cease violating the law.

For disobedience to the laws regulating Inns
12 of Inn Keepers, the Keeper's licence may be suspended
by the civil authority of selectmen till the next county
Court, if the court may remove the suspension or continue
it till the expiration of the year for which such such li-
cence is granted.

McGurl concludes that this provision
cannot estop the common law indictment for a disorderly
Inn; he views the provision made by this statute as
affording a cumulative remedy.

The Duties of Inn Keepers.

Their duties extend generally, only to the entertaining of Travellers,
and keeping their goods safe.

The Inn keeper is not made the
keeper of the person of his guest, but merely of his goods.
37. If an Inn Keeper refuse to entertain an individual without offering sufficient reason, or being tendered a reasonable compensation, he is liable not only to the person injured, but to a public prosecution.

If the Inn is already full, or the Keeper family sick, it is of sufficient excuse for refusing to receive a Traveller. The cause must always be a substantial or reasonable one. If what amounts to such a cause must be determined by the Traveller.

If, as before remarked, the Keeper duly does not extend to the person of his guest, then he is not liable for injuries which he may receive from 3 persons while at the Inn.

If the Host or his servant sell to the Guest unwholesome food or liquor, he is liable to an action on the case.

Of the reason is that the Traveller is under the necessity of trusting to the fidelity of honesty of the Keeper in these particulars, a violation of this trust therefore ought in justice to subject them.

The principal rules as to the liability of an Inn Keeper have been noticed under "Bailment." A few additional rules therefore will close this branch of the subject.

The Inn Keeper is not discharged from his general liability for the goods of his guest, either by absence, sickness, or insanity. If the reason assigned is that he ought, if it is his duty to provide against contingencies of this nature, manifest as they are imperfections incident to
Anne's Innkeepers.

1802.
2 May. The Infant Innkeeper is not chargeable with the return of a lost key, but the responsibility of the general custom.

2 May. If the Host refuses to receive the guest upon any sufficient cause, if the latter persists in staying at the Inn, the Host is not liable for any loss which he may sustain of his goods. The reason is that it is the fault of the guest in continuing.

26 Apr. If the Host require the guest to lock his apartment, or he will not be liable for loss of his goods.

7 Apr. Still in the event of a loss accounted by the guest, he is not liable for the loss unless he is directed to comply with the request. It appears from the current of authorities that the Inn Keeper is liable.

6 Apr. It is said that the Host cannot discharge the burden of his duty by such a request or declaration.

6 Apr. At any rate, it is clear that the delivery of the key of an apartment to the guest does not discharge the Inn Keeper. The good were lost in consequence of the doors being left open by the guest.

6 Apr. The Inn Keeper like a common carrier is liable for the goods of his guest when lost, although he knows not their kind or value: yet if he demands a knowledge of the articles it is deemed as to their kind of value. Mr. Gould thinks he ought not to be liable at all, and most to the amount of the property represented to him by the guest. Mr. Gould has given his opinion at large on
Transf. Inn Keepers

see the "Treatment" Note that title for the solution of this
5 Sum 273. question. See however. 8 Bo. 33. Nov. 158. 3 Nov. 1583.

The liability of Inn Keepers for the goods of their guests
obtains only in favor of Travellers, & such as board at
their doors at the price paid by Travellers. It would not
therefore extend to a neighbour, or to such as board there
at the price of board at private lodgings; for in that
case they do not receive them in the character of Inn Keepers
but merely as private houses.

Inn Keeper of guest are rela-
tive terms, but Inn Keeper of boarder are not.

The Inn Keeper is not chargeable in the event of
5 Sum 273. since for the loss of goods, for the keeping of which he re-
8 Mon. 377. ceives no reward. By the owner absence is here meant,
18 Bo. 3. such an absence as that he is not considered as a guest.
338.

In order that he should be received as a guest however, it
is not necessary that he should be considered as infra hospitium,
8 Nov. 126. for if his goods are infra hospitium, (by which
is meant the curtilage) it is sufficient.

But for any goods for keeping of which he does receive a
reward, he is liable in the event of a loss, as injuring, the:
the owner has left the Inn for any length of time. Then
four if one leave his house or stable at an Inn if go away
for a month, say, next as the keeper has a reward for their
keeping, he would be liable in case of a loss. But if the
Traveller leave unimpaired property, as his baggage (for
the keeping of which the Inn keeper receives no reward)
he would not be liable as Inn Keeper in case of a loss or injury. True he may make himself liable on a contract, in which case he would be considered as a bailor of the 5th kind - liable in that character. See 

**Of the Inn Keeper's remedies against his guests.**

**By action.** By retuming his person or property, till the price is paid. He may retain his person, for all expenses that have arisen. But his horse cannot be detained except for the expense of horsekeeping - as a Tayloe may retain a garment till the expense of making it is paid for him, yet he cannot hold it for a general balance.

If however the Inn Keeper once abandons his possession, by permitting the guest on his horse to leave his house at Barn he has no longer a lien upon them, but must resort to his action. If however the guest goes away with his horse without the Inn Keeper's permission, the latter may retake him on fresh suit.

So of the person.

The Inn Keeper must not however use Moore 377 the horse, which he detains of if he does he is ipso facto guilty of a conversion. The Inn Keeper has the same remedy under our statute as at common law, tho his action in
Inns of Court.

The laws in many cases abridged.

The Inn Keeper in

London can maintain no actions for liquors retailed out

unless they are dealt out to Travellers or boarders, unless

the action be brought within two days (or 48 hours) from

the delivery. This provision regards stipulated for

Where the person in whose of a guest of

3 Geo. 3rd. is retained, if a bond promise is made by a 3. year

pay the expenses, provided the Inn Keeper will deliver

3 Ann. 18. b. 2. In the profession, it is binding the Statute of

Frauds of Omissions notwithstanding. It is to be ob

With 305. sworn to that it is not strictly to pay the debt of an

other, but merely to pay a certain sum for the giving

up a security or pledge.
Bailment is a delivery of goods from one person to another on a condition expressed or implied, that they shall be returned by the Bailee to the Bailor according to his directions, when the answers for which they were bailed are answered.

Thus, if a deliver goods to B to keep while A is absent, or if one deliver cloth to a dyer to colour, it is a Bailment.

The person who delivers the goods is called the Bailor; the person to whom they are delivered is called the Bailee.

The authorities upon Bailment are very contradictory.

Every Bailment rests a qualified property in the Bailee of the thing bailed.

A Bailee distinguished from other kinds of Bailees is said by some to have a property in the goods.

But there is no such distinction. A Bailee has it is true from the nature of the Bailment, a stronger interest than some of the other kinds of Bailees, but all kinds of Bailees have a certain kind of property in the goods.

From the Bailee's obligation to restore the goods or things bailed, it follows that the Bailee must keep it according to the terms of the contract. If he is responsible to the Bailor if they be lost or damaged, still however as the bailee of justice would be transported, if the Bailee are all cases were made liable at all events. It is a general rule that he is not liable if the
Bailment

lefs or damage happen without any fault of his.

But to determine when he is in fault, the nature of the bailment and quality of the thing bailed, as well as his own conduct, are to be considered, for different kinds of bailment require different degrees of care and diligence. To ascertain the different degrees of diligence requisite in every case, constituted the principal subject of this able.

In considering this subject I shall compare the authorities and duties in this Books, with the principles of the law as laid down by Jones.

Of the degrees of diligence required of Bailiffs in different cases.

The most general rule is that the Bailee is bound to keep the goods with a degree of care proportionate to the nature of the bailment.

In some cases the degree will be greater, in some less than ordinary diligence, for the degrees of care are various.

In order to understand this rule we must define the different degrees of care or neglect.

Ordinary diligence is that which ordinary or so

Jones 910 personal men ride generally in conducting their own affairs, or in other words that which every rational man of common sense uses in the management of his own concerns.

The degree of diligence on both sides of the standard or measure are not distinguished by any specific denominations. What
Bailment.

speeds is called more, that falls short is called less than ordinary diligence.

To every degree of care or diligence there is a corresponding degree of default, or neglect; thus the omission of ordinary care or diligence, that is, such as every rational man of common sense and prudence takes of his own affairs, is called ordinary neglect.

The omission of that care which every diligent man uses is less than ordinary neglect; this is called slight neglect.

The omission of that care which every negligent man uses is greater than slight neglect; this is commonly called gross neglect.

Dealing with gross neglect, it is generally regarded as evidence of fraud in the Bailee, but not having

even in all cases is where the Bailee suffers his own property to be lost by the same negligence by which the Bailor is lost.

In order to apply the general rule first laid down under that head to particular cases, it is necessary to observe the following rules. 3 in number.

I. If the Bailment be for the benefit of the bailor only, nothing more than good faith is required of the Bailee, he is liable for.

There is a dictum in Locke. Rep. contrary to this rule. G. 4 7 8 5.

There is however an exception contrary to this rule. "When the Bailee by a stipulagreement makes a
Bailment.

Itself liable for less than ordinary neglect. If perhaps in
some other cases.

The books generally agree with this rule, when
taken with its exceptions.

II. When the bailee only is benefited, he is liable for slight neg.
23. 33. 91. but that is bound to more than ordinary diligence. And
here the same reason operates as in the former rule viz. that
it would be hard for the person who pays the gratuitous act
that he should in consequence of not be indemnified in
doing the act in case of loss or damage, unless the other had
been guilty of gross or ordinary neglect. He who received the ben-
efit ought to bear the burden.

III. When the bailment is a benefit to both parties, the obliga-
tion hangs in equal balance. Therefore the bailee is bound to
use ordinary care & diligence only, if is liable for ordinary
neglect.

The last three general rules are derived from the
33. Roman law.

As far as the mere private injustices of the case is
to govern, these rules will hold in all cases. But there are
certain rules that are governed by general policy, in which
these rules do not obtain.

Of the different kinds of Bailment.

In the division of Bailment, several eminent laws
and lawyers differed. According to some of the books there are
two kinds. In this Jones divides it into five. As there

...
Bailment

I. The first kind of Bailment is called Deposition. And in a delivery of goods to the Bailee by the Bailor without re-

Verse 1,2. wards from the Bailee. The person to whom the goods are

Verse 2,3. delivered is called the Depository, or merely the name the

Verse 13,18. nished Bailee.

II. Bailment of the second kind is called Commodation of

Verse 9,13. is a gratuitous loan of goods, which are usually to be used

Verse 1,5. by the Bailee, if which are to be specifically restored by the

Verse 1,5. Bailee to the Bailee. The Bailee in this case is called the

Verse 1,5. Lessor of the Bailee the borrower.

This kind of Bailment differs from mutuum, which

Verse 1,5. is in a loan for consumption if to be paid in property of the

Verse 1,5. same kind, but not in the same property; as in the case of

Verse 1,5. for money, wine, etc. in these cases the absolute property is trans-

Verse 1,5. ferred to the Bailee. Who is in case of a loss must be said at

Verse 1,5. all events.

III. Bailment of the third kind is called in Latin, as well

Verse 5,13. decommit a loco, and the rest is a delivery of goods into the hands

Verse 1,5. of the Bailee to be used by him for hire. The Lessor is called the

Verse 3,13.ensor of the writ conductors.

Verse 1,5. Jones makes this a rich division of his fifth kind

Verse 1,5. which he calls donation.

IV. Bailment of the fourth kind is a security in a debt from the

Verse 1,5. to the Bailee. This is called a Pawn or Pledge, in Latin, the

Verse 1,5. debt, or Pignori autem. The Bailee is usually called the
Bailment.

V. The fifth kind of bailment is a delivery of goods to be carried in some other act done about them for a reward. It is called when the goods are to be carried locationes in medium remediumum. Then some other act is to be done about them it is called locationes faciendo.

This kind includes a delivery of goods to a common carrier, as to any one who receives them, in the exercise of a public employment, or to a private person, or to a private person, or even one of a private professional character, as to a lawyer, a mechanic, or to Bailiffs, factors, etc.

VI. Bailment of the sixth kind is a delivery of goods as in the last case, to be carried or for done other act to be done about them, but the conveying or other act to be done is greater. This kind is called mandatum or mandate of the Bailee mandatory.

We shall now consider the different kinds of Bailment in their order.

I. Naked Bailment or Deposit.

Naked Bailment or Deposit is a naked bailment to be kept by the Bailee for the Bailor gratuitously.

In this case the Bailee or depositary is bound only to good faith. I liable at most only for gross neglect. 659. 913.

Both says "ordinary care" well repay the depositary 665. 1124.

It looks to imply that less than "ordinary care" will not...
Bailment.

But he evidently uses the words "ordinary care" without any definite meaning.

But he is not always liable for graftsm. Indeed generally speaking he is not liable at all for neglect as such, considered as such in the abstract, but for fraud only.

If even graftsm it does not furnish evidence of fraud, or where he has to the deposit as his own goods he is not liable, thus: if the depositary be a careful man, idle drunken fellow to leave his doors open by which means the deposit together with his own goods were stolen, he is not liable.

There is however an exception to this rule where the depositary by special agreement makes himself responsible for loss than ordinary negligence, he may thus make himself liable to any extent.

There is perhaps a principle another exception when the deposit is in consequence of the Bailee's officiousness in offering to keep the goods. For the acceptance is general for the same is not excused by that officiousness, from instructing them to a person of known integrity of vigilance. It is therefore the opinion of Jones that he ought to be liable for ordinary negligence. But this rule is too refined to admit of application.

The old authorities are contrary to the general rule first laid down under this head.

The doctrine advanced in corresponds safe in substance
Bailment.

Thus it is, that every acceptance to keep implies an agreement that the goods shall be kept safely, which would subject the bailee for loss than ordinary neglect.

Thus the doctrine is repugnant to the general rule by which we are to discover the liability of bailees, if clearly expressed or implied by a weight of authorities. Indeed, the doctrine here is advanced obiter, if the decision is otherwise clearly reconcilable with the general rule.

Some have taken the distinction between a special agreement to keep safely where there is a valuable consideration, whether there is none, that is, in the former case, such bailee would be bound by his agreement, if that in the latter he would not, for it would be a medium faciem.

But this valuable consideration would altogether alter the nature of the Bailment, and in the statute of the fifth title. So that this doctrine if mere well founded, would not affect the law on this subject as to depositaries.

But it is not founded on principle, for the delivery of the goods is a different consideration for the special undertaking.

It has been held that these goods have been left with a depositary in a locked chest of which the bailee had the key, the bailee is liable for the chest only, and not for the goods, for they it is said, are not entrusted with the depositary. But it is opposed to this decision be...
caused the parties to have a little power of over the goods as to any benefit when out of the chest and when in, of ad
much power to defend them or the one safer than the
other.

It is remarkable that neither shall one be take
into consideration, the circumstance of the parties being
ignorant of the contents of the chest or not.

But this, as a security may be as the meaning of it is evidently that, that he is executed,
from such acts of violence as he cannot resist. And
being generally speaking, one act secures the deposition
A special agreement to keep such goods in safe
keeping the goods safely, for if his liability was to extend
still further, he would be liable even in cases of taking an
inevitable accident.

He is not excepted where the loss was occasioned by
the defrauder refusing to deliver the goods on demand
without lawful excuse, it is evidence of conversion for
II. Commodatum.

This kind of bailment is a gratuitous loan of goods to be used by the Bailee, if to be specifically returned. No one is entitled to the Bailee only. He is bound to more than ordinary care, if is liable for slight neglect or as it is sometimes said for the least neglect.

Thus, if a horse be borrowed by the Bailee, or his servant, put it into his stable not locked, if the horse is stolen, he is liable. But it would have been otherwise had the stable been locked.

According to Jones, the borrower is liable in case of mere theft, unless he can prove extraordinary care on his part.

Borrower is not liable for such a loss by such force as he cannot resist. Therefore generally speaking, in this case, it is not liable for a loss by robbery.
Bailment.

There being no guard against open violence. - Jones, 92.

But a bailee is liable even for robbery if he exposes himself to it by his own rashness, as if he should leave the high road of trust, this a haunt of robbers, especially in the night season.

Yet a bailee of this second kind is not liable.

Jones, 95, 6. Generally for any of the accidents called involuntary, such as lightning, tempests, etc. But he may make himself liable.

For instance, if it be shown by a previous breach of trust.

As if he hires a house for one journey, and another is detained there for a longer time than that for which he is hired. Here he is liable for all accidents, as he would be for robbery.

This rule applies to all kinds of bailment. 1 Pau. 263. 2 Mcq. 29. 238, lev. 244.

So he may be made liable for those accidents occasioned by his own rashness.

This kind of bailment is a delivery of goods to be used by the bailee for hire. As a horse to ride on.

By this contract the bailee acquires a transient, quantified property in the thing bailed, of the bailee an absolute right to the use and profit.

Hence the bailment being reciprocally beneficial, the bailee is liable according to Jones for no less than
ordinary neglect, being bound only to ordinary diligence.

But it is said by Lord that he has incurred to the
May 9, 16, almost delinquency if so. He is liable for slight neglect, and
then the liability of a hirer to him is the same as that of a hirer
who is a hirer of the second class.

This doctrine of Scott is the foundation and only support
of the rule as laid down by Bowell & Buller.

But first, Scott's proposition is only a decision, besides
May 9, 16. Scott himself of Bowell after him, do make a distinction.

The hirer of the hirer, as to their liability they lay down
the rule generally that the hirer is excused in case of theft,
but there is no such rule thus generally applied to in favor
of the hirer in the same situation. In the case of the hirer
it is said that he is excused from such a force as he
cannot expect to resist, here the idea of the least neglect is
excluded.

Again it is said by Justice Bowell that if the hirer
be robbed without any fault in himself, he is not liable, but
no rule is proposed as to what adds to the hirer. Indeed
Bowell says the hirer is liable for the least neglect he
can be had the use of the things failed.

27. Scott relies for his authority solely on a quotation from
May 9, 16. Branton which does not warrant the conclusion. For it is
trivially true that expectations are often used when the quality is not expected
intentionally, in the expectation.

Thus it is then no question more clear authority requiring more
than ordinary care of diligence in a hirer, if prudence seems
Bailment.

It requires no more since the bailment is beneficial to both parties.

The thing here is to be kept with ordinary care. Hence the hirer is excused in case of robbery unless sanctioned by his imprudence or want of ordinary care.

But when the house is hired, the hirer is liable by reason of the stable's doors being open.

IV. Pawn or Pledge.

Pawn or Pledge is called in Latin, caperum. It is a delivery of goods as a security for a debt due from the Bailee to the Bailee. 4 com. 258.

If one delivers goods to another under an absolute sale, but it appears from another instrument, that the delivery was to secure a debt, yet it is agreed in the latter, that the vendee may sell the goods where he pleased, if also it is evident that the vendee is subject to the debt, yet the right to sell, maybe, the goods are a pledge.

Thus, contract being a benefit to both parties, the contract by securing the debt, of the Pianer, procuring him a credit on delay of payment. The Bailee, May 5-23.

4 com. 258, is bound on principle to only ordinary care, if by no means, the ordinary negligence. The rule is fully established in English Books. In 2 Raymond, it is said expressly, that

free diligence is what is meant ordinary care expedites the pawnor.
Bailment.

It has been held that the Bailee is bound to keep the goods pawned, as he keeps his own property, because he has a property in the goods.

Jones 61, 92.

It has been held also that the Bailee has a property in the thing bailed.

1 Pet. 5:3.

This doctrine in Locke would subject a pawnee for gross neglect only; a not even for that as this case may be, but this is not only contrary to the general principles, but to the weight of authorities.

1 Pet. 5:3.

A pawnee is excused according to the general rule in cases of robbery unless it was caused by his own neglect or fault.

Co. 26, 52.

It is held by Locke that if a pawn be stolen, the pawnee is not liable, because he is to keep it only as his own property.

10 Pet. 5:3.

Co. 26, 52.

That Locke holds unconditionally, that he is liable in case of mere theft, because a Bailee cannot be considered as using ordinary neglect, diligence, and taking care to keep the goods to be lost by stealth.

10 Pet. 5:3.

Jones 61, 92.

Jones 61, 92.

Some cases were made in which the general doctrine of that the pawnee gains the other Bailees a qualified property in thing bailed. — Co. 522, 3: 26.

This interest is determined by the tender of the money due,
Raisment.

and the whole interest vested in the person, tending to refusal being in this case equivalent to payment.

They are often a payment in tender, of decrease of the Power. The Power retains it. We are wrong to stay for any loss or injury at all events, even for inevitable accidents.

This is one of the exceptions to the general rule of the Power's liability.

If the refusal be by the Power's servant acting regularly in his master's business, it is also the Power in this case if the power maintains a demand on the implied promise to re-deliver.

On refusal to re-deliver after payment or tender, the Power may maintain a cause. This rule ought to be placed before the preceding one.

If refusal to re-deliver on payment or tender, is an indictable offense at common law, if this is the ground of policy.

As said by James, it is laid down by Buckley, that on tender of refusal, the thing Power may refer to be a pledge of becomes a deposit. I do not find it laid down by Buckley, nor can the proposition be true, for a deposit is liable for goods left only, but the Power in this case is liable for a loss at all events.

As said by Buckley, the money at demand becomes the property of the Power, for tender and refusal are equivalent.
Military.

To payment, as often as it is liable for the
money to be paid for the bond, it is liable for gross negli-
gence only.

In some cases the bond or bond is a right to use the
pledge as if not so. But this right when it exents is
said to be founded on the bond or bond's consent is strictly
given or presumed.

This presumption of consent generally ex-
sting not, as the pledge is likely to be made better or lost
not at all affected. This where the bond or bond's pledge
the presumption exists, for by not he is confirmed in use-
ful habits, so that the pledge is made better.

So of it will not be injured by use unless goods or
are pledged, the bond or bond's consent is presumed. But
the bond or bond's uses the thing pledged at his peril,
he will be liable even in cases of robbery, if he resents for
incurable accidents.

So of the bond or bond's interest in help.

The pledge he may use it, as where a horse or cow is
pledged, by way of reimbursement. The law indeed is bet-
ter for this use: is there a presumed consent in this case?

That is, is the true complainant upon it? The bond or bond is
in that case if in the first is not I suppose liable for robbery
while the thing is in use, and in the last case that
of the cattle. The right in the last case is that of jewels or
orders from a presumption founded on immediate use. In
the first of present case from a principle of duty of justice.
Bailment.

According to the Roman law, the owner was obliged to account for the benefit of the use, but not at law.

So be according to former decisions, you may use the thing bailed when it is and receive it to him for he ought not to be injured or benefited.

But if the owner will be worse for receiving of the thing in use, not expending, the owner may not receive it, and if there be no other provision, the owner cannot be benefited.

If he does use them, though in the first instance I conclude less for unlawful use, is a conversion.

The law as to having, is said by Blackstone is not the same as to goods.

According to Blackstone, the law implies a contract by which the finder is to use ordinary diligence.

But in some authorities, it is said that he is not liable to keep it safely, nor liable for negligent keeping. Blackstone.

The less he ought by law to have, does not seem to be liable.

The finder is responsible for anything left on goods he finds, because the use of the goods is to the real owner, until the owner is compelled to pay the finder for his trouble. But there is a great difference between finding and deposit. In the latter case, the owner has it optional to deliver or not, if he elects his deposit. In the former it is otherwise; indeed, finding is not a strict bailment. The finder ought to use ordinary care, in not taking the thing, if he has the opinion of
Bailment.

Powell seems to be correct.

Indeed, in the case of hirelings, the decision seems to be more

by that Uomo would not hire, if it was not right, for known

is only for misfeasance or actual wrong, not negligence.

Banc. 2527. 8 Co. 146. 1 Womb. 62.

A finder of goods has no

him upon them at law, for his trouble; but

is liable in trespass or negligence to deliver them up

the one expenses he not incurred.

The case of mortgage is different. 2 H. 16 254. M. 373. 374.

A question had been stated respecting the finding of goods

which had never been divided by the English receipts. S. 2

375. It finds 10s. goods of 6 shilling's of duty. It refuses

10 H. 16 68. 6 shilling to deliver the goods of money. It then sues for

668. proving his property, can he recover? It is believed

that in principle he cannot. For it is a rule of law that

where a man is compelled to pay a sum of money by

proof of how to a wrong person, he cannot be compelled
to pay it over again. And if he had paid it voluntarily

he might

If the Pawnee knowing tendered it refused in

Nov. 23 8.

However, if the Pawnee may have his action to recover what

is due but he must first make a demand.

If assignable goods be pledged, it appears, at the Pawnee

may recover his money by the duty incurred. The pledge

being only a security for the debt of not for the repayment.

This too, while the pledge remain unperfected in the
Bailment.

A pawnbroker handles money due for his debt. If none
and if there was an agreement to the contrary, that is,
that he should rely solely on the pledge.

If the money be paid by the day, the bailee has a right to
the property; if not, and the subject is absolute in the
pawnbroker. But the pawnbroker has a right of expropriation in
Equity, even tho' the agreement is that the property if not redeem-
ed by the day should rest absolutely in the lender.

If the pawnbroker left the premises there, then the omission of ordinary care of the pawnbroker the
debt seems was extinguished. But this does not seem

to be a very reasonable rule, since the pawnbroker is liable
to the borrower for the value of the thing pawned. If
is said to some that if the borrower was diligent in keeping
the thing pawned, if it is lost he shall not be an extin-
guishment of the debt.

A factor cannot pawn the goods of
his principal, so as to give the pawnbroker any lien at against
the principal. He cannot thus transfer the right which he has.

self has, nor create one even to the same amount, for a lien
is a personal right and not transferable.

But on tender to
the factor of what is due him, Sound lies against the Pawnor.
This must I presume be a demand on the pawnbroker, tho'
this is not mentioned.

After the day of payment the pawnor
may doubtless sell the property, it being absolutely in him always
But according to Mr. Black the pawnor may in equity perhaps at some remove the surplus, if the thing was sold for more than it was pawned for.

According to Commentaries the pawnor may before the day of payment assign the pledge. But a sale in lieu of a seems to invalidate the other way. If Justice Brule says a lien is a personal trust, it cannot be transferred. 4th 1735. 3 Com. 606.

It is also laid down that it cannot be alarmed, which plainly implies that the pawnor cannot assign the pawn, since it was never supposed that he could sell.

And it is a rule that a pledge cannot be perfected by the pawnor, but a man is capable of perfecting what he can convey in his own right.

A pawn may also be considered in the nature of a personal trust. The owner may be willing to entrust his goods to one but not to another. If the pawnor might assign at his will, the pawnor would be in danger of a loss, for the assignee might be a knave or faggot. This is different from the case of land being mortgaged which cannot be run away with.

Again a pawn cannot be taken in execution for the pawnor's debt, neither can it be attached for his debt.

This last authority is the same which Conings cited to the point that a pawn is assignable. The principle in this case is the same as in the last.
not mitigate against our reasoning, for the bill was

but, in that case, if the assignee's right was suspected

at law.

In the whole it may fairly be inferred that a pledge
cannot be assigned

The assignee may perfect his right in the

pledge by delivering but the thing cannot have it without

paying the sum due to the person.

Anciently it was decided essential to a case

that it should be determined at the time the money was

paid to the debt accrued. Therefore it was considered

not as a pledge giving a specific property in the holder, but

merely as a licence to exercise his rights. — The law is

now otherwise.

Therefore if A deliver goods to B, as a secu-

re for a debt already due from A to B, B becomes

another with a qualified property, so that A cannot com-
demand the delivery, nor a contrary opinion firmly re-

ceived.

It seems that the rule in the case above stated is pro-

nounced on an agreement between A, B, and C, that the delivery

should lie to B, unless he were C agent.

But if A delivers goods to B, as a naked donation to B,

the delivery it seems, may be invoked before C shall have

the actual possession; for the delivery was without com-

promise.

And it is held that a legal gift without some
Bailment

out of delivery, will not transfer any interest so that an action will lie against the donee after demand; I suppose if he take the gift.

It was formerly doubted if no day of payment was fixed, whether payment on tender would arrest the property, unless it were made during the joint lives of the parties. But it was held that the pawnor might redeem at any time during his own life, even after the pawnor's death.

And if the Pawns before his death deliver the goods pledged to John Ates, without consent of John Atley, it is to be to the Pawns's executor of not to John Ates. After such tender John Ates refuse to redeem he is liable in person.

But if in the last case the Pawns having the pawnor had delivered to John Ates as a consideration, the question to whom tender must be made is the same as whether persons are assignable before the day of payment, according to some authorities it must be made to the Pawns's executor according to others not.

But there being no time fixed in which the pawnor must be redeemed, that is, tender must be made if at all during the life of the pawnor. If his Ees cannot do it, the condition is personal as to the pawnor.

It is questionable whether this rule would be adopted here. It ought to be with some limitation if the
Bailment.

The promisee may live for his debt during his life; yet the promisee may be worth nothing.

It is said by some that equity would relieve unless it were clearly shown to have been the interest of the promisee, that redemption should be lost in case of the promisee's death. This seems to be reasonable for when a day is paid for payment there is an equity of redemption.

If a day be paid for payment, the promisee's interest is not forfeited by his death. This may do it by paying or tendering, as the promisee might do it if living.

If the payee pays at the day, the absolute property is invested, if not he has an equity of redemption.

V. Locatio operis mercium vobendorum.

This is a delivery of goods to the carrier or some one else. The act to be done about them for a reward by the carrier. This includes a delivery to a private carrier or other private person, who is to do some act for and also a delivery to one who exercises a public employment, in his public professional character, as a common carrier, or the like.

Of a delivery of goods to a private carrier, or to an agent for a person not acting in a public business, that included a delivery to one, even in a private professional capacity, as to a carrier, the other carrier, a merchant, etc., as well as to a special carrier.
Bailment.

But a delivery of articles to the silversmith to work into plate, if it is not a Bailment of this kind, it is no Bailment, but a mere delivery of the property, not in the person to whom it is delivered.

See the Bailment being reciprocally beneficial, the Bailee is an ordinary house, and liable only for ordinary neglect, as it tends to the law.

But days expire, by which the mere ordinary case he shall not be answerable. - 172:4.

As goods be delivered to such private person, as an agent, to have them shown to a person for hire, to a private person meeting, etc., if the Bailee be robbed, he is answerable to the general rule, excused, the force being irresistible.

As in case of theft merely, if the property be locked up with reasonable care, the Bailee of this kind is excused. This rule.

If a person be general as to Bailment reciprocally advantageous, but is denied by forces as to damages, when according to his own principles, the same reasons exist, as in the present case. 172:4. 472.

If the thing bailees be distinguished by

The landlord of the Bailee for rent, if he sold as it may be,

the Bailee is liable for this at least is ordinary neglect.

This rule is common to every bailee who receives pay or compensation in any way or of any kind, for keeping or doing

as a Carrier for generally. I suppose where the contract is reciprocally advantageous.

And if depositors would be liable of, as should be.
Bailment.

Since his own yards are as to escape the bonders, or
Jones 142. if he should in any other way not escape them.

But if the depositaire should even act, I have said it is
believed that he would be liable to the Bailor in the
Jones 39. case in our action of finde. As, if silver be delivered
to a silver smith to work into an ounce if he is not a
Bailor of this kind according to Jones, the contract is not
a Bailment but a mechanicum, the property rests abso-
lutely in him. And according to Jones if it be lost, the
person to whom the silver is delivered must be in the
loss at all events, he may therefore use it for any oth-
er purpose if restore an equal quantity of the same quali-
ity: The reason of this seems to be, that the form of the pro-
duct is to be so altered it cannot be identified, if the
face it cannot be specifically restored, in legal contem-
plation. This case is something like that of mixing col-
ing grain into flour ingrafted into wine etc.

Then the Bailment is to a person to do some act of skill
in his professional calling for the law implies a two fold
contract, not only to redeliver the thing, but
to do the work skilfully, and when the delivery is to the
Tayler or other mechanic.

But of the act to be done be not in their line of the Bailors
professional calling, the law implies no engagement in
this part that the work shall be done skilfully, if therefore
he cannot be made liable for not using skill without
an express engagement.
Bailment.

Ordinary care does not oblige the Bailee to ensure the thing against fire.

If goods of the kind be lost or destroyed

while the work to be done remains unfinished by the neglect of the donee of the work, the donee requires of him

it seems he is not entitled to wages for the work which he has done; for the Bailee received no benefit from the work which he had done.

2. If a delivery to a person exercising a public employment

May 11, in his professional character, that is in the way of his business, as Common Carriers which are first.

Common Carriers.

A Common Carrier is any person engaged in the business of carrying the goods of others for hire, as a common

wage, or as a Common Bearer or a Common Hayman.

When hired for carrying goods.


He who hires a canoe by land, fell under the description of Common Carriers.

2. To Common Hayman's goods.

The law on the subject of Common Carriers was first enacted

in 1718, and to Common Hayman's goods.

3. To masters of vessels.

So to the owners of vessels are common carriers of the goods.

4. May be lost, against them, in the nature of an action against

common carriers, or against the master.

But according to that, the owners are liable to the value of the ship only and freight, while the loss is ascertain...
By the mismanagement of the master of a common carrier having convenience to carry, if being offered his price, refuse to carry, he is liable to an action

Notwithstanding the last rule a common carrier may make a special, that is a conditional acceptance that he will not be answerable for money he shall receive, if is paid in proportion to the amount.

The Baitment in case of a common carrier, being reciprocally beneficial, he would make the thing nothing to impede the application of the general rule he liable for ordinary neglect only. And this seems to have been the rule so late as the reign of Henry 8th, when it was held that a common carrier was not liable in case of robbery, unless his own rashness or inconsiderance gave occasion to it.

But it was settled in the reign of Eliz. that robbery was no

And the rule now is that he is liable for theft occasioned

The true ground of this rule is not the reward, as affected by Sir Edward Coke, that public policy, which makes an exception to the

A carrier is not liable to this extent, unless paid, because

A common carrier is in the nature of an insurer at all events
except the will of God, if by the act of God is meant by

1 Sam. 38. Haddiefields, such an act as could not happen by the intervention of man, or tempests, &c.

1 Sam. 34. 

If an accident in any way than by lightning is not considered as the act of God. — 1876, 1796, Est. 620

A rat gnawing a hole upon the side of a ship, or no such ease, do that the carrier may be liable for what may be

1762, 297, 1761, 1323, called an inevitable accident.

1 Sam. 33. The letting the rat to gnaw the rope is said by Jones to be ordinary neglect — Jones 1478.

1 Sam. 47. An inevitable accident may perhaps be defined to be that at

Jones 47, against which human prudence (that is any degree of human prudence) could not guard. That act of God will always

then be inevitable accident of necessity, but this is not

true in accidents, for inevitable accidents may happen by

the act of man, as in conflagrations.

1 Peter 197. 237. For they are not met with within the rule, but frustrated fall

1 Sam. 18. 120 620 within the rule. — 1 Noe. 85.

245. If a tent near make it necessary to throw the goods

3 Sam. 6745 of the carrier overboard, the carrier is excused for the never

161 Est. 620. efficacy of doing it is imposed by the act of God; but in this case the master answers for freighters of passengers must aver age the loss according to the law merchant.

In a case of a box of jewels being thrown overboard, the master was held not excused, for the box was light enough to necessity of doing it.
Abatement.

Part of a common carrier voluntarily expropriate the goods to damn.

Ex. 6.20. age from the act of God to the act of man shall not excuse him,

Ex. 195. as if a common dayman had voluntarily put to sea in very tem-
festious weather, do that a loss could not.

A common carrier is excused if the loss is occasioned by the

Ex. 621. act of the wind, as if in the conveyance of a ship of stone, it

hurts from being in a state of fermentation.

So if the wagon be full, if the owner forces the goods

2 Thess. 127.

1 Par. 347. when he, it is his own folly, if he must bear the loss of any

happen.

It is otherwise when they are delivered to a carrier, but a half-

1 Par. 347.

Ex. 230. danger is incurred to take care of them. 1 Par. 2. 1477. 97.

Ex. 230. danger is incurred to take care of them. 1 Par. 2. 1477. 97.

It seems that a common carrier, the ignorant of the contents of

1 Par. 347. the ship, is liable for its contents in case of a loss, unless he de-

145. the ship. 145. agent himself is a special, that is a qualified acceptance.

1 Par. 345. 145. there are due to the principle of that rule.

As to according to this decided authorities, this.

1 Par. 70. carrier is mistaken of the contents of the money he is that

Par. 345. he sends the custody actually. This is where the key contain-

1 Par. 345. at a large sum of money, if the carrier was told to this.
Mailment.

owner that it contained six hundred pounds of tobacco was lost. The carrier was held liable, because there was no special acceptance. But Buckle Justice says if damaged might have been given.

Both of these decisions were disapproved of by Lord Mansfield if the rest of the Court of King's Bench to whom it was held that fraud might to excuse. They are also refuted by D. Kenyon if by Jones. In Opp. Jones who consider the two cases as before are concurred.

For the purpose of making a special acceptance it is not necessary that there be personal communication between them by the owner of carrier. An advertisement in the public papers may be sufficient, that is the jury may infer from it that the owner had knowledge of the

Under a general acceptance, except in cases of fraud, a carrier is liable for what he carries, but if he accepts specially he is liable only as he undertakes to carry, that is he is liable only so much as his reward extends to; as to anything once, he acts not indeed as common carrier.

Third where a bag containing $400 in money was delivered to a common carrier who was told by the owner that there was but $200, if that proved for no more, which bag after was lost the carrier was held liable but for $200.
This doctrine was approved of by Lord Mansfield. But the Gentleman thinks as the case might be, he ought not to be liable to any amount in case of such accident.

The master of a stage coach who received hire for carrying goods, and was not for baggage, is not liable for the loss of the latter, if it would have otherwise happened if he had carried the goods for hire.—— *Ex. 62. 2* *Sum. 1218.*

But common carriers are liable without any special express promise by the owner to pay the hire, since the former may recover on a quantum meruit.

The carrier is liable that the goods are lost at the inn where he arranges.

It is clearly liable in this case if the custom or use of business so is for the carrier to deliver the goods to the consignee. *Ex. 62. 8* *Sum. 1567.* If it seems to be liable of course till the delivery to the consignee, it is until the establish custom is not to deliver this to the consignee.—— *Ex. 62. 81* *Sum. 1681.*

When the custom is not to deliver to the consignee, but to keep for the owner to claim, the owner is not liable as common carrier, after they are discharged, if that is for defective according to custom.

When an action is laid against ship owner as common carrier, the master must all be joined, for this action arises quasic ex contrahentia, and non ex delito. This will supposes the owners to have done no wrong.—— *Sum. 1651.*

The owner are liable because the master is their servant.
Bailment

The common sale of all is pleaded in bailment only

If you, Law v Postmaster, being an officer of
and must be a common cause for let-

And Act 1. W. 4. 12 che. 2.

But the Postmaster will be liable for his own de-

But this seems necessary, for the custom being

general is no other than the common law. 227. 1162 343.

When property is stolen from a common carrier or

is by a special action on the case of not found.

If he be guilty of mischief, by breaking a box

or destroying goods the wrong lies. But he is not liable

in favour even for actual negligence. 5 sc. 1 79. 6 B. 65.

Brook 22 27.
II. Inn Keepers

A delivery of goods to an Inn Keeper seems to fall most
probably under the second general head of the 6th of Misch. A delivery of
goods to a person exercising a public employment in this full
his professional character, to be carried on some other act
to be done about them for a reward.

But, confined under the head of Commissions, it
is not the least resemblance he
to the last called. Sending goods is to a private per-
son for his use if for his sole benefit.

Jones 30. 1
Esq 397; 6.

Bailiff in his Wise Prices treats it under the last head
that is a delivery to the Bailiff to carry on to do some act about
them greater.

But first, this delivery is always to a person doing a private
character that of an innkeeper. He is not a public character. And
2dly. The case of horses or the beasts cargo is clearly not gra-
ted, not in the case of inanimate goods, for in the latter
case his cargo is rewarded, by another, a gainful contract,
by which he is bound to entertain the owner.

In conclusion will apply to our innkeeper, for this, the inn
keeper be not paid in money, yet the guest a lights at their inn
Jones 30. not solely for his own refreshment, but also that his goods
may be safe. Indeed, the price paid for among of life may be
considered as extending to the goods, luggage, or trust.
Innkeepers

for it.

The general rule as to Inn Keepers, is contained under another title. Under this head I shall lay down a general rule as to their liability for the goods of guests when lost or stolen or injured.

Nov. 1799. Any person who makes it his business to enter, 2d. with a train of horses necessary for Travellers, nor their horses for a reward, is a common Inn Keeper.

Jones 133.

The Bailment being reciprocally beneficial, an Inn Keeper would according to the general rule, be liable for ordinary neglect only. But the policy of the law has, by the policy of the law has extended the principle somewhat further. It seems however not so far as the general liability of common carriers. Jones does not specify require the same responsibility, as of a common carrier?

The Inn Keeper is clearly liable for any loss,

as conditioned by his servants in any way. For he is bound to all servants to provide honest servants.

Jones 143.

6th 426 3rd 323 2d 72 1st.

The goods are stolen by any stranger, the Hotel is according to the general rule at all events liable. There is an exception to the last rule when the goods are stolen by the servant in company of the guest or by any other whom he desires to have lodge with him.

As I conclude he is liable for common robbery on the same principle of policy. Robbery he is punished by such a force as in common presumption he might have resisted.
In Plowden, indeed it was said that if the lint be broken, and the goods taken by the king's enemies, the host is responsible, which seems to incline that any other human force would not excuse, but I do not find any ingenious rule laid down by any other authority.

Jones asserts it as a rule that a force truly irresistible does excuse, if Plowden is assigning the reason of the hosts being excused in the case he puts, says, "by reason such violence cannot be resisted". I conclude then Jones' case that Jones rule is law.

I do not find any rule subjecting the host to inevitable accident, such as fire, floods, in the case of common carriers. I conclude therefore that he is not liable. By the Roman law he was liable in all cases, except where the loss happened through inevitable accident.

It is to be held in laude that an inn keeper is not liable unless there is some default in his part or on the part of some of his servants. This point is denied by Justice Bell, who says that it is not necessary to prove negligence in this contingency. It is only merely verbal. His idea perhaps is, that whenever the law makes him liable, from whatever cause, he is guilty of a default from the nature of this implied condition in undertaking the business.

He is liable for such goods only as are infra hospitum. But the hospitum includes stables. It is otherwise in case where the goods are removed out of the inn by the direction of the guest. It makes a difference with respect to the liability.
Mandatum.

Mandatum is a delivery of goods for the Bailee to carry, or to do some other act about them gratuitously. It is called in English mandate of sometimes acting. The commission denoted a Bailement to one who received a reward.

Mandatum differs from a Bailement of the 5th kind in this, that in this case the act is done gratuitously. But in Bailement of the 5th kind for a reward, the distinction between this and deposit is, that one lies in custody of the other in possession.

This contract is for the benefit of the Bailee only, therefore according to the general principle, the Bailee is liable for gross neglect only, that is, a violation of good faith. This is clearly as the general rule established by the authorities, gross neglect is regarded by the Books as evidence of direct a breach of good faith.

But when there is any engagement by the Bailee to use all necessary care of all, or any other given degree of a lost

Red. 255, 255, by his omitting to make it, he is liable, but he

16. 16, 16, engagement to use all necessary skill, care may be inflicted but some cases.
Bailment

Such an undertaking may it is said, subject him for life their goods and not. But according to the case in Tournier, Blackstone, or rather in the argument of the Court when the engagement is to do an act skillfully, or being the general 1675 in declaring it is implied in the act it shall be done skillfully, Jones 3:7. 245. on the omission of the necessity which was gross neglect.

So according to Black it is a strict requirement according to this mode of considering the point, an express engagement to execute all necessary care and skill, or such an engagement implied from the act does not work an exception to the general rule.

But according to the case in Tournier, Black, such an engagement does not imply merely the act be done in the way of the Bailee's profession or occupation.

Jones 7:2, 17. of the Bailee where it was in possession or custody only.

In the former case greater diligence is required, but in the latter, the implied engagement being to use a degree of diligence proportionate to the performance of the undertaking.

The proposition in Tournier, Black, above cited, seems contrary, 146, 15:8. up to the passage here quoted. But according to the definition of the degree of diligence, the agreement expressed an implied to use necessary care will be equal at least to ordinary care, if make him liable for less than gross neglect of this sort it does work an exception to the general rule.

Jones 7:2, 2. This seems to me the proper mode of considering it.

When there is no agreement expressed or implied to use
Bailment.

shall a more care than the Bailee takes of his own goods, the Bailee is liable for greatest but only. Thus, Jones Eq. 1.
where a merchant engages to enter his goods with his own grantees at the custom house, but entering them with his own they are deeded, because he enters them under a 1306 1557, waiver denomination with his own goods he is not liable.

It would be otherwise if a taylor engage to make a garment gratis, for here the understanding implies that all necessary shall be done in the making.

So in the case of Leaggs at Barnard.

Powell justice intimates that the special act of to carry safety was what subjected the Deft.

Jones contends that the nature of the Bailment implied the same thing. This however is intimated as the opinion of Powell seems to be correct. Besides Jones himself says that the Bailment to carry gratis does not imply an engagement by the mandatory to use all necessary care, if that he is liable for greatest but only. But I can see no distinction between doing of carrying.

The engagement that implied extends however it seems only to the feard one in damage of the act stipulated.

It does not provide against accident arising not connected with the performance of the act. This in the case of the taylor who works gratis, the implied condition does not
Bailment

extends to guarding against robbery. So far as it relates to such accidents, there is no implied agreement to use all necessary care if the Bailee is liable for gross neglect only.

So I apprehend is the distinction in the case of Keggs vs Barham, for the engagement was to carry the goods safely. Yet says Justice Powell, if a drunken man had laid the bulk of the Bailee would not have been liable.

But the Bailee may bind himself to be liable for casualties. D. Roy 919. 916.

Yet the promise to carry safely does not make him liable for theft answerable for losses occasioned by the act of God. If I apprehend it does not subject him to any loss happening without some degree of neglect.

The mandator cannot even by an express agreement exempt himself from liability for fraud, such an agreement being in a hollow voice.

The doctrine of the law.

May 909. of some of the books. That when any degree of care is expended or impliedly stipulated, the omission of it is gross negligence, yet the authorities are equally clear that an delivery of the thing, the engagement binds as a contract, this, not before delivery.

In the case to build the house gratis.

D. Holt holds that the delivery of entering into the trust is a good consideration. 4th. of 128. 5th. 667. D. Roy 920.

When special damages have been sustained by a
Bailment

If he injure or lose the goods by omitting the degree of care promised. It is said in Bell that things may be not the cause of the action, but the rule is otherwise laid down by 2 Profit. If the mandant be not liable on the promise, how can the promise extend his liability? Without a promise he would not be liable in this case. The promise is therefore the cause of the action.

Further rules are to follow applying to different kinds of Bailment.
I. As to the Bailors' Right to Detain

A lien so called exists on property in the Bailor's favor. It appears only in the fourth and fifth kinds of Bailment. Things I conceive a direct claim to an incumbrance upon some special property of another by way of a security for a debt.

In the fourth kind of Bailment 1442, by pawn, a lien is created by the delivery itself, without which, anything of first fruit, if the pawnor had a right to detain until the debt is paid.

Most bailors of the fifth kind, that is where there is a delivery of the goods to carry for a reward upon horse.

A common carrier had of course a lien upon the goods, that is right to detain until paid. This the contrary is affected by Ravell's Justice.

So it was said by Holt that if goods were stolen or detained by the thief to a common carrier, he may retain them even against the owner till paid.

The Innkeeper had also a right to detain the horse of his guest till paid for the expenses incurred.

So the horse was left at the Inn by a stranger. He may detain it as in the right case of Lem. Bordeaux.
To he may detain the person of his guest.

A house cannot be retained for the entertainment of the asses.

The ten keeps him in, lest he forget the house for his profession, the 5-57.

As the tailor or other mechanic has a lien, the condition is annexed in behalf of trade and commerce, for the tailor is not bound to receive the cloth.

But when a tailor is in the habit of trusting an employer, he ought not to detain him, he gives a personal trust to the landlord.

An ancient form can no longer detain his tenant for his pay, because he is not obliged to receive them, if the interest of trade and commerce do not require that he should have a lien.

But when there is a special agreement on which the bailor relies, he cannot retain the goods. And it has been held that a special agreement to pay a sum certain, without more words and the right to detain, as in the case of the fermier, frequently mentioned in the books, for his the bailor does not rely on the property for security.

So a factor had a lien upon the goods of his principal, in his actual profession, but he cannot
Bailment.

Bailment was a form of property law in which the bailor (the owner of the property) transferred possession of the property to the bailee (the person to whom the property was given) for a defined purpose. The bailor retained legal ownership of the property, while the bailee had physical possession. The bailee was required to return the property to the bailor in the same condition as when it was given, unless it was necessary to alter it for the purpose for which it was given.

Rights of strangers how far affected by Bailment.

If one takes the property of another, the Bailee it is said must deliver the property to the Bailor, according to the terms of the contract, for the Bailee cannot judge between the owner of the Bailee but must do perform his contract.

But it is doubtful whether this rule means any thing more than that the Bailee will be justified in delivering the goods back to the Bailor, that he will be discharged of the owners claim by this act.

Or it is laid down by Roll that if the Bailee delivers the property to the Bailor before or pending the action against him by the owners, this will bar the owners action.

If indeed the owner does not exhibit sufficient evidence to the Bailee of ownership, the latter ought not to be subjected. But if sufficient be afforded the Bailee would be liable. I apprehend unless he had discharged himself by delivering to the Bailee it infra 369 in the case.
As to the rights of the Bailors creditors who levy on the property as his and of purchasers under him.

By the Stat. 13 Eliz. made to avoid fraudulent sales. It was enacted that if a purchaser of goods leave them in the possession of the vendor, the bill of sale being in the possession of the creditor, the creditor who claims on them will hold against the purchaser, such shoes being in general to secure property by having tendency to give false credit to the profession, of hold out false colours to the world in his favour. Here then is founded on the original sale is being fraudulent against the creditors of the vendor, so that the original purchaser acquires no title to against them.

The law therefore as it stands under this statute does not perhaps fall under the head of Bailment strictly speaking.
Bailment.

In which the transaction is within the statute, the vendee as he acquired no title against creditors is not ipso facto speaking (so far as they are interested) to be considered Bailor. This law however having a close connexion with that on Bailment ought to be noticed here.

Part of the event of immediate possession

2 Sam. 5:9-10 The commencement with the deed of sale, as where the deed is conditional, it is not of course fraudulent for if the time of the deed the vendee cannot have possession till the condition is performed; here the presumption of fraud is rebutted.

So when the notice of the case is such that immediate actual possession cannot be given, as in the case of the sale of a ship at sea. Indeed the delivery of the bill of sale is in this case considered as a delivery of the ship.

Some of the contracts hereunder agent as in case of a mortgage of goods, will the mortgagee remaining in possession till the day of payment; being the case within the statute of James I. 1579.

In the last case the event of immediate actual possession, will not make the sale fraudulent, it may doubtless prove fraudulent from the facts indicating fraud if these be any.

The statute 13 Eliz. related only to seamen only as to antecedent creditors.

36 Eliz. 2., 8 Stat. 2d, 462. But Lord Mansfield says that this clause was
Bankrupt

attained every end proposed by the Statute, the con-
sideration that false credit is given, holds more strongly
in favor of such subsequent creditors than prior.

of the owner of immediate possession he not consis-
tent with the deed, it is fraudulent per se in point of law, it
not merely existence of fraud.

Statute 21st James I. 1666.
18th 1666. son when he becomes a Bankrupt have in his possession,
not at disposal goods of another by the latter can en-
they are liable for the Bankrupt's debts.

The statute extends to goods not originally belonging
to the Bankrupt; but related to him or permitted by the
owner to be in his possession, as to such as were original
by his.

by his.

3 to goods originally belonging to the Bankrupt of by
been sold but permitted to remain in his possession the rule
were as strong in favor of his creditors before the statute
now for by the statute 13 Clp. of 1666 Law, the sale
would have been fraudulent against the creditors of the
Bankrupt.

The reestablishment of any presumption of fraud, 49
it deems of no avail under this statute — 1 Veg. 365.

This statute extends as well to mortgages as to
10th 1665
4 Veg. 3:48. a absolute sale, where the vendor is left in possession, an
17th 1665. becomes a Bankrupt.

10th 1665
12th 1665. If the creditor claim the property precedent
to the vendor's right of possession, it would not prejudicial be withi
Bailment.

The statute for the purchase does not voluntarily entitle the vendor with the property of which he had the right of possession.

The statute does not extend to ships at sea. 

So in many other cases a manual delivery is not necessary under special circumstances as a delivering a key of a store containing the goods is sufficient.

The goods must be possessed by the vendor at his own goods are, or in other words they must be left in his possession, order of disposition, or the case is not within the statute.

Therefore a temporary possession for a limited time for proper as till an opportunity offered for sending the goods to the vendor is not within the statute.

So the vendor must appear in all cases to be the owner, to bring the case within the statute, for if from the nature of his business, the prevalence of this ownership is excluded, the true owner shall hold, as in the case of a factor, goldsmith, &c. who do not deal in their own stock. The statute 13 Cliz 6 of 21st Jan. 10. are in favor of creditors, not of purchasers.

The statute 27 Cliz. is in favor of purchasers. The common law have none would have attained all the ends of both of the statutes of Cliz of the statutes of 21 Jan. 10. so far as it relates to the rights of persons imposed upon by giving false credit, or with the non-attendance of the same laws.
The common cases of Bailment, when the bailee was not such a bailee as to bring the case within the statute of Eliz. 13, is not in possession of the property, so as to bring it within the 21st James 1st, if when he does not become a bankrupt, the general rule is, that the true owner that is, that the bailor may have power against the purchaser under the bailor, or any subsequent purchaser, as a creditor who derives his title from the bailor, and who the rule is, if there has been an order, and if to against any person into whose hands they might have fallen, however honestly they may have obtained them.

This rule it seems is founded upon convenience in England. It has been several times suggested that the possession of goods, ought as against third persons, to be considered as evidence of ownership.

There is an exception to the last rule, when the property, Bailee is money in Bank bills, there is no regular transfer of title from the Bailee, and not in the market, it binds the property.

When the goods are left with the Bailee merely to keep, no purchaser can hold them against the Bailor, for they are not with the order of disposal of the bailee, and therefore cannot be sold without a violation of the terms of the Bailment.

As well a creditor can hold against the Bailor, if the possession of the Bailee is so explained.
as to exclude the presumption of fraud.

The law it seemed would stand upon a much
more rational foundation if this great principle were
made the general criterion of justice by Big that.

39. When one of two innocent principals must suffer by
the act of a third, he who trusted the third person
of enabled him to do the wrong should bear the loss
rather than he who had not trusted him.

To good be bailed for hire to be used by the
Bailor for a certain time, it is a question whether
from 11:12, the Bailor's creditor can take the use of them for
the term of limitation in Execution.

It would seem
by a doctrine of a Judge in Lem. Rep., that he might
take the property. But it is a personal trust, not
transferrable by the Bailor.

The sale or mortgage
of a ship at sea is valid if the grand bill of
lading be delivered to the mortgagee or cede
of he take possession the first opportunity
after the ship arrives in port: 1 Dom. 462.

As to where the continuance of possession is consistent with the
original ownership see, 3 Coll. 574, 32. 2 3d, &c. P. 1285.

Daiment.

When actions bailors and bailors are respectively entitled.

It is a general rule that the bailor, having the general property, may have trespass, I presume, against any person who takes or injures the thing in the bailor's possession. See 3 Edw. 4, 26. 2, 4. Edw. 4, 26. 1, 4. Roll. 4, 26.

To this the bailor had the actual possession, as in the case of a Bill of sale of goods not delivered, for in personal things property accrues after it a possession in law.

If goods be bailed for hire, to be used by the bailor for a certain time, it is a question whether the bailor can maintain trespass or wrong against the stranger for taking or injuring them during that time, but it seems that he cannot.

If goods in possession of A are by B the owner given to 6 and if a stranger afterwards takes them of injured them, it seems, while in A's possession, C cannot have an action against the stranger, for he is not in actual possession. If a fraud, gift without delivery does not transfer the property, then C cannot give a constructive possession. Thus he is not strictly bailor.

But slight acts will amount to a delivery. A de 5 Edw. 577, 20, 4, 17, 1 Edw. 4, 26, 2, 4. Edw. 4, 26, 1, 4. Roll. 4, 26.

If the bailor give goods to a stranger, the bailor can not have trespass against the latter, nor in the first in.
Bailment.

Art. 606. Action brought for the recovery of possession lawfully taken for the same cause, the stranger gains possession lawfully.

But if the demand was refused, the stranger is entitled to return it to him, and the stranger may discharge himself by delivering it to the bailor before or during the action.

So most bailors of persons owe all money main-tenance actions of recrev for the full value against the wrong-doer as a common carrier, a ship or a vessel, are affected by the service of process. (Cf. 574. 550. 545. 524. 514.)

The grounds of the bailor's right to file an action above are said to be his own liability to the bailor. (Cf. 543.)

But then, it has been doubted whether a deposi-
tary can have an action of recrev against a wrong-doer in the same action as the plaintiff, and the bailor's action against him, because he is not liable in those cases except for goods. But this is questionable, for every bailor has a special right.

No. 12. 340. 262. 146. 392. 396.

397. An action.

It has been held that a lawyer has such a right to a service of process, which will enable him to keep the thing against all but the rightful owner, if consequently he may maintain an action.

So according to a late decision an unsealed article, having acquired goods after bankruptcy, may have been against the stranger who shall take the
goods out of his possession, the case does not very nearly resemble that above, yet it was then held that a special property, or even a lawful possession is sufficient, against a wrong done.

Besides the defendant may be possibly be liable, as in the case of gross neglect. This seems sufficient on the ground of the Bailee's right to sue, is his own liability, for no bailee is liable at all events. How shall it be determined before hand, in any case that there is an actual liability? The principle advanced that the Bailee cannot maintain the action unless he is liable would be an equal objection to any one's right to sue unless the question of actual liability were mentioned tried by the Bailee against the wrong-doer, but this would be clearly inexpedient, for the decision would clearly not bind the Bailee.

Also policy required that the Bailee to keep, should have the right for the Bailee might be at a distance and a special remedy necessary.

Further if the Bailee does have a special property, it will not be the law to protect it? This right is of a higher nature than that of a stranger, as against the stranger he may be considered the owner, he having a lawful possession which the stranger cannot have.

If a Bailee deliver goods to a stranger, the stranger it seems may have an action against
Bailment.

Bailment is the relation which exists between a bailee and a bailor. When the bailor of goods has a right to sue for the full amount, there can be but one recovery, that is for the full value. Therefore a recovery by one in trespass or wrong does not bar the other action.

But it is said in Plead. that if both

Verse 5. 69.
Verse 22.

Verse 5. 59.
Verse 127.

Verse 280.
Verse 1217.
Verse 24.
Verse 35.
Verse 124.
Verse 68.

Verse 510.
Verse 52.
Verse 677.
Verse 109.

5. 1217.
Verse 24.
Verse 124.
Verse 68.

Verse 510.
Verse 52.
Verse 677.
Verse 109.

Verse 280.
Verse 1217.
Verse 24.
Verse 35.
Bailment.

also to the ease of rescue of escape. In which of the cases.

juries, against the amount recovered, the defendant to dis.

charged.

5. Rom. 17. 

6. 24. 8. of two remedies. 1. Matt. 66. 3.

Thus if breach be not finished,

damages pleasant an action of trespass does not lies for damages

done, but the possesson of the land had this election as to two

remedies.

So according to the Peace of Mr. Bailey for first for

the full value he makes himself liable at all events

to the Bailor. This must undoubtedly be the ease of the

Bailor by commencing his action for the full value

against the Bailor of him.

3. Com. 66.

den his special damages, the the Bailor had recovered

the full value according to the general rule, damm-

sum injuria gives an action.

If the Bailor himself take the

property from the Bailor, before his special property

is determined, the latter may have a special action

on the case against the former, but it seems he cannot

have two suits or actions; for these actions are for the full

value. Besides if the bailor night to have tenure in any

case, it is founded upon his equitable liability to the Bailor.

The foundation of such an action fails as against the Bailor.

of his special property, partly gives him a right to these actions a.
Bailment.

The thing is not the Bailor's, but he has only the special property entitling him to the custody of use. It is said in law that the Bailor's ownership retains the mitigated damages. But I apprehend it is in all cases where damages are merely mitigated, when the full value is assessed by detaching the property before suit, in the sale of excess. The owner had originally a right of actions to recover the whole; which action cannot be defeated by any subsequent suit of the Debt, nor the damages may be rescinded. But the special damages may be greater than the amount of the property, if damages cannot be recovered in an action of trover.

By 5 Ch. 8.

Von 26.

Nov 237.

5 von 258. The Bailor has a case: a special action on the case for Rest.

Prof. 244. The Bailor for negligence, trover for conversion, or abandonment. This promise to redeliver - 8 Co. 146. Peab. 191.

The debt will not generally lie because the special property is lawful.

5 von 15.

But if the Bailor destroy the goods, the

5 von 58. Bailment is extinguished if theft. Paul. 248. 3 Atk. 46. 5 Bar 2, 66.
Contracts.

Contracts are agreements upon sufficient consideration to do or not to do a particular thing. A written contract is under the law of equity, it is essential to the validity of a contract that there be a consideration. In that the contract be such that no proof can be admitted to show that there was no consideration.

A man cannot be compelled either at law or equity to fulfill a contract entered into without consideration, unless the nature of the contract precludes all inquiry respecting the consideration.

The quantum of consideration is not however requisite. That if the thing specified as the consideration have no value as such, the contract will be void.

But it is not easy to discover, for a Peppercorn which is a sufficient consideration, is more valuable than a rush.

The relation of landlord and tenant is a sufficient consideration to support a promise.

It is a common opinion that a written contract
under hand & seal acknowledging a consideration.

If from the face of the writing there appears no consideration, it is said. Pure is it said, I may not nominal damages be recovered.

But if it do not appear from the face of the writing that there was no consideration, the contract if reduced to a specialty, will be binding as to the parties, formal proof being inadmissible to prove the want of consideration in a special contract, under the rights of third persons are affected by the contract.

The consideration of a contract expressed in a deed is conclusive as to the existence, amount, & substance of the consideration between the parties; but it is only partial evidence as to the quantum.

In voluntary simple Bills or covenants only nominal damages are recoverable, the consideration being insufiicient examineable.

If acknowledgement be acknowledged it does not appear from the face of the writing, whether it is sufficient or not, the parties cannot go into an enquiry respecting it, but third persons interested may, and those valuable consideration should appear upon the face of the writing, yet third persons may prove that there is no consideration.
Contracts.

There are no such nominal damages given if it appear from the face of the covenant that there was no consideration. The contract of consideration being proved, if the covenant expressly acknowledges a consideration.

If the consideration of the contract be illegal, it may be employed into, as between the parties themselves.

The undue advantage taken, of a mere advantage, being unconscientious, initiates the contract in equity.

The not at least.

Equity will relieve against fraud and a misrepresentation practiced upon persons of weak minds, as also 2428, where parental influence is used to induce a child to enter into a contract.

But if the parties to a contract were up.

on an equal footing if no imposition or undue influence was practiced, equity will not interfere; the one may have obtained the advantage in the bargain. Courts of law even where there is no actual contract will upon the idea of an implied contract compel the payment of money which is justly due.

Principles of policy indeed present doubts in some few instances, from lending their aid, but when no such considerations militate against private justice, the court will in all cases compel a debtor to pay over money which in good conscience he cannot allow to which the debtor in good conscience is entitled.

Ex. 164. A contract merged in a security, renewed when the se.
Contracts

1. Sect. 10. 53. Security is secured, if justice requires its removal.

A partial contract is not merged by being reduced to writing, but if a bond or other security which moves the consideration out of sight and enquiry, be given: the partial contract is merged, if a written contract expressing the consideration may be merged in the same manner.

2. Sect. 23. 423.


11. Sect. 146.

7. Sect. 244.

$\frac{\text{Sec. 164}}{\text{256.}}$

Verse 433.

Persons by law disabled to contract

It is a general rule that all persons who have not the physical or moral powers to contract, or who have not the exercise of their powers, are by law disabled from making a valid contract. An agent it is said is necessary to the binding force of every contract, if an agent in consideration of law involved the free and deliberate use of these powers; therefore the absence of either of these powers in either party to the contract, renders that party incapable of binding himself by such contract or agreement.

These observations according to Mr. Broom apply in all cases of self-deal contracts. But when the contract is implied, an agent is not of course necessary. It is a common opinion among lawyers, that the binding force of such contract depends upon the implied agent; but it is
Contracts

131

of the ground on which such contracts are enforceable, not that there is an implied assent but that it is a just right that they should be enforced.

There are some cases in which an implied assent is apparent, but there are others in which it cannot be implied. Thus where a husband lends his wife out of doors of his own accord, she is bound by her contract for necessaries, if it is said on the ground of implied contract; yet plainly no assent can be implied for the term absent denotes "the assent or assenting of the mind to something supposed or affirmed." If in this case there is an express refusal.

There are several descriptions of persons who fall under the rule first laid down.

I. Idiots, Lunatics, persons of unsound mind.

1. Rev. 11:22. They are incapable of entering. Their contracts are therefore not merely avoidable but absolutely void.

3. 176. And they may always plead non est factum. This rule is evidently a just one, but there seems now

178. to be a current of opinions, that a Lunatic or cannot take advantage of his lunacy to avoid his contracts. This opinion is as old as the year 1745. yet

178. The only reason of signed in support of it was, that no

178. man is held to stipulate to himself. But the

178. heir at law of such Lunatic if it was admitted.
Contracts

might avoid the contract of his ancestor.Smarts
does not appear to have held that it was indecent for a man
from his life to stultify himself, but that his child or, whose his
his male might do it with impunity. Smith in
which case attempts to prove that that was
not always the law of Blackstone in his own evi-
dently indicates the opinion by his mode of consider-
ing it. The opinion however is supported by ma-
ny modern opinions.

Powell indeed assigns us addi-
tional reasons in support of this rule; he maintains
that if a man were allowed to stultify himself it
would open a door for fraud.

This argument however

carries no more force when urged against a man's

on

stultifying himself, than against every mode of assu-
ing the contracts of infants, lunatics, since in
whichever manner they are avoided, the same danger
of fraud exists. But it is settled that the con-
tracts of lunatics may be set aside in two ways.
1st. Where a thing have found a man a lunatic,
2d. A suit may be set forth by the Attorney General in
3d. The King as his legal guardian may avoid all
contracts made by such person after he becomes
a lunatic. 10th. 2. 2. 119.

19th 107

176.
Contracts.

The Chancellor, Commissioners are appointed to examine whether a person is a lunatic or not. If he be found a lunatic a surety must if there be any creditors to state the reason why his contracts should not be set aside.

Now what possible objection exists against the lunatic avoiding his contract at law, which does not lie against the Attorney General avoiding it in the lunatic's name in a Court of Chancery?

II. The second class of persons disabled from contracting are drunkmen: their contracts are made certain gratifications voidable. There has been no decision upon this point in a Court of Law.

The general rule adopted in the 6th of

3rd. 131

231

1829

119

19

1762

1827

2nd. 131

The general rule adopted in the 6th of

1861

231

1961

172

1762

law is this, if one induces another in any way causes another to be intoxicated if they take advantage of his situation so as to overreach him in a bargain, the bargain is avoided in Chancery.

But if a person finds another drunk to take advantage of him, his situation, to make an unfair contract with him, there is no decided case that warrants the interposition of Chancery to avoid the contract. Yet as an undue advantage is taken of another situation in this case, it would seem that upon principles adopted by Chancery in other cases, the contract might be avoided.

If, however, in the case above, the contract be not unreasonable, than to him will not interfere, thus the drunk...
Contracts

every of the parties was caused or induced by the other.
This is at least one case of this kind.

The general reason why
all contracts entered into by drunken persons may be
set aside is founded upon policy, since drunk law
would lead to dangerous consequences, in a country where
the opportunities for intemperance are frequent.

If money be taken from a drunken man without
any consideration, an action of Trustee. This is true.

Conceit. This action whenever it lies is concurrent with
relief in Chancery.

III. In case of contracts to make by persons of weak minds,
the degree of weakness that will warrant the intemperance

39. 56. of Chanc. is matter guide to the discretion of the Chancellor.
30. 44. 12.
Indeed Courts of Chanc. deny that they can set aside con-
tracts on the ground of weakness; and one of the parties, they
being one and to the Judges of the weakness of intellect.
They assign fraud for the reason of their intemperance.

But the fraud in one party is evidently weakness in
the other; if the former cannot be supported from the cases de-
licated without first supporting the latter.

If unfair advantage be taken of a person,
whose mind is weakened by intemperance, Chanc. will grant re-
lief.

IV. The contracts of Deeds County of Infants have been
considered under other heads.
Contracts

Of the binding force of contracts as to the parties thereto.

Some persons may by their contracts bind not only themselves, their heirs, execs. or leg. also, as for example heads of corporations, select men of a town, agents, attorneys for agents, attorneys, or who lend their employed only where specially authorized, or who lend their employed only where specially authorized.

Being execs. of Admins. are bound by benedictions of their ancestors," if they have effects.

In their may be compelled in Chancery to carry into effect the agreement of his ancestor.

A joint tenant may also be compelled to execute an agreement or covenant made by his deceased fellow tenant to convey Chancery considering the joint estate as devolved from the time, at which the covenant to convey was made.

A husband is in many cases bound by the contracts of his wife.

A subsequent mortgagee is privy to a prior mortgagee, if the latter acquainted with the subsequent mortgagee does not give information that the property is mortgaged to himself.

A person left may recuse to take a legacy of the land, which to himself from the legacy, the same is refused.

If a settlement is made of intailed lands, as a
Contracts.

Jointure in bar of Dower; if the person entitled to the remainder, not in fact, knowing of the transaction, does not give notice of his claim, his right shall be postponed to the jointure.

Nov. 23d.

Sem. 169.

If a person holding a bill of exchange fail to give notice to the drawee, when it is dishonored, he shall lose his claim.

1Sem. 269.

A grantee of lands expressly informs the grantor that he shall not have ingress or egress on the grantor's land, the law will not notwithstanding give the grantee the right of ingress or egress, if it be necessary.

1Sem. 269.

If a grantee of lands expressly affirms the grant of a leasehold estate, to one who knows nothing of the grant, is valid, if otherwise assigned to by the grantee.

Oct. 23d.

72d.

5th 5th.

6th 7th.

For want of his right, such ignorance will sometimes invalidate the contract.

But a compromise of a dubious title, is binding notwithstanding the ignorance of either of the parties. Ignorance of the law to be said will not exonerate a party from the obligation of his contract.

But this rule does not appear to be strictly true. For in the dispute of two brothers respecting the right of inheritance, referred to the school master, afterwards settled between them by agreement, the only ground on which the agreement was set aside was, the ignorance of one respecting a rule of law.
Contracts.

A voidable contract may be ratified by mutual consent.

A contract obtained by duress may be affirmed after
the duress; yet if it be affirmed under ignorance of the law
as to its binding force, it has, with release against it.

A promise made by one of whose interest is unfortunate
advantage is taken, to induce the contract, is not
binding.

A promise to pay a note, by the promisee when
it is outstanding, is not binding; if the promisee is ignorant of
his legal right to refuse payment. True as to this rule.

Ignorance of the law appears to be the only ground
for setting aside contracts in this case; but no definite
rule seems to be established for determining in what
case ignorance of law shall have this effect.

Ignorance of fact fraudulently induced, is al-
ways reason sufficient for setting aside a contract.

If a misrepresentation be made respecting the true state
of the property, from ignorance, it not from fraud, the rule
respecting the contract, while the misrepresentation had
affected is this: if the contract would not otherwise have
Contracts

been made, it may be wholly set aside, but if the contract would have been made, tho' there had been no misrepresentation, it must stand.

In some instances the intention of the parties as to the nature of the grant will be implied from circumstances, as from the price, and the like. Thus, if a man sell a horse for a sound price, the contract will be void unless the horse was sound. This cannot be law, says Mr. J. But in the case of a Bill of Sale, if the person who signs the Bill as owner of the goods, is of opinion that if the holder sent it to market with a note endorsing his name upon it, neither morality or law would compel him to refund the money for which he had sold it, if he did not know at the time, that it was not a good Bill.

It is a general rule of law, that in express contracts, if the thing stipulated for is not delivered, its value at the time that the contract is to be performed, is the rule of damages, in an action at law for non-performance.

My contract naturally impossible to be performed except a bond with an impossible condition of which he gratuitously assents of money paid to induce a performance of it, may be recovered back in an action of Indebtedness. But if the imposibility of performance arises merely from the human circumstances of the party undertaking, an action lies to recover damages for non-performance.
Contracts.

But in some cases where it is impossible for the party, through negligence, to fulfill his engagement, or where this event of circumstances in some way he is ignorant of the

May 1664, value of what he promised to perform, as in the 

1 Mort. 305. Amm. Case, Courts of law have made the value of the article sold, the rule of damages. The propriety of such a decision may be doubted; partly establishing such a rule of damages the courts evidently make a contract which the parties never intended or contemplated.

Prorided as fraud or undue influence advantage is very apparent in cases of this kind, it would seem that the contract need not be established at all.

It is generally true that a promise to do one of two things, in the alternative, leaves the promise at liberty to elect which he will perform, unless contrary intention appears.

A Bond with a condition which is idle, gives

1 Mort. 172.
Roll 420, void, impossible or illegal, is gone, if the condition is void.
1 Mort. 267.
Ch. 186.
Cod. 208, but in this case if the condition is incorporated with
Cod. 206, the bond the whole is void.

Cod. 19.
352.
Ch. 731. the condition becomes partly impossible

2 Sam. 32.
32 126.
19 547.
32 691.
13 327.
13 327.
36 18 25. by the act of God, or of the law, it ought to be as far
Jones 136. performed as possible. 2 Ne 183. Palm. 522.

The courts of the penalty of a Bond appear to be in the nature of alleged damages. Court will not chance the bond otherwise they will. Courts of law are empowered to chance by statute. 1 Sam 22 25: 111.
Contracts

In cases of bonds for money, it is done on payment of principal and interest, or bringing into court principal interest and costs.

If an impossible precedent condition be annexed to the grant of an estate, the estate can never vest.

But if there be an impossible subsequent condition, on performance of which the estate is to be defeated, the estate vests absolutely.

If the act of a stranger be by the terms of contract necessary to the performance of a condition precedent, if he refuse to act, the party bound to performance is not to suffer.

One party's presenting the performance of a condition, is equivalent to a performance by the other.

Thus the Doff. preventing the performance of a condition precedent to the Doff. right of action, is equivalent to performance by the Doff.

A contract in order to binding, must be not only natural. naturally impossible, but morally so. That is must be law ful.

A promise which the party making has no power, to make either in fact, or law, is void.

A contract may be unlawful, as being malum in se or malum prohibitament. — 1 Hawk. 103.

It may be malum prohibitament, as being first of
contracts

Ass'd to some statute. 2d as contrary to the welfare of the community, or by contrary to some reason of law.

A security given on a promise made, in conse-

2d Mo. 156.

New 2d. 9th.

by a transaction cumbered illegal, by justice of law, is not of course void, as if one of two contracts on a loss sustained by both, in an illegal undertaking, may the whole, if it be a security from the other for the payment of part - See the doctrine disapproved of, 2 Plant. 774.

In engagement to be an unlawful act, or to pay or to indemnity another for doing it, it is void.

A contract made to induce an omission of duty, is void.

10 Mod. 156.

Conf. 341.

as being unlawful. 7 San. 475.

A contract made to encourage any unlawful act, or omission, is illegal, and void. This rule op-

Nov. 12.

New 56.

2d 44.

4d 446.

erates even against strangers, if they collude with and assist the parties in violating the law.

6th 12.

Nov. 2d.

19 2d.

New 18 2d. sustainable, said. 5 Mod. 375.

But generally wages are sustainable at law, if it may truly be said, wages are wages.

At law, wages, being a contract, in case the employer does not agree to pay the wages, the contract is void.

Nov. 9d.

New 9d.

2d 207.

19 3d.

19 8d.

4d 2071.

3d 8d. 35

2d 446.

A contract not to induce a trade is void.
Contracts.

As a contract not to pursue a trade in any particular place, if made upon reasonable consideration, is good. - Psalm 172. 13: 6. 2 Kings 1. 36. 136.

Marriage Broads bound the good at law, are said in Equity as being intrinsically corrupt. - Chaver 441. 2. 45. 563. 253. 447.

In case of a contract with an heir apparent for an estate in expectancy, if there be great inequality in the terms of the contract, if the money was expended by the heir in disreputable fashion, chan will grant relief. But otherwise no relief can be obtained, unless perhaps where the inequality is so great as to afford evidence of fraud.

If an unlawful contract which was not binding be actually performed, no relief can be had either at law or in Equity, provided both that both parties are equally guilty.

The injured however may recover by Indeb. Off. money which he has lost at gambling. Yet, he is cleann by parties as criminals.

And if one party has been induced by necessity, to pay money when an illegal contract it may be rescinded back in an action of Indeb. Off. Off. Indeb. Off. however now lies for money which the holder cannot in good conscience retain.

If a man has received money at hire for the performance of an unlawful contract, Indeb. Off. lies to recover it back, if lost before the act committed, but not afterwards.

Contracts made to defraud third persons are illegal.
Contracts.

The illegal transaction by one of the partners, is said as to the other; that is, he is not affected by it, he not being a party or consenting to it.

By a Statute of 1665 contracts for money even at play are void. By another Statute money lent at the time of play are void.

If one resumns security he made the contract.

If one of two contracts is resumns, if they are both merged together in one security, if that security is afterwards avoided, it has been a question whether the good contract revived. On principle it would seem that the good contract would revive, for such security is considered when avoided, as void to all intents and purposes as ab initio. It cannot even be given in evidence.

A Bond obtained by duress as a security, for a contract of a lawful nature, does not void the principal contract. But if one part of an entire contract is void the whole is void also. If the contract is made in pursuance of a Statute, or founded thereon, but if it is a contract entered into at law, law of part of it is avoided, the rest will remain good, the the contract is entire.
Contracts.

If divers considerations be alleged, if some of them be
fraudulent or void, or insufficient in matter or form, yet if
any of them be good the Plaintiff may recover. But if one
of the considerations be not simply fraudulent or void, but
illegal or immoral this completely vitiated the promise.

If part of a promise, or one of the things undertaken be
illegal, it vitiated the whole. T. Jones. 84
Contracts

Sec. 161.

It is a general rule that a contract is entered into in a foreign country, Courts will support it agreeably to the laws of the country where it was made.

But if a contract be made to be performed at home, if it is contrary to the laws then existing, Courts will not support it. So if the Contract be to do a thing, which is free of fee, Courts will not carry it into execution, tho' it be agreeable to the laws of the country where it was made.

If judgment be had the interest of the county where

Sec. 162. It was rendered is to be allowed on the judgment in ease of delay.

It is a general rule that a person be tried if punished for a crime in the state where the crime is committed. But if any person has received a private injury in consequence of the commission of a crime, he may have an action to recover damages against the person injuring in any state, the action being remedial. And if double damages are given in the State where the injury is sustained, that will be the rule of damages in the State where the action is brought.

If a person is guilty of a transaction, which is not held in the State where committed, be prosecuted in a State where it would not be considered, yet the law of the State where the act was done will govern.
Contracts

A contract is made in one State to be performed in another, the place of performance will govern.

Lands must be conveyed according to the laws of the State where the land lies.

Usury

Usury is an unlawful contract upon loan of money, to receive the same with exorbitant interest.

By the English Statutes of Usury, any contract by which more than four per cent is reserved for the loan of money, is absolutely void upon addition to the loan of more than four per cent received, its recoverable is perfect, it may be recovered in an action popular.

An illegal receiving subjects to the penalties of the Statute, an illegal reservation makes the contract invalid, but an illegal reservation does not void the penalties of the Statute, nor does an illegal receiving affect the contract. The penalty of the Statute is recovered in the receipt of all interest.

[Signature: 1854]
Contracts.

of £100, and £3 to be reserved at the time; and an ob. 2 deo. 393 legation for £100 with legal interest, too much is reserved of the contract is made.

A contract good at first can not be made by reversion by matter of past facts.

Courts of Equity in considering usurious contracts aside from the rules of positive law, enforces only

12 deo. 393, the except on legal interest, if allow the latter to recover in the same manner as the the contract has been originally legal. This rule obtains where the obligee brings a bill to have the security delivered up, if not where the obligee is left.

A payable contract to take more than legal interest made at the time, of the expiration of the bond, receiving in the bond only legal interest avoids the bond.

1 deo. 393, the whole he cannot recover in an action for a contribution of that note given to secure usurious interest, is not only void itself, but renders the principal contract void.

Any shift or continuance by which more than legal interest is reserved, makes void the contract.

When the object in view between the parties is a sale merely, no excess of price, nor any stone taken for forcemenance will render the transaction usurious.

But if sale is valuable only of the real object be a loan - excubitory or price or an excubitant sum -
Contracts

allowed for performance will render the contract
unenforceable, as well as if there has been a direct lend-
ing in the first instance.

To make a contract unenforceable, it is necessary that it be worthless, for no mistake of
what ever kind will render it unenforceable. This
whenever there has been a mistake which renders the
appearance of money, the D[ef]t in his replication
to a plea of money may set forth circumstances
to prove that there was no intention to take
more than lawful interest.

If in an action on a unenforceable
contract, the D[ef]t fails in the manner in which he
charges the money, the D[ef]t must prevail.

In abstinent money must the greater in evidence
under the general issue, in case of which it must
be pleaded.

The Sup[reme] Ct of this State have estab-
lished a rule for the computation of interest, desirably.
The former federal court has also adopted the former
form of the rule of the Sup[reme] Ct in all cases.

The computing of Interest is different from that adopted by
the courts of law, with no intent to evade the statute, does
not constitute usury. And it is now settled that the receiv-
ing of money for interest before the end of the year is
not usurious, tho' somewhat more than the legal in-
terest is in this way retained.
Contracts.

When according to the terms of the contract there is an actual & honest pledge or mortgage of the principal

property, a reservation of more than legal interest is not restrictive — as in the case of annuities for lives, etc. for the

ground of an actual mortgage of the principal, the lending

of a sum to be returned in 3 years with another

Mon. 398. There is not restrictive.

But there must be an actual lending and a real mortgage, or the contract is restrictive.

The rental in that case must be real, and not

Gor. 642.

741. merely colourable, though in many cases it may not be

579. 45, easy to distinguish the pictures from the reality.

An attempt to evade the statute is

an interference with the nature of a penalty,

1 King. 289. for not paying the principal at the time appointed, is

1 King. 287. not considered restrictive.

If it however colourable, if merely

3 Sam. 534. colourable to evade the Statute. The object having it in his power

to avoid the additional interest by punctuality, is the reason

4 Sam. 54.

1606. 72.

1 Sam. 498. interest is colourable.

1 Sam. 53.

1601. 1077.

1077, on a ducasse bond, but not in the case of simple contract.
Contracts

It is presumed that if a contract were made in one country, the security for it made in another, the interest of the country in which the contract was made, might be reserved in the security. Here as to this, especially if the original contract was intended to be performed in that state in the latter country.

If both parties for the purpose of avoiding the statute, should go into a foreign state, and execute a contract for the loan of money, such a contract it is deemed to be governed by the laws of that state where the parties belonged.

There is also an analogy between this case, to that of a marriage celebrated in a foreign country, between persons who go there to evade the laws of their own country. Compound interest is not considered as usurious, but from principles of policy, courts will not allow more than simple interest to be recovered upon a contract reserving compound interest. But if compound interest the actually paid, or if a separate security be taken, marking principal that of the interest which has accrued, courts consider payment on security as legal.

But when the lender profiting by the embarrassed situation of the borrower, takes compound interest as a condition of forbearance, courts of Chancery will grant relief. As long as not greater than compound interest be reserved,
Contracts

not as interest, but for the forbearance, the contract is usurious.

If one usurious contract be made the
consideration of another, the latter is said, but a corrupt
agreement to which the Ofl. was not and shall not
injure him, that where one note was taken in settle-
ation of two others, one of which was usurious if
was adjudged by the Supreme Court of this State, that as
the Ofl. was not nor the last note in his hands was
of the original note was punished by the subsequent
transaction. There is this decision consistent with
the established principles of law. 9

It is an established rule of law that interest
on liquidated sums, not expressly reserved, is pay-
ab de 12th late from the time of payment.

If no time of payment be stip-

Do upon it accrued from the date of the security—
A loan of stock, or of money produced by the sale of stock,
3 San. 53th an agreement, that the borrower shall replace the stock, or
pay the money with such interest as the stock would have
produced, is not usurious, nor the interest exceed the legal
rate of interest, if the money was to be repaid on a day sub-
sequent to that on which the stock was to be replaced.

A plea of usury must set forth the principal sum
honoured and the sum reserved for interest.

Here a corrupt agreement for more than lawful,
for that the Ofl. received more than lawful interest
Contracts

is not sufficient.

A special verdict finding no agreement
under § 58 to pay more than lawful interest, but not finding that
it was corruptly agreed, enabled the Court to give judgment for the Deft.

and it is not certain. If an Eqv pay an invalid contract
Brown 33 it is a devastation
Hob. 167 Contracts void on account of fraud.

 Fraud in the execution of a contract renders it
absolutely void. 2 Sam. 597. supra 194.

And no after. If non est factum may
be pleaded to such a contract. But if the fraud be in
the consideration, the contract is good at law, no is
a strictly speaking void in equity. The Ch. in some
cases of this kind relieve against the fraud, as hereafter
mentioned, but the contracts of this description are
good at law. yet the party injured may obtain legal
redress by an action for damages. The reason of
signed for this distinction, between fraud in the
execution, & fraud in the consideration, is that in the
former case, the fraud imposed upon does not in
contemplation of law affect to the contract, but
that in the latter he does. But it seems to me that
the affect is vitally wanted in both cases. The
real ground of distinction I apprehend to be this,
Contracts

That when the fraud is confined to the consideration, it would be impossible in many cases to determine from the terms of the contract whether fraud had been practiced or not. But as to fraud in the execution, the line of distinction is obvious.

Courts of law have lately shown a disposition to set aside contracts for fraud in the consideration.

When there is a particular fraud in the consideration of a contract, if the legal remedy will not be effectual, as if the party who has practiced the fraud is unable to respond the damages recoverable at law, equity will grant relief—not indeed by nullifying the contract, but usually by offsetting the damages which might be recovered at law against the contract, or by striking such balance as justice requires; or in other words by setting aside the contract on condition of the obligee paying what is justly due. But the party applying for remedy in cases of this kind, must show the insufficiency of the legal remedy—

If a contract be set aside for fraud in the execution, still the party who has practiced the fraud may sue upon the bona fide contract, originally agreed upon between the parties, if recovered at law, yet equity would not in this case decree a specific execution of the contract in his favor, because he has not acted on honest intent, the whole transaction.
in the execution of a contract, the party is not bound up or not having fraud cannot recover damages for the fraud, for before damages are sustained by payment, he cannot have suffered. But by filing a bill in chancery, he may compel the party to surrender the obligation.

It is a general rule, that equity cannot relieve, when an adequate remedy can be had at law. By an adequate remedy is meant, one which will effectually answer the demands of justice, and such remedy is not afforded by law; or cannot be obtained without great expense of uncertainly. Chancery will interfere in great relief.

When on a contract of the kind last mentioned, one has paid money, he may in disaffirmance of the contract recover what he has paid, in an action for money had and received, or in an action for damages in disaffirmance of the contract.

But if the property granted with in this case, be any other than money, the latter remedy only can be obtained, for an action for money had if received lies for the recovery of no property, but mere money itself.
The action of fraud lies as soon as the fraud on the
fidelity of the covenant is discovered.

This action lies in all cases of fraud. 2 Rob. 643
1 Com. 166. 2 Ba. 694. Esp. 629.

I. It lies when a warranty, when one falsely warrants
property sold as being his own, or as being good in its kind.

II. It lies on the false affirmation, when the vendor of
property affirms that it possesses qualities which
it does not.

III. When the vendor of property conceals private defects
unknown to the vendee.

In case of an express warranty it is

Long 26.
Simp. 149. not necessary, to entitle the vendee to damages, to prove that
14: 313.
14: 317. the vendor knew the warranty to be false, it is sufficient to
Esp. 629.
not that the warranty prove false.

If a warranty prove false at the time of making it
14: 317. the vendee may support an action without either returning the
property, or giving the vendor notice of the unsoundness of it.

When there is an express warranty the

I. 317. warranty, it is necessary that the warranty be made at the
time of the sale, the if it be made at a different time,
then an action may be maintained on the

I. 317. warranty.
of fraud will lie on the false affirmation.

In an action for false affirmation, notice it is said
must be stated. 1 Term 110. N. S. 5d. 632. 3 Term 3d.
No action for warranty will lie when the vendor
warranto qualities which it is apparent to every one
that the property does not possess.

2 Term 455. 3 Term 455.
2 Term 455. 3 Term 455.

Any imposition appearing to be an express fraud, will lay
a foundation for an action of fraud, even tho' the vendor sold
nothing to deceive the vendee. Concealing defects amount
to a warranty.

If an express warranty be accompanied with an agreement by the vendor, to take back the goods, if the buyer are proved defective, the buyer
must return the goods as soon as he has discovered the defect, in order to maintain his action on the war-

If one lends a piece of property of no value at all, the
vendee not knowing the defect, but being entirely
honest in making the contract, it is doubtful whether
any action for damages can be maintained by the
vendee. An action for fraud certainly cannot. But
it is now settled that damages may be recovered.
Contracts.

Whereas one sells property to another, the law
carries an implied warranty on the part of the ven-
dee, that the property is his.

When one buys on this implied

warranty, property which the vendor did not own, the
vendor in bringing his action for damages must ascer-
tain, either by some authoritative state decision in the vendor
or by some authority in law, a false of

furnishing of qualities which the articles sold do not possess is
no ground for an action for damages, but this authority seems
to be overlooked.

An affirmation is a warranty in law if it was

so intended.

A mere opinion given by the vendor respecting the

property sold, has no foundation for an action of fraud. As

if one A says, 'One pound is worth a £100.' But if he

should say, 'I trusted my farm for five pounds last year

to Tom Jones, when in truth the rent was best two pounds

of these induced the vendee to purchase, an action of fraud

will lie, for in the latter case the vendor evidently affirms

that his property possesses qualities that which it does not.

It has been adjudged that a false affirmation of qualities in

property sold, the made by a person not interested in the

contract, is a sufficient ground for an action of fraud.

It is laid down as a rule of law that in cases
Contracts

A breach alone in a contract, is not sufficient to warrant
the interference of Chancery, but that if the unreasonable
measures be such as to afford evidence of fraud, Chancery can
relieve. It hence is well established that unfaithful
breach alone is sufficient for the interference of Chan-

The undue advantage taken of one's situation, un-
doubtedly forms a claim for relief in Chancery.

Contracts operating as frauds on in ripositions on
third persons, are totally void, even as to the contract
parties themselves. 1 Am. 13-6. 1 P. W. 496. 3 175. not.

Frivolous contracts not operating third persons, may
be ratified by a subsequent agreement; for if the party
originally cheated will then acquiesced with his discretion
of which he shall not retract, confirm a disadvantageous
contract, it must be charged to his own folly.

But agreements in fraud of third persons, is a such
agreement, as though there is actual fraud, cannot be rendered binding
by a subsequent promise or ratification, even of the parties
to them, as agreements fraudulent in the eye of a court
of Equity, committing breach of faith on one party, may, for
the original contract being actually fraudulent in the
sense of deceit, no subsequent act can purge it of
that quality.

Marriage, Browne London, fraudulent loans in
general, gains no validity by assignment. Hence, law is the
law respecting negotiable securities. It is
Contracts

now decided, that negotiable securities are void by

omission, except when the statute says expressly that

they shall be void to all intents of purposes.

Contracts for the expectation of young heirs, are consid-

ered in Equity as intrinsically corrupt. This was formerly

the practice to inquire into the fairness of the contract.

Yet such contracts now be ratified, notwithstanding, by

the heir, after he comes into possession of the estate, if at the

time of making the ratification he understood his right, and

no advantage was taken of his situation he will be bound.

If, however at the time of ratifying the contract the heir did

not act freely, or were ignorant of his rights, he is not bound by

this ratification.

A contract perfectly negotiable is void, if money

has been paid upon such contract, it may be recovered back

as having been paid without consideration.
Contracts obtained by duress.

Contracts or securities obtained by duress may be avoided by pleading the duress specially.

1. Duress is of two kinds, Duress by imprisonment of Duress per Undeer.

A contract entered into by a man unlawfully imprisoned may be avoided.

But if a man by the course of lawful arrested, imprisonment, or mean Treps, which was apparently gone.

left, if given a Bond to procure a discharge from prison, it seems that such a Bond the iniquitously ob-
tained, and voidable in Chancery, is not voidable at
law, on the ground of duress, for the receipt of imprisonment is strictly speaking legal.

1866
10 May 28th
9 June 87

Threats to destroy property

or commit a Matry, not amounting to Mayhem, do not constitute duress so as to avoid a contract. This rule is questioned.

It has been considered as a rule, that duress to enter
a contract voidable, must be imposed upon the person himself.

But duress imposed on a wife may

Broth 187
due a contract made, entered into by the husband, by being specially pleaded, if vice versa. The reason why the judges afirm as this rule in support of this rule, is that the
Contracts

Husband v. wife being but one person, of course when the wife is imprisoned, or otherwise put under duress, the husband is also personally imprisoned.

In some cases the duress imposed on a man by duress to a relative, has been adjudged sufficient to avoid a contract.

But as to this point authorities are contra.

5 Rep. 119, 120, 121. Durefe must be pleaded specially, in order to avoid this special rule, it cannot be given under the general issue of nonsens account, this may not set forth. In the case of undue influence, this is not amounting to duress, chancery will rescind the contract, but if it is otherwise if the contract be reasonable, if the influence shall only be sought from due reverence of respect.

The ratification of a contract obtained by duress, must in order to be binding, have been made freely, if without any undue practice.
Contracts.

Contracts required to be written.

The common distinction between special and simple

1. In 72.

2. in 269. contracts is explained under another head. 3.16.

3. There is also a distinction between written and unwritten

4. contracts, introduced in certain cases by the statute

5. of frauds of Revisions enacted 27. 26. 2.

6. Under the statute of frauds of revisions the following

7. Thus, 271. contracts or agreements will not support an action or suit

8. in law or equity, unless the contract or agreement be in

9. writing, signed by the party to be charged, or by some

10. other person, by him thereunto legally authorized.

I. A promise by an adult, in or out of his

11. estate, for any debt or duty of his testator, or intestate,

12. that is, such a promise not in writing, does not bind

13. him in his private capacity.

II. Whereby to charge the debtor upon any special promise

14. to answer for the debt, default, or miscarriage of another

15. person.

III. Promises upon consideration of marriage.

IV. Sales of lands, tenements, hereditaments, or any con-

16. tract for any interest in or concerning them.

V. Contracts not to be performed in one year from the time

17. of making them.

There is a clause in the statute relating to contracts

18. for the sale of goods of the value of £10, which is not material on

19. this country.
contracts

By the Eng. Act. all sales or leases of lands, tenements, or hereditaments or of any interest in or concerning them, it was formerly held and operated as leases or estates at will only, except leases for a term not exceeding 3 years reserving as rent two-thirds of the increased value, but it has lately been determined that such leases secure as tenancies from year to year.

By the Stat. 2 Geo. an action of Lord of Glares lib. on 500l. demised.

The object of the Act of 2 Geo. was to prevent persons from making agreements of the above description, by fraud evidence, it being supposed that there was danger of fraud of gaming in doing it.

Qualifications of the foregoing rules.

Premises by Ex. to and Administrators

No. 126.
Book 194.
Ch. 524.

If the Ex. or Admin. have assets sufficient to answer for the debts or duties of the testator or intestate, his said promise shall

Assets constitute a consideration advantageous to him

self, so as to render the duty to him personally.

If such proof of sufficiency, will not arise in implicit promises

Ch. 691.
Book 288 to charge the Ex. to personably, then a contrary opinion was

...advanced by F. Keaton. The administrator submitting a
Contracts.

Claim against him to arbitratement, was once held, to be admission of sufficient effects. But this opinion is now properly overruled, for the state may be decided of as exclaiming the existence of amount of claims, without knowing whether he has effects.

But if an such denomination the arbitrator's award that the admit shall pay a certain sum, he cannot afterwards deny effects to that amount against the creditor, indeed the award is equivalent to the binding of effects to that amount.

The same rules hold as to C: It was once held, that payment of interest was an admission of effects by the C: to the amount of the principal, or rather the annuity mortandai is thrown on the C:

But this rule was plainly unreasonable, for if there be not effects it would be hard because the C: had paid a part out of his own pocket. He should therefore be liable to pay the whole. It has been overruled by later authorities.

For the promise by the C: being writing, he is not bound unless some sufficient consideration be proved. The promise is a simple contract only. The object of the C: is not to make the C: liable at all events when the promise is in writing, but only in those cases which before the that he would be bound on a hand promise.

II. Promises by one to another for the debt of another.

Under this clause of this that this general distinction is to be taken.
Contracts

2 May 1857.

If the promise made for the benefit of another be original,
and is binding, this by law, but if it be collateral, it is not
binding. — From 1856.

A promise is said to be original,
first, when the third person for whose benefit it is made
is not liable at all to the promissee, so that there is no
debt to him, but secondly, when his liability is
extinguished by the promise being made, such a promis-
see is out of the statute. —

But when the promise is made in aid of a
 needy, or to secure credit, or in the name of such third per-
son, or to secure credit for a friend, that is, when the promise
is intended to furnish an additional remedy, it is collateral
from the statute.

The above distinction is supported by
the current of authorities. Thus if A. say to a Merchant, "de-

liver goods to Tom Brown, I charge them to me," or "deliver
them on my account," or "deliver them I will pay you." The
promise is original, for Tom Brown is not liable at all, A.
is the original debtor. — But if I say, "deliver goods to Tom
Brown. If he don't pay you I will," it is collateral.

The intent is that the charge should lie in the first in-
stance against the receiver. — From 1856.

So when it was said, supply my Mother-in-Law
with bread, if I will see you paid, the promise was held
not to be collateral, because of the intent as in the last
case, that the receiver should be liable in the first place.
A Mansfield once held that such a promise before the delivery of the property, was original, there being then no liability on third persons. But this opinion is overruled.

As if one said, if you don't know J. B., you know me. I will see you paid the promise was held to be collateral, J. B. being first to be charged.

To a promise by me, that in consideration of your letting a horse to J. B. he shall redeem him, is collateral. This

And it may be laid down as a general rule: that a promise that a third person shall do an act, for not doing which he would be liable, is collateral.

A promise in consideration that the promisee will extinguish a debt against a third person, is original, if not being in aid of a continuing liability in the third person, or to obtain credit for him, as one when one paid burner J.

The words bond I will see you read.

As in Burgess Williams vs. Leiper, when the landlord came to dispossess J. B.'s goods for rent, the Deft. to whom they had been assigned promised to pay the rent if the Deft. would not dispossess, the promise was held good, so the tenant J. B. remained liable.

The Deft. had a lien which he gave out in favor of the Deft. on his promise to pay.
Contracts

I promise to pay a certain sum in consideration
of the promise withdrawing a suit agst. J. B. for a debt of

750. 1764.

Mr. B. was holder original. Then no debt was made, if

20th 1864.

17th 1864.

It did not appear that there was any debt in him.

20th 1864.

But a promise to pay in consideration of the promise's

1st 1864.

20th 20

17th 1864.

20th 1864.

1st 1864.

20th 1864.

20th 310.

If this promise had been in consideration of the

20th 1864.

31st.

promisers withdrawing, it is a question whether it would

20th 1864.

be good or not, since a detraction disables the debt

20th 1864.

from liking another suit, so that if 138 liability

20th 1864.

is extinguished.

A promise to pay a 138 debt of the

20th 1864.

If it were released A. B. taken on more process, is at

20th 1864.

Cademic. I apprehend, for the debt continued, and A. B.

20th 1864.

may be arrested again, yet if the A. B. should in this

20th 1864.

case escape, so that the sheriff could not take him;

20th 1864.

the promise would be binding.

20th 1864.

Yet this rule would not hold, I conclude, if A. B.

20th 1864.

had been taken on final process, if they released, for in

20th 1864.

this case releasing would discharge the debt.

20th 1864.

Some have supposed that when there was a new con-

20th 1864.

sideration, a promise to answer for the debt of another

20th 1864.

was good. D. Mansfield once held this opinion, but afterwards

20th 1864.

acknowledged it to be erroneous. If certainly it is not law,

20th 1864.

for as the original promise continues as a rather cause of action

20th 1864.

the promise is collateral. Mr. Beene maintains that if such
promises be out of the statute, almost every oral promise to answer for the debt of another, would be established if that the provisions of that part of the act would be abolished.

A written promise to pay the debt of another, if he do not, is discharged by the promisee granting performance to the debtor, for by this act the promisee makes a new contract with the debtor, which of course leaves the risk upon himself.

Then according to the above rule

This rule holds as to all contracts contemplated by the statute—B.N.P. 279. Pur. 454.

A formal contract to pay the debt of another of to do some other thing, is void in toto, because

The statute of Frauds requiring to answer for the default of another to be in writing, requires the consideration of the agreement to be in writing also. E. & E. 99. If verbal evidence cannot be admitted to supply the omission.
This clause of the Stat. related not to promises to marry.

There are, however, as yet no words. It relates only to agreements to consider marriage, or such as are in contemplation of marriage, for any marriage settlements, or family pro-

vision. These to bind must be written.

There are no exceptions to this rule, except in cases of past performance, of which hereafter.

It was formerly doubted whether a verbal agreement

would not be good if it should stipulate that it should be re-

281.

1/2 to writing, but such stipulation it seems makes

Ps. 501.

40th. 504. no difference, at least does not take the edge out of the

Stat.

A letter signed by one party is a writing within


But it must appear that the other party accepted the terms

Ps. 287.

237. in proceeding to marry, otherwise they are not binding.

Ps. 287.

268. Thus, when the party to whom the letter was sent, was igno-

rant of the promise in it, at the time of the marriage,

performance was not deemed.

As when I wrote a letter to his daughter containing

a promise of a settlement on her intended husband, which

was not shown to the latter.

In these cases there is no agreement, the minds of the

parties have never met—10:112. 560. 10:42 6. 10th. 72.
Contracts.

A letter only is said to be a sufficient agreement must furnish distinctly the terms of the agreement or it must at least refer to some written agreement or instrument in which the terms we set forth.

IV. Contracts for the sale of Land.

It was formerly doubted as under the last head, whether a parcel contract would not bind if it were part of the agreement that it should be written. 1 Co. ca. 19.

But it is now settled that this makes no difference Brown v. Cool 47 2 Meck. 5 35.

It was once decided in Connecticut, that a parcel agreement binding by the grantee at the time of the granting, to pay for the deficiency in the supposed contract, was within the statute.

But a contrary decision has since been had in the Supreme Court of Texas. It is considered not within the Statute.

The nature of such agreements are good, under the statute, if they are provable in court consistently with the spirit of the act and the rules of evidence.

There is no inherent in the parcel contract the difficulty lies in the proof. The statute merely introduces a new rule of evidence to prevent frauds.

It is a rule of construction that statutes
Contracts
offence by setting aside the contract, 1182, 441, 484, 261.
3 & 4.
155 1st.
When there is no danger of fraud in pecuniary in enforcing the agreement, the case is not within the spirit of the act. Thus, 30, 8, 5, 59.
In filing a bill for specific performance, if the defendant does not confess the agreement, it is binding, for there is no danger of fraud in acting on such proof.

It is a question as to the example just, whether the defendant, thus, he admits the agreement, if he insists on theSTAT, by plea, the agreement can be enforced.

In that case, it is laid down that chancey would defend it, that the plaintiff had insisted on not performing.

In the case in the second, Atkins, the defendant did insist on theSTAT by pleading, yet the having confessed theplea in his answer the plea was overruled of the agreement.

In Black, the rule is laid down generally.

Allly that an agreement confessed is out of the STAT. A contrary decision has been laid at law, that is, it had been decided, that the defendant, having confessed the agreement by answer in chancey, insists on the STAT he is not liable on the agreement. This decision plainly militates against those in chancey notwithstanding there are weighty opinions to the contrary; for this is altogether a question of construction abut which the same rules prevail both.

In Black, 4, 28 & 30, at law. So in Brown, the plea of the STAT was allowed, that the agreement was confessed, or rather not denied, but this decision was on the special circumstances.
Contracts.

The agreement was incomplete, only general heads by way of illustration or instruction to an Attorney.

It remains therefore question vexata. If insisting on the Stat. prevents a remedy on the agreement when unperformed, the rule itself that compulsion on the answer takes the agreement out of the Stat. seems nugatory, because no agreement can be enforced under it unless the Deft. is willing it should be.

It is also an unsettled question, whether a Deft. in Chancery can be required to perform of a penal agreement for the sale of lands if it is bound, either to confess or deny it in his answer.

This question was decided by D. Mann and 26 June 1668, field in the affirmative, that is he was obliged to do one or the other.

D. Thurlow was of the same opinion of D. Laughton, held that the only effect of the Stat. as to proof of the 26th agreement, was to prevent the Part. from proving by other evidence, as that if the Part. denied it the Part. cannot prove it by hand.

D. Laughton is of a different opinion, because compelling the Deft. to answer a penal agreement, lays him under a temptation to commit perjury.

If he is bound to confess or deny it seems to follow that his confession takes the agreement out of the Stat. and that insisting on the Stat. will not avail him.
Contracts.

It has been held that a party to a verbal agreement for the sale of lands to him, he declines the agreement by answer, shall be bound by it if a previous conveyance out of bond can be proved. Mr. Justice does not like this rule.

Upon the above principleviz. that there is no danger of fraud or frenzy, a verbal contract for the purchase of lands at a vendue sale, before a master in chancery, under the order of the court, is binding.

Here the sale is a judicial one, i.e. proved by the entry of the master in chancery. Thus, in contemplation of law, there can be no danger of fraud or frenzy, since full evidence is given by law to the officers of the court.

Again, according to the authorities, a verbal contract respecting the interest in lands is, if inferable from circumstantial facts, in proving which there is no danger of fraud, or frenzy, is binding. Thus, if there be a sale of lands by the solicitor deed, and the vendor at the execution, gives obligations to the vendor, to the exact amount of the consideration, re.

10%, 3%. 1.3. 2. as mortgage by virtue of an implied verbal agreement.

This seems to be a reasonable exception to the general rule, for the mode of proof is not inconsistent with the spirit of the Stat. That is, it does not invite frenzy.
Contracts

[Page 164]

2. Con. 276. 600.
3. 733. 363. 619.
4. 733. 2. Ath. 100. 115a. 54.

In such cases the agreement has been an

9. 528. forced, that the terms of it have not been mutually settled.

10. 997. by the parties.

Delivering possession of land is performance.

10. 299.
2. 363.
9. 363. of a partial agreement, is a sufficient part performance.

10. 304.
2. 525.
3. Ath. 7.
10. 85. 22.

And taking possession under the agreement

10. 304. 5.
2. 525.
3. Ath. 2.
10. 85. 22.

10. 304. 5.
2. 525.
3. Ath. 2.
10. 85. 22.

10. 304. 5.
2. 525.
3. Ath. 2.
10. 85. 22.

10. 304. 5.
2. 525.
3. Ath. 2.
10. 85. 22.

This rule has been questioned but finally settled by D. Hardwicke.

Two or three cases have however been objected.
to the rule, where on a verbal agreement for a purchase, a leaf of land, money was paid as earnest. But these cases do not affect the rule, for here the money paid was not in part performance of the agreement, but subsequent to it, and after the agreement, but was a mere solemnity in making the contract as form in stipulating.

In this case damages may be recovered at law for non-performance.

It has been questioned also whether the receipt of the money in part performance may be proved by parole. If not the rule is that the payment of money is sufficient part performance; it is idle for if the payment cannot be evidenced, without a writing countersigning on the agreement, the contract will no longer rest on parole.

In one case, decided by D. Harrietk, the payment was proved by parole.

And Powell also treats the rule as questionable, maintains that parole proof of the payment of money may be admitted, because the payment is merely a collateral fact.

A parole agreement in part performance will be decreed against the heir of the party, or who made the part performance was.

But the act claimed to have been done in part performance must be in order to take the agreement out of the statute, he said, as in the opinion of the court would
not have been done, but with a view to perform the
16th. 12th. 9th. 29th. 39th.
agreement, otherwise it affords no presumptive evi-
dence of the agreement.

Marriage of itself is not considered
19th. 9th. 9th. 9th. 9th.
as part performance of a local contract, in consideration
19th. 9th. of promises made by the terms of various contracts made
between the parties themselves, as the it is considered
19th. 9th. as such to bind a third person. The reason why mar-
nage alone is not considered as an execution on one
side it between the parties, de as to take such ege
out of the statute, seems to be that if it were, the dec
would be entirely evaded, for all promises of this
kind suppose a marriage had or to be had.

But it is said a local contract in consider-
19th. 9th. 9th. 9th. 9th.
ation of marriage, by third persons as a father to one of
29th. 9th. the parties, is taken out of the Statute of marriage, if being
19th. 9th. with his consent, otherwise a fraud would be practiced
on the parties.

So where the wife was allowed by the husband
19th. 9th. during coverture, to receive the interest of a certain sum of
29th. 9th. money, which the husband before marriage agreed to settle to
19th. 9th. the wife's separate use, the agreement was held binding on
the ground of part performance.

As cutting down timber in performance of a marriage
19th. 9th. 9th. 9th.
agreement, was held a sufficient part performance.

Upon the same principle to prevent fraud, even a unit
39th. 9th. 9th. in contract respecting an interest in lands, or any other sub-
A contract may be contradicted by proving the fraud agreement. If there was fraud in the execution of the instrument, the court may do so in case of mistake. Thus if A agrees to settle £1000 on B if by mistake £100 is inserted, the fraud contract may be proved for the minds of the parties never met in executing the agreement.

A written agreement respecting an interest in lands may be controlled by a fraudulently to rebut an equity. An equity is a right merely equitable.

To rebut means to dispute, to combat; if that rule that it be a rule of evidence, is peculiar to equity for a right of law knows nothing of a mere equitable right.

By Art. 12 Geo. II. Indent of grant for use of premises.

He held on a fraudulently if the agreement as to the rent may be given in evidence to ascertain the damages. If the law of equity would not be for rent that debt.

But in order to sustain the action of a new party, the debt must have occurred with the consent of the deft. if the demolition have been taken in adverse, the idea of a promise is excluded.
contracts not to be performed within one year from making.

It has been held that that clause of the Stat. does not extend to any agreement concerning lands or tenements, because if supposed the preceding clause had made all the provisions intended to be made as to contracts of this kind.

1Bom. 276.
1Vom. 155. and confused or partly executed as binding.

Salk. 220. When the performance is to take place on a contingent event, whether may or may not happen within a year, the agreement is not within the Stat. and binding. 3Bom. 8.
2Ran. 316. Novt. 326. That to pay a sum of money on the return of a ship or on any marriage is binding by word.

A promise to leave a sum of money to the promisee by will, is binding, for in the eye of the law the death of the promisee is such a contingent event as may happen within a year.

And to make the contract binding there is need of the contingency really happening within a year for the contract is good not absolute.

This clause then extends only to contracts which an.
Contracts

cording to the express terms are not to be performed
within a year.

Rules applying to all of several of the
different contracts contemplated by statute

The construction of this statute is the same both in

County at law and the remedy or relief may be different

These rules apply to the construction of all statutes,

for the intention of the Legislature, govern both in Equity as

how the construction as much the discovery of that intention.

A question may arise respecting the import of the word "note"

on memorandum less in the statute. I suppose any writing which

intended to furnish evidence of the contract is a note or memo-

morandum within the statute. In evidently no particular form

of words is necessary. Thus a letter written by one party as

a sufficient "note or memorandum."

But such a letter must sufficiently or rather distinctly

furnish the terms of the agreement, otherwise is not binding.

This rule holds in every case of a writing whether of a letter of

a note.

It must also appear that the other party accepted the

terms, or acted upon the offer, otherwise there is no agreement:

An advertisement written or printed by one of the parties

of containing the terms is a sufficient note on his part.

The statute requires that the note be signed by the party

he or she issues for a question then arises as to what is a sufficient signing.

Page 32.
Page 33.
Contracts

The general rule is, that not only a subscription in the usual form, but the name of the party to be bound, written in any part of the instrument, if intended to give an authenticity to it, is a sufficient signing, provided there be an acceptance by the other party. The agreement being in this manner, A. Wells agreed with B. Edwards to sell to him Black Tree. The name of Wells written in the body of the instrument is sufficient.

But when the name written in the body of the instrument is not sufficient to give authenticity to it, it is not sufficient

1. To make the instrument sufficient to give authenticity to it, it is sufficient to sign the instrument itself. If A. agreed to lease to B. for a dollar, wrote

2. instructions for drawing the lease in these words: the lease to be renewed, to pay taxes, this is no signing by A. for A's name was inserted merely to explain the stipulation of not to authenticate the agreement.

It seems formerly to have been supposed that the party's

3. signature in the subscription, the signor knowing the contents of it, is a sufficient

4. signing. This is not the case. A court's

5. in the subscription, is not sufficient to authenticate the agreement, but that opinion is now

6. overruled.

But signing the writing as a subscribing witness,

7. the signor knowing the contents of it, is a sufficient

8. signing. This is the case. If B. was asked to subscribe to any stipulation recited in the

9. writing as a witness.

Thus when marriage articles reciting that

10. the mother of one of the parties had agreed to advance one

11. thousand pounds as a portion to be paid, signed by her as

12. a witness, she was held to be bound, this not a party

13. for the signing was intended to give authenticity to the.
Contracts.

Again the Stat. requires that the note be signed by the party to be bound, or some other person by him authorized legally to sign. The question then arises, who must sign?

It is sufficient if the party against whom the note is not have signed, that the other party have not, if he has had evidence of the existence of the note. Thus, if A. draw an agreement for B. to sign it, then he does not himself, it is bound.

In the last case, A. is also bound, for procuring B. to sign made the subscription a signing authenticated by A. for signing, procured by one party, is equivalent to a signing by his Agent.

Also an auctioneer subscribing the name of the highest bidder, to the conditions of the sale is a sufficient signing for both parties. For in this subscribing, he acts as agent for both parties.

It has indeed been doubted whether sales at public auction are contemplated by the Stat. at all, the sale being publicly advertised, so that there can be no danger of fraud or injury.

If part of an entire contract is within the Statute, the whole is, for an entire contract cannot be divided, since each part is in consideration of some other part. If, since therefore law to enforce one part only, they would virtually make a new contract.
Contracts

Contracts made void by the act of the parties

Before a right of recovery is had, or is attached, the parties may rescind their contracts by mutually expressing their design in sequence of contingency.

But after a right of recovery has attached, the contract cannot be rescinded by a mere agreement; there must be a release, acquittance, or discharge, in writing, or the consideration. A waiver of a contract on one or both sides may be enforced from a long continued neglect to claim the benefit of it.

A right to a penalty of a bond he may be waived by acquitling that for which the penalty was a security.

If a wife suffer the separate property be used in her husband's family if neglect to charge it, she cannot afterwades claim a compensation for it.

A contract of a lesser may be merged in one of a higher nature, but one contract cannot be merged in one of an equal degree. Cite: Ch. 817.

When the right of obligation arising out of a contract vests in one person, the contract is annulled.

If a contract vests in one person, the contract is annulled by express party laws.

If full performance of a contract be rendered impossible by a legislative act, or full performance is impracticable as required by the obligee, will be enforced in Equity.

If the promissory pay the consideration of the promise.
Contracts.

The party to deliver the property according to the contract, if he does not deliver the property within the specified time, the party may recover his money by action at law, thus disaffirming the contract.
Contracts

Contracts executory and executed

18 Nov. 356
2 P.M.

Contracts executory convey no present interest, but the
parties mutually trust each other.

Thus if each one agrees to sell
the contract is executory, if a chose in action only is conveyed.

Contracts executed are those by which the parties mutually
20 Nov. 334
hand over their rights to each other to effect a change of property
either immediately or on the happening of some event
which does not depend on either of the parties, i.e. in this
case a chose in possession is conveyed.

A contract containing words of present interest, but
18 Nov. 356
Nov. 385
providing that a lease shall be executed in future is
Oct. 337
merely an agreement for a lease not a lease itself, tho'
4 P.M.
it contains a stipulation that the lessor shall take imme-
diate possession.

The reason is that to every contract there must
10 Nov. 387
Aug. 204.
be a consideration applied in its full extent only to executory
Oct. 577
Pha. 955.
contracts - a gift delivered is good it seems.

An executory contract under seal, is good if it is said with-
out a consideration can be shown, nominal damages only
can be recovered on such contract; and if a consideration be
acknowledged still if the want of consideration can be
shown from the tenor of the contract itself, or by other
written documents nominal damages only can be recov-
ered.
contracts

A deed of land for which there is apparently no consideration, formerly owned only to the use of the grantor, but this rule of law goes when the presumption that in cases of this kind, no conveyance was intended.

This rule has not been adhered to in any since the Stat. of Frauds, as final agreements, (which the rule contemplated) respecting lands are not to be void by statute but if the use was declared to be to a third person it was good without a consideration. If A, in consideration of over $1000 received of B, grant an Estate to B, if in writing declares the use to C. Such declaration of the use or its good, was formerly good by hand.

A grant merely reciting is operative if binding, if the deed be delivered.

A deed of land delivered is considered as considered to contain a contract executed. And a consideration not being necessary to support an executed contract, the fact of the delivery is the only thing requisite to the validity of such a deed, whether there was or was not a consideration is an inquiry, totally immaterial.

A penal bond for the payment of money, if actually delivered, is good without a consideration; such a bond being in contemplation of law the same as payment of money. Therefore a contract executed is binding, even if it appear upon the face of the bond, that there was no consideration. The delivery of it not the consideration.
Contracts.

being in this as in all executed contracts, the only material enquiring.

A single bill was not formerly considered as a contract executed, but a mere promise under deal, the consideration of which might be inquired into.

A release is also a contract executed. A penal bond has always acknowledged of present indebtedness, a single bill formerly diinst, then it now does.

If a contract executory be under deal, the consideration cannot be enquired into except by written documents. A sealed instrument according to English principles, carries with it too strong evidence of a consideration be the rebutted by verbal proof. But if it appear from the face of the instrument, or from written proof, that the executory contract was made without consideration, nothing more than nominal damages can be recovered on the contract that was under deal. Thus an agreement under deal to execute a release if made without consideration will subject to nominal damages only, the a release actually executed without consideration is valid.

The words value received are not essential in a sealed instrument.

The quantum of consideration is totally immaterial if it have any value.

A consideration to be sufficient to support a contract must be an existing consideration.
According to some old authorities a promise in consideration of something past, is always void; in others, if in some cases the old rule is retained, but when the act done if past, was beneficial to the promisee a subsequent promise in consideration of that is now binding.

A statute of not debt lies in those cases. It is said by Judge Blackstone that a promise founded on a prior moral obligation is binding. The proposition is true in part. It is not in its full extent. For if a sum of money should run out a debt of after her decease. Thereon promise to pay it. The promisee is clearly entitled to a prior moral obligation would not bind her.

The rule with regard to promises founded on prior contracts appears to be, that if the original contract out of which the moral obligation arose, or on which the subsequent promise is founded, was in itself void, void of such as created no liability or semblance of liability, the subsequent promise would not bind the promisee. But if there was even a colour for a suit. The subsequent promise is good. Binding.

A voluntary promise created no legal obligation, but it is sufficient to support a subsequent promise. Nov. 384.

The action may be lost by one on a promise made to another. If the promise were for the benefit of the life.

A case of this kind had been decided in the Superior Court of Connecticut, where there was no relation between the life and the promisee. 5 Mod. 179; 4 Dall. 167; 3 Gale 36; B.M.K. 36.
Contracts

It has been held, that the right of him for whose use the promise was made to recover, if not being the promisee, extends only to goods promised; therefore if a bond be given to A for the use of B, the action on the bond must be brought in the name of A.

Forfeiture of a suit against the debtor is a good consid.

Rev. 18:19, section on which to found a promise. But the forfeiture must be total or for a time certain, or as it is said, for a reasonable time, of which the court will judge.
Of the consideration necessary to support a contract.

I contract has already been defined to be an agreement upon sufficient consideration to do or not to do a particular thing. According to this definition a consideration is the essence of every contract.

It is the material cause of the contract, and an account of which each party is bound to give his agent. Considurations are of two kinds, good or valuable.

1. A good consideration is such as that of kindness or natural affection between mere relations. - 111. 427.
2. Such a consideration in contracts is a good consideration.
3. Where the contract is executed as between the parties, as in a grant by deed, from the father to his son. But except in cases of the grantor of bona fide purchasers, it is generally deemed voluntary if set aside.
4. And an executory contract on such consideration may be enforced in chancery in many respects. - 360. 535.

II. A valuable consideration consists of something valuable, as money, goods, labor, marriage, etc.

Contracts on a valuable consideration may be made in either of four ways.

1. By stipulating that do not des, as in case of loans on bonds of promises, sales on a contract executed subject to pay.
contracts.

The second species is said of fairs as where labor or service is to be performed on both sides: or fideicommissum on one side of some act on the other, in mutuality fideicommissum.

The third species is fidejussit where on one is to be performed for reward.

The fourth species is so at fairs which is the counter part of the last, or the last inverted, as in the case of granting to give something or of giving something for all or to be done.

Contracts are divided into three kinds: special contracts, simple contracts.

I. A special contract is one which is written into an evidence by specialty that is by deed or writing sealed.

II. A special contract is a contract by seal in writing but not sealed. A contract not sealed and a sealed contract being upon the same footing in point of solemnity.

In general, a seal is not absolutely necessary to a special contract constitute a specialty.

It is clear that an executory contract by seal is not binding.

But it is said by Symon, Justice, that a contract in writing is good without consideration at common law.

This proposition Philpot considers as not defensible.
Contracts —

In the case but by Blackstone of a promissory note, an actual consideration is necessary. It must be proved.

After the note is negotiated, the promisor cannot sue the want of consideration because a third person becomes the holder.

The Law Merchant governs, otherwise a fraud might be practiced on third persons. Reducing a contract to writing then, does not supress the necessity of a consideration.

The act ensures that in strictures or judgments of law, a consideration is necessary to the validity of a sealed de

First, the plaintiff need not prove a consideration; secondly, the defendant cannot avail the want of it, for from the solemnity of the instrument a consideration is implied. If the defendant might disprove he might contradict the deed which cannot be.

If a want of consideration appear upon the face of the speciality I apprehend it is void.

The result then is, that in principle a consideration is not necessary to the validity of a speciality; but that it is based upon the want of a consideration appears on the instrument, or some other instrument of equal solemnity, which has reference to the contract.

It is laid down by Powell that an voluntary cause

want of consideration being under seal only nominal damages will be given at law. The want of a consideration in the case stated, I apprehend, is not supposed to appear in
Contracts.

The instrument. This meaning then, probably is this on the want of urging, the want of consideration may be found to mitigate damages and not to affect the right of action.

The rule that a consideration is necessary to every contract applies in its full extent to temporary contracts only. A contract executed by delivery of the subject imparts without a consideration as between the parties, as a gift.

A consideration sufficient to support a contract may arise in two ways: 1. From something advantageous to the party promising or undertaking; 2. From something disadvantageous to the party in whose favor the promise or undertaking is made.

The promise arises from something advantageous to the promisor, and is consideration of selling my house to E. Now to say the promise to pay thereafter is not in most cases of contracts the consideration unless in this way.

The quantum of consideration is wholly unmaterial, for the law does not regard proportions. It is sufficient if there be any consideration, as a peppercorn.

Sale of insignificant considerations are not deemed considerations, ad I engage to pay a sum of money for a cafe at Will.
contracts

But any thing however tending to be done by him
in whose favor the promise is made is a sufficient con-
dedication. Thus if A lends to B the sum of five
372. becomes one of B's promises to pay it. I will show
him the lease, showing the lease gives a right of action
against C on the promise. And it has been held in
the court of Kings Bench in a late case that the mere
relation of landlord of tenant was sufficient consider-
ation for a promise by the latter. Thus a declaration
stating that A is to be tenant if B will consider
402. as if he promised to pay, carry away a how he was
held sufficient.

A consideration arises from something disadvantage-
402. goes to him in whose favor the promise is made. Then A
gives it up to the cancelled or
404. promising to pay the content. — Rob. 22. chapt. 128.

It is a general rule that a contract is not supported by a
consideration altogether past of executed. Thus in consider-
tion that one had built me a house gratis, I prom-
ised to keep up the premises it not having for her there was
no subsequent consideration or benefit or advantage arising
2. or from the premises to either party.

But if the part of the promise or consideration be past, yet if a
part be subsequent, the contract may be good. Thus if the
lease be given in consideration that the lease has been paid, and
the rent promised to save the tenant harmless, the promise is
good, thus the acceptance is past, yet the lessor was to continue in possession of the premises, rent.

As to a contract on a consideration expressed, it good if there was no present legal duty on the promisor, as where an action in consideration of a previous indebtedness, promised to pay

But if there was a prior moral obligation on the promisor, there is a different consideration, as where a promise is made to pay an honest debt barred by the Stat. of Lim.

In cases of a promise to pay by the father for the past nursing of his natural child.

A consideration completely past will support a contract, if the consideration be at the request of the promisor, for the contract then subsequent coincidence with the previous request. As where I promise to pay

James Stanger to a meritorious act done to another, cannot support a contract when it is in his own favor, for he does nothing favorable to the promisor or disadvantageous to himself. He being a stranger to the consideration. As where A in consideration that B will accept title of a Chase’s prom multipled to pay $100.

That a consideration moving from one will support a contract in favor of a near relation. As where a person was made to sign in consideration that the word she
Contracts

100. 1. 35-3. from a surety to pay his daughter.

When forbearance of a debt is the consideration

[...]

100. 35-4. there are two requisites. 1st. The forbearance must

be either general that is, total, or for a certain period

and 2d. It must be of an action in which the promis-
ion or person to be liable, is chargeable.

1st. A promise to pay a debt therefore in consider-
ation that the deft. would abstain from suing no time

being limited; if forbearance not being expressed to

be total, is not good. Numb. 108. But where the consid-

eration was forbearance for a reasonable time, it was

held good. If that the debt ought to give a further it

was a reasonable time or not so.

2d. A promise by a mother to pay a debt due from

100. 35-5. the son who was dead, if the deft. would forbear to sue

Numb. 73. she was held not to be obligatory, for there was no

consideration to support it. The mother was not liable

of course, forbearance was no favor to her if no dis-

charge to the deft.

As if one be entrusted one such procus if

another in consideration of his release promises to pay;

Eph. 94. the latter is not bound for here is no consideration.

As a promise by b to pay b's debts, if the creditor

100. 35-6. will forbear to sue A for 6 months is not good at

Numb. 75. Comm. Laws, for he might sue it immediately. If therefore

the forbearance was no prejudice to the creditor,

100. 35-6. But a promise is consideration of forbearing a suit
is good, if there be a reasonable ground for the

To be in consideration of Performance promised to pay, the promise was good at law: when was colour for a suit he being Executor.

When a promise is in consideration of Performance if the original cause of action is not to be enquired into, it is acknowledged by the promise.

When that which is stipulated on one side is in consideration of Performance on the other, the considerations are termed mutual, as where A agrees to pay B. for doing a certain act, here the doing the is a condition precedent to his right to the payment, if he fail for the price, he must also perform.

Where Performance on both sides is to be concurrent, neither party can compel the other to perform, till he has performed his part as offered to perform, as where A promises to deliver B. a load of wheat on such a day for such a price. 

If the agreement be that on one side shall do an

Act for doing which the other pays, the doing an condition precedent, but if according to the terms the money is to be paid on a day, which is to arrive before the act can be done: here indeed the payment is a condition precedent. In such a case where A agrees to give B. 1l. on the first of August 1824 for work which is to be done on the first of September of the same year, here B can sue for his 1l before the time comes to
But of the day appointed for payment, he to arrive
after the time fixed to do the act, the performance of the act is
a condition precedent if must be avered in an action for the
money.

But when the promises are mutual, i.e. where the promise on
each side is the consideration of that on the other. If a performance
is not a condition precedent on either side to a right of re
convey, either may sue without avering performance on his part.

The rule does not obtain in equity, for here the 7th
1 Cor. 12:445.
18 4. must see performance or readiness to perform, nor the
2 Sam. 11:2 35: covenants are mutual, otherwise equity will not interfere
2 Kings 3:8. If the payment be in this form: I promise to pay
1 Sam. 11:2.
Ket. 6:60.
23. 15:12.
12. 1 Kgs. 28:3.
1 Kgs 8:57.
The promises are not mutual. If neither can compel her
promissory till he has performed. 2 Kgs 4:96.
The question whether promises are mutual or dependent
is to be determined by the meaning of the parties, to be
collected by the spirit of the agreement, if the nature of the
contract, that is from the order in which the intention requires
their performance.

When the promises are mutual, it is no bar to
an action that the 2dst has not performed his part, each may
may have a course of action agst. the other at the same time
The Eq. Parties have learned of late against continuing from
1 Sam. 7:61.
Contracts

has a tendency to multiply duties.

Mutual promises must both be binding on neither party; they are mere nu&na bona.

The mere act of interchanging property to another does not, in itself, create a duty to deliver the same. — 2 Co. 26. Inst. 362. Note 3.

The preservation of the honor of heirs of a family has been held sufficient consideration in some cases. — 26 Co. 26. Inst. 362. Note 3.

As a compromise of a doubtful right, was held to be a sufficient consideration in some cases. — 2 Co. 26. Inst. 362. Note 3.

It is not necessary in contracts that the consideration be expressed in direct terms. It is sufficient if one can be collected from the whole agreement taken together.

But if an express consideration appear upon the face of the contract, the better opinion is that no other can be implied or avered. For it is a maxim that nothing can be implied when it is expressed.

At some law schools the consideration of the contract does not in general inure to the fraud in the execution does. The reason of this distinction is that offense is want ed in the second case, but not in the first.
Contracts

But there will relieve against contracts for fraud in
the consideration. A law the party must resort to his
special action for the fraud committed upon him.

In one case however the Court of Chancery seems
to have considered fraud in the consideration of a contract
as a good defence. But the circumstances of the case were
familiar, whereas other points in it influenced the de-

cision.

Of the consideration in contracts again
considered.

In every necessary contract a consideration is necessary to
secure its validity; therefore it is that a promise to do an act
for another or to build him a house or give him a sum of
money, is not binding if can never be enforced either at law
or in Equity. But if the contract has been executed that is to say
if the gift has been made or the consideration of the property trans-
ferred, by the donee, property so given is liable to the creditors
of the donor, so every man must be just before he is
beautiful, but this does not affect the right of the donee at
the donor. This doctrine, I believe is universally admitted
to be sound, so far as it respects personal property, but it is
said if a man conveys land to another without any consid-
eration, such conveyance shall amount to the use of the grant-
tor only.

This does not seem to be any reason why a man should
have greater benefit from real property when he deals with it
Contracts

voluntary than from personal. The reason why we find such a
proposition in our books is attributable to the fact, during the civil
wars in Eng. between the houses of Lancaster & York, the real
property of the leading characters in the nation was greatly expos-
ited to confiscation for rebellion as the contending Parties al-
ternately prevailed; they would therefore invest their real
property to a great extent in the commotions which then agitated the country,
if they did not (as is now the practice) to their own use or that of some friend
whom they wished to provide for in case of their death. For it was
an established principle that an use was not subject to perfect
ure, if the grantee to use had only the legal title, if the gran-
tee was entitled to the beneficial interest, for should the grantee
attempt to prevent the grantor from enjoying the estate so grant-
ed, a suit of Sua, would compel the Grantor to suffer the
Grantor to improve the estate as his own. During this period it
happened that if a man granted his estate to another for no
consideration, the presumption was that it was granted to his
own use, but in that case there can be no doubt that the
deed conveyed the legal title to the grantee, if the use by the
Grantor was adapted the idea of the presumption alluded
to settled in the grantee. If this be a just mode of consider-
ing the subject, it is apparent that this doctrine grew out of the
state of society in Eng., it cannot be applicable to any other law-
ly under different circumstances. But if it become an estab-
lished rule and of course when the Stat. of Uses was enacted,
giving to the estate use, or the legal title, such conveyan-

had not the least operation. But if it might be said that it transferred the legal title to the grantee, the estate immediately transferred to the grantor, it seems to me that in this County no presumption can arise of any intention in the grantor that he should be entitled to the use of upon.

general principles I entertain no doubt, but that a grant of land without any consideration goes unvaluable attended with the delivery of the deed, as much as the land in the grantee, as a gift of a horse attended with a delivery rests the property of the horse in the donee. I consider it therefore as a sound principle that in contracts expressed, no consideration is necessary to vest a title to property granted, and it is as universally true that a consideration is necessary to give validity to an executory contract.

When a consideration is necessary to an executory contract

not if the contract is in writing, it is acknowledged that it was made upon a valuable consideration, no proof is admissible to show that it was not. But this does not proceed upon the ground that a consideration is not necessary where the contract is in writing, but proof cannot be admitted to contradict what is alleged in a written agreement, for if the consideration which is acknowledged to be valuable in a writing should be detailed at length in the instrument itself, or in any other collatral instrument relating upon such contract would not if when detailed, it should appear to be no consideration in the eye of the law. If afterhand such contract would have no more validity than a fraud contract without consideration for in that case the
want of a consideration is not shown by proof testimony
but by written documents of as high a nature and validity as
the contract itself.

If the written contract should not acknowledge
my consideration, then indeed it may be averred the declaration
that there was one of this document many be supported by
Jeschyn jus y f y s a t h s u c h an i n t r o d u c t i o n P r o n o y
to contradict a written agreement, yet you may introduce it
when it stands well with the agreement it seems to give it
effect.

For we must notice a difference between a mere written
agreement of one that is dealt. If there becomes a specialty of
although there is no consideration expressed in the agreement, there
is no necessity to even any to give it validity, for from the act
of dealing, it is presumed that there was a consideration, and
of course if there is a covenant to do any collateral act, the Court
must recour to the contract, when there has been a failure of
performance, whether any consideration is acknowledged or not.
That as it is not consistent with the rules of law that the quantity
of the consideration should be enquired into if there appears to
be no other law what is implied from the act of dealing, in
such case, only nominal damages will be recovered, and a Court
of Equity will never decree a specific performance of such a con-
tract.

If the contract is to pay a sum of money as in a bond an
covenant here the action must be an action of debt, if in this
action the whole sum must be recovered if any thing, if it is not
Contracts.

governed by the rules that regulate when the action stands on damages, since the parties are of liberty to give lesser or more damages according to the equity of the case.

In such cases it is plain there can be no use in the inquiry as to the quantum of consideration, for if there is any consideration the whole sum must be recovered, if it is certain from the deal that there is a consideration.

Notwithstanding these observations, I should suppose that the contract being sealed, would not in every case give validity to a chirography, such as for instance that the contract details at length the consideration of the land in the condition discovered the consideration if it was one which the law considers as none, here the law presumes a consideration from the act of sealing, and in this case this presumption is completely rebutted by the instrument itself, showing what that consideration is. - A.B. Stubbs: we consider notes of hand as securities.

The manner of closing a contract.

When the terms of a contract are mutually accepted, as of A says I will take £20 for my horse, either party may close by tendering on his part.

But if in this case no tender be made, no delivery be given, no earnest accepted, if the parties separate, both are at liberty to refuse performance, but if a day of payment is fixed within a year, the party is charged and neither...
Contracts

As at liberty to retract.

A promise made in consideration of an act to be done, is not binding till the act is done. But if the promise has offered to do the act, it has been presented by the promisor, and no suit on the promise, performance or at least an offer of performance must be averred. 2 Ko. 16. 16. 30.

But where one promise is in consideration of another performance, he need not be averred by either party. In case of conditional promises, as if A agrees to make a deed to B on the tenth of May, B paying $1000 A on the same day & making such a deed, the contract is in whole only, but either party may on the day promised, do not 1 Th. 381. offer and close it by performing on his part. If either 684. party perform his part at this day, the contract is at an 761. end, and if on promises of this kind suits are brought by either 766. party, performance must be averred. 7 Sam. 125.
Actions founded on Contract.

I. Account.

This is an action founded when one person made a contract that one who has received money of another to account for, will render his account for it. If he does not render it this action lies.

It lies at com. law only against guardians in seigneur, bailiffs of receivers of joint tenants, they being receivers for each other.

By Stat. 42 Ann. this action is extended in favor of one joint tenant if tenant in common against the other as before.

At Com. law the action lay only between the original parties themselves, it not for any.

By Stat. 1219 against their为客户 of being founded on such security of contract as that one party was subject to condition of the other disbursements etc. But to this rule there is an exception in favor of joint mercantile, not against others who might maintain the action at com. law.

By the Stat. West. 2 that is 13 Edw. 1st 25 Edw. 3t

31 Edw. 3 this action was extended generally to Cts. the Cts. of Cts. and admiralty. Stat. 4 Ann. extended it agst.

Cts. of admiralty of guardians of wards, bailiffs of receivers of to and agst. the Cts. of admiralty of joint tenants and tenants in common.
Contracts.

The distinction between Bailiffs of Receipt is
this: A Bailiff is one who has received the property
of any kind of another to dispose for the owner of
the amount of who is entitled to an allowance or wages
for his reasonable expenses.

A Bailiff must account for profits which he
has made of for those which he might have made
by reasonable industry.

A Receiver is one who has received money to the use of another to render an amount
of who had no allowance for his trouble.

Generally a Receiver it has no allowance and
is not bound to account for the profits, but to this there
is one exception as between Joint-merchants, for
here the Debts have an allowance and amounts for the prof
its.

A Bailiff cannot be charged as Receiver, because
if he were he would lose his allowance.

This action being founded on privy of contract, lies
not in cases of tort, except in favor of the King of
infants.

In dreaming against a Bailiff as Receiver, the Debt
stated that he delivered such property to the Debts as Bailiffs
were bound to deliver to the Debts, and the Debts refused to deliver the reasonable amount to his
damage for his demands of the Debts their reasonable amount
then with his damages aforesaid if his actions.

In case of partner...
Contracts.

1. If I advance of mine to say in the 7th week to the 6th of the month, the defendant had received more than his present.

2. It is said that an action of account lies on the sheriff, who, not having a certain sum, should not be charged as debtor.

3. Where one receives money to the use of another, to render an account, an action of account will lie for an amount of the money received.

4. If money has been received of A. by B. to deliver to C. amount lies on B. here B. is the defendant, declare of whom the money was received.

5. If I deliver money to A. to deliver to B. for my use, if A. delivers it, I cannot have account against B. for he is not bound to the use.

6. If the master of goods wastes or refuses to deliver them, the amount will not be lost, but honor or discharge to the amount for which he does not receive them to improve an account for.

7. So it does not lie against the disseissors for the prof.

8. For the action is founded on contract, except in the case of an infant, he may consider a disseisor and treat him as a guardian.
Contracts.

_12 Bailiff to make a Deputy._ I cannot have this action against the deputy for want of privity, but the Bailiff is may.

_Mat. 7:8._

_He, an Infant may be an Est. of lia._

_Bond. _

_The bailiff is not liable to answer._

_He cannot contract if is supposed incapable of accounting._

_In an action of account if the Deft. prevails, there are two judgments, first that the Deft. do account, after which auditors are appointed before whom the account is had._

_The auditors then make their report, and final judgment is rendered upon it as on a verdict._

_Before auditors the parties are of common right entitled to testify._

_If the Deft. refuse to go before auditors to produce his account, the auditors must award to the Deft. the whole of his demand._

_If auditors find a bal._

_15a. 16. in favor of the Deft. they may award it, if judgment goes for him to recover damages.—This is the case in chamber only._

_If he who receives property of another to account, makes an express promise to account, this action or special of sumpset will lie._

_If he who receives property of another to account, makes an express promise to account, this action or special of sumpset will lie._

_But in this case it is said by Scott, the Deft. shall not travel into the particular of._
Contracts.

If the account, but confine himself to the damages which he has sustained by the deft. not accounting.

Does not this imply a promise? if it is not that a

good ground of complaint.

If one by deed acknowledges that he has received property to account; the deft. has his election to bring an action of account, or on the deed.

If one finds nothing of another, account lies again against him, for the action is founded on privity of contract, trust confidence.

As to what the deft. may plead in bar there

is much contradiction.

It is competent for the deft. to plead any thing to the action, which shows that he is not bound to account.

It is a good plea therefore, that he never was bound to this in the general issue.

As a set-off of all actions is a good plea in bar.

As an award of arbitrators, that the deft. should be acquitted is a good plea in bar.

Plea that the deft. received the money to conclude to

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A receipt for the money received is not good for a receipt admission of liability, if it is but evidence of payment which does not affect the deft.'s right of action account.
Contracts.

So "that the Debtor has fully accounted" is a good plea in bar. On this plea the Debtor cannot go into the account but must prove the fact.

It is a general rule that if the Debtor shows that he has not been able to account, no plea in bar of the action is good except "fully accounted" and a release or something equivalent to it, as an award of a release or in discharge for other things must be pleaded before auditors.

"Fully accounted" release he must be pleaded specially.

Before the Auditors parties may plead if join issue is law or fact, the issue is then to be carried back into Court of Chancery.

Whatever can be pleaded in bar to this action must be so pleaded, first before auditors, because it will avoid trouble of change to the parties. 3 Will. 113. And nothing can be pleaded before auditors contrary to what has been pleaded in bar to the action.

Therefore "never asked for" release, "fully accounted", an award in discharge, are not good before auditors.

It is a good discharge for the Debtor as it is sometimes collected, good accounting to show any thing which could not be pleaded in bar to the action, but which appeared that he ought not to be eventually liable.

That the property in his hands was lost at sea in a tempest, so that they were cast overboard is good he-
Contracts

16. the goods were taken by robbery with
act his fault: or taken by an enemy.

16. the goods were taken by enemies in
strong, or plea in law to the action
That the property was irretrievable or in danger
of perishing, if he sold it on credit, without a
special commission to this effect.

The Deft. accounting is allowed all lost
security by irresistible accident, if open enemies or rob-
bery without his fault.

When the report is returned to the court, final
judgment is rendered for the sum awarded.

16. In Eng. the action of account is not much in use
The common remedy is in Chanc. for its benefits of law
34.58. the Deft. is not entitled to a discovery of books, papers,
44.8. nor to the Deft. oath.
Contracts. Debt

II.

The legal explanation of the word "Debt" is a sum of money due by a certain express contract, as by a bond for a determinate sum, note, special long-writ. So for a sum capable of being ascertained.

The action of Debt lies in general upon contracts implied, but not of presume to on a hand contract implied. As if I sold goods agreed by hand for a fixed price, Debt lies, but if no price is fixed debt will not lie.

Debt on simple contract was distrusted in Eq. by reason of the wages of law, which is the Debt's meaning that he owes nothing, I compurgators saying that they believe him.

Wages of law is equivalent to a credit for the Debt.

Because the whole sum demanded must be restored, and if any according to the old rule. A roll 706.

This rule is not now observed Aug. 6. 1703. note 550. Oct. 12. 12 11.

In some case "Debt" lies not on express.

simple contract — as against an Est. or Admn. for a testator might have waged his law, but an Est. or Admn. cannot.

If one expressly promises to pay a debt certain for helping to his own use, or for services ren-
Contrasts.

A promise to pay the debt of another in consequence of a relinquishing in favor of the promisee a lien on the debtor's property. The promisee will not be liable to recover

The Draror is the debtor if liable in debt.

Debt lies in some cases on implied contracts. If some times where there is nothing like a bargain or contract a non-commercial transaction from which to imply a

2. 394.

2. 394.

2. 394.

1. 394.

1. 394.

1. 394.

This is the same practice in Eng.

This is the same practice in Eng.

This is the same practice in Eng.

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This is the same practice in Eng.

This is the same practice in Eng.

This is the same practice in Eng.

This is the same practice in Eng.
Contracts.

 Generally execution cannot issue in Eng. after a year of a day. If in this case the deft. only remedy was by debt on judgment by original writ. often such a time payment was presumed.

 The Stat. Vet. 2. gave a share priority in this case to show cause why execution should not issue, if more often any year and a day the deft. cannot issue execution without a share priority except where execution had been stayed for want of even a single other cause.

 It had been said that in Eng. debt on judgment will not lie within a year of a day. —

 Hence. It is said in Bacon, that debt on judgment 1. Ann. 615. will lie, to punish the deft. for not paying the money covered by the judgment, without putting the deft. to the trouble of evidence of levy of the execution and thus compelling payment. — It seems therefore that the action will lie before a year of a day.

 The erroneous judgment will support that action for such judgment is valid to all intents if found upon bill.

 By the constitution of the United States, true confidence is to be given in each state to a judgment rendered in another. If therefore an action is begun in one state on a judgment rendered in another, no inquiry can be had into the original cause of action.
Contracts

A judgment rendered in a foreign country is
not competent evidence of a debt but
in an action on such judgment a party may be
called upon to prove it into the original merits.

Formerly, it was held, that debt could not
be on a foreign judgment.

The duty in declaring need not, from the original con-
sideration.

To debt on such judgment "null dice record"
is a valid plea, yet declaring — on the record does
not vitiate the declaration.

Indeb. O. see is competent with debt on foreign
judgment. Aug. 4. 5. 6.

It is said where Indeb. O. see will
not lie. Debt — also will lie: This is not always time the
sale as where money is paid by mistake, obtained
by fraud, by breach of trust, by sale of property con-
veyed by a stranger. The rule is to be understood
I conceive in general of express contracts, if they im-
plied from transactions in the nature of contracts,
as for example, sale of goods without express prom-
ise to a foreign judgment is not altogether the side
one of these cases, and seems to be so considered.

If judgment has been obtained by fraud it
is a mere nullity. Goo. 5 14. 2 Bl. 4 7. 3 3 4 1. 8 0 5.
For money, received by bond or single bill debt
is the only remedy.
Contracts

If a bond is given conditionally for the performance of a collateral act, there is sometimes a remedy in
sham, it being received as an agreement to do
the act. But the only common-law remedy is the
action of debt for the penalty.

A bond to pay $500, generally that is,
due 1 year from time of payment being paid, is payable on the
day of the date.

On a contract to pay a sum certain.

If there is a covenant with a penalty, the
obligee has his election to sue for the damages in
2 Rob. 163.
2 Coa. 153, "covenant broken" or in "debt" for the penalty un-
less it appears that the obligee was to have his
election to do the act or pay the penalty. In such
case on non-performance of the act, the action lies
for the penalty only.

Debt lies against an officer.

2 Rob. 206, who has collected money on an execution, on a re-
over, 3 Bl. 385.
2 Rob. 235, fraud or neglect to pay it over, for keeping it
implies a contract in law.

This seems an exception
to the general rule, that it lies not on fraud, or contract
implied. But by levy the judgment debt is
considered as transferred to the sheriff.

But debt will not lie for collateral articles lev-
ed on, if not sold for want of purchasers.
Contracts.

But if the collateral articles taken were estimated
Held in his return, at a sum sufficient to pay the
debt, if he should neglect to sell them, it would
seem that debt lies against him. For his own
return shows, that the Debt, in execution ought to
be exonerated.

In debt on land contracts, the Stat. of
3 Geo. 3, c. 513.
2 Geo. 6. Limitations, or a release may be given in evidence
under the General issue.
The action of Debiture lies for the recovery of a "specific chattel" in nature of a bill in chancery. The judgment is for a restitution of the things detained conditional. E.g., if the chattel cannot be had, the Deft. shall pay the value of damages of detention.

It lies to recover any thing which can be identified. If not for money, can be

It lies for a piece of gold of such a value as 20° but it does not lie for 20° in money.

It lies in the cases only in which the Deft. obtained possession lawfully or by delivery or finding.

The action of Debiture seems founded on contract.

The action of Debiture lies in all cases where Debiture lies, but

this rule does not hold a concursus, for hence lies

where the taking is tortious.

The reason why Debiture does not lie where the

taking is tortious, seems to be, that originally a tor-

tious taking was considered as divesting the owner

of his property. And in Debiture the Deft. must have

the property of the thing demanded. This action was

dissolved by means of the means of law. Suarez had taken

place of it under the equity of the Stat. of West 2.

As to the evidence in this action see Gilb. 2 E. 5. 3. 5.
Contracts.

Assumpsit.

Assumpsit is an action founded on simple contract whereby damages are recovered for a breach of any promise contract or undertaking.

The action of assumpsit is derived from the Stat. of W. 2.

Of Assumpsit there are two kinds: 1st. Express & o. 123. 2d. Indeb. Assumpsit. The former of these lies on express agreements promises of undertaking which may be either written or verbal.

The ground of recovery in this action is the agreement which is also the rule of giving damages.

The latter is founded on a duty or moral obligation which creates a promise by implication of law.

But it also lies where it is impossible to presume a promise, or where a husband has forbidden any one to supply his wife whom he has turned out of doors, with any thing on his account. Where one borrows another of his money in those cases Indeb. Assumpit lies.

But if it appear that the promise was to have it in his election to perform the promise or to pay the penalty, action lies for the penalty only--A breach of trust by which

1614. 652.
66. 131.

Ask the doth...
Contracts

1. at 6 or 6 o'clock.

2. Prob. 29 of Ass. of.

And, after, this in some cases where a special offer does not. As for the price of goods sold on a quantum solvabit where no express agreement was made. Also for services done on a quantum meruit. no price having been fixed by the parties.

It may then be made out as a rule that whenever one is bound in justice or good conscience to pay money to another, the action of Indeb. after. lies to recover it, in such cases. Where justice or national policy forbids a recovery; as in cases of debt on which the Stat. of limitations has run, or on gambling debts, etc.

The damages in this action are not sustained by the agreement, save usually there is no agreement. But the damages are such as in equity and good conscience ought to be recovered. When a contract is detailed at length whether in writing, written without deal, or written if deal, the action for breach may lie, but on the promise or if in contracts of this kind a debt is created by the agreement, a Special Action. Indeb. after. of the action of debt are convenient actions of the Agts. may have either at his election. Upon a breach of contract neither debt nor Indeb. after. but a special afterpart lies for a recovery of damages, the damages being uncertain. But if the damages for non-performance were assessed by the
Contracts

Parties to the contract. Indeb. often also lies in the latter case, the Off. the promisor may at his election bring Indeb. often, for the plaintiff agreed upon a special action for damages to be assessed by a jury if it appears that the penalty was in the nature of a security for performance, to make the promise stronger.

But if it appears that the promisor was to have it in his election to perform the promise or pay the penalty, action lies for the penalty only.

A breach of trust by which one has been defrauded.

Indeb. often lies in some cases where a special action does not as for the price of goods sold or a quantum minor valerat, where no express agreement was made for services done or a quantum minor valerat no price having been fixed by the parties, and is not necessary for the Off. to declare the promise null and void.

So for money loaned or for money paid to the Off. use.

But at his request express or implied, or expended for that which it was his duty to do. Indeb. often lies. 1 Tred. Rep. 174, 185.

In these cases debt also lies. There.

Notwithstanding the general position that Indeb. often lies in these cases only, in which debt lies, there are some cases, where Indeb. often is the only action, e.g.,


Contracts

by fraud, or money paid by mistake, the loss lies in the disappearance of the contract.

In the latter case, an action for quiet title is one dense concurrence.

Money paid by mistake under a rule of court cannot be recovered back.

This action will be an action in an advertisement offering a reward. (Ex. 141, S. 24. 1 Ex. 119. S. 228.)

If he is an innocent contractor, it is not absolutely necessary to an account stated, that it be signed.

An Indebtor, after will not be for money had and received, for a payment made on an express contract still open.

In whole it is open, damages only will be recovered if they on the special promise, where the contract is at an end.

If a horse be taken by a wrongdoer, the owner may bring action for the horse, or if he is sold, first

then the Indebtor, after the price actually received.

are perhaps agreed for, not as the sale may be the actual value. Will it lie if the horse was stolen? This

depends on the doctrine of merger.—Tha 873:373.

The action of Indebtor after will not be for money had and received to enforce an unconditionally claim.

For money obtained by of profession, fraud,

imposition of Indebtor. (Ex. 141. S. 24. 1 Ex. 119. S. 228.)

Ex. 1073. 17 16 83. 4 Ex. 48. 5. 561. (X) 18 sound. 2 16. 35 to the doctrine
Contracts

As for money paid on an illegal contract or consideration if the Offt. is not praecipitum conferio, of as in case of Utley, Doug. 172, 643, 467.

It seems now settled that he is compellable to refund of all events to the contract is executed.

Money paid for property to which the privilege had no title may be recovered back in an action of Indeb. After, or an action might be est. for the same, or the unjustified warranty.

So money paid under a void authority of a certain case for money paid in pursuance of a judgment or of Court. Indeb. After lies. But in the last case For. 1104, debt. After does not on the ground that the judgment was inequitable but by reason of some circumstances attending the judgment or some subsequent event rendering it inequitable for the Offt. to retain the money.

The case in Bunyo, Mosses vs. Fairguard had been questioned.

If a debtor of Beaufort deliver money to Ft. to convey to his creditor at Savannah, Ft. does not deliver. Can the creditor maintain Indeb. After, against Fts. 9 Camp. 36. 10. 35. Found 2280.

It is laid down as a general rule that the Offt. cannot not sue in one kind of action, when he had a remedy of a higher nature. Then the object in both would be the same, that rule holds. The lower being merged.
in the higher remedy, but when the object is different the party may resort to either remedy.

If money has been paid on a contract written or unwritten, for an act to be done. Indeed, after his

By money paid in discharge of the contract, or

An action for damages in offinance of the contract,

For warranty is not triable in Sudeb afteer.

In this case the consideration fails. This rule first

hande doth not hold, when the subject contract is

still open.

The contract must be discharged if at all, and to

If a greater sum is demanded and that it was pledged fo

of paid, the surplus may be recovered by Sudeb after.

While money paid by mistake is in the hands of an

agent, indeed, after may be tried against his, but not

after it is paid over to his principal. pp. 824.

Can the action ever be lost against a known agent?

A mere knowledge of the existence of a debt, if it

begun, if he accompanied with a refusal to pay, lay as founda-

tion of an action of Sudeb afteer.

A bare acknowledgment is mere evidence of

the existence of a debt, promise. If money has actu-

ally been received to the party's use, if not accounted

for, money had if received stated generally is good.

In special circumstances, proof of a promise dif-

fering from that slightly from the promise will not
Contracts

1. Insanity may be pleaded as given in evidence under the general issue. It is a general rule that in actions of afft. anything which goes to defeat the right of recovery in the afft. may be given in evidence under the general issue.

2. Equity.

3. Infancy. In an action based on contract, governors of a child running under the land against the heir of the latter, infancy is no plea in bar.

4. Impossibility of performance appearing on the face of the declaration is a good defense on demurrer. But if the impossibility does not thus appear, it must be specially pleaded.

5. That the contract is idle or nugatory, or illegal,
Contracts.

The want of consideration, or that the consideration is past, may be pleaded as a ground for evidence under the general issue.

VIII. The want of consideration, or that the consideration is past, may be pleaded under a penalty, other than a contract executed as bond, the given in evidence under the general issue.

But if it appear upon the face of the declaration, Damnum est a good plea. This is no safe or summary contracts. To this a good defense as between the immediate parties in case of a default.

The meaning of the plea of non-assumpsit, is not that the debt never promised, but that there is no duty binding upon him at the time of the demand.

Formerly "not guilty" was held as a good plea in

...as a general issue, but now it is not.

Who nil debet is not a proper general issue, yet it is cured by verdict for the debt.

It is laid down in 1 Sleath 22 that the excess

Cont. 198. of principal of interest paid upon an unincorporous contract cannot be recovered back. Not law. Says the Judge, "The action of usury is the only to be lost to recover money where the transaction excludes the idea of a contract... as when money is obtained through extortion, or by fraud. The case is not ours..."
Contracts.

Of matters arising subsequent to the contract.

I. The Stat. of Limitations.

By the Stat. of James 1st. called the Stat. of limitations. 26. c. 262. &c. 65. 66. 67. &c. &c. 27. 28. &c. 29. &c. 30. &c. It is enacted that no simple contract shall be binding in law after 6 years standing. That the remedy only is taken away the debt continues. 31. c. 1617. 32. c. 1607.

It is a question litigated whether a contract upon which the Stat. of limitations has run can be so revived by a subsequent promise of performance, as to lay a foundation for an action, or whether the suit should be founded upon the new promise. The decisions upon this question have been various. But according to the latest adjudged cases, the action may be laid on the original contract.

An action supposes in cases of this kind that the sub-sequent promise is made merely as a waiving of the advantage which the debt might take of the statute. but that the debt is at liberty to ground the his action upon the subsequent promise if he pleases.

Various opinions are entertained as to the ground on which a debt is taken out of the Stat. of limitations. Some eminent lawyers are of opinion, that the debt is taken out of the Stat.
Contracts

on the ground of indebtedness: but this cannot be the case
for when one acknowledges a debt but refuses to pay it, the
debt is not renewed. Gilb. 126: 127.

But if there had been a previous acknowledgment without
refusal, the debt would have been taken out of the
statute, and the goods of the debtor would have been seized and
sold, and the proceeds applied towards the debt and the costs.

The acknowledgment of the debt is evidence of a sub-
sequent promise. 5 Mod. 426. 6 T. & R. 110. 6 T. & R. 470.

It is the opinion of others that it was the intention of the
legislature to have all debts on the presumption that they
were paid.

This was true in some cases, but not in others. A debt which
was not due at the time of acknowledgment was not considered
paid, and the debt was still enforceable.

The true ground is that where the person acknowledges, as that of waiver, the
debt is paid. 7 Mod. 311. 2 H. & C. 761. 3 T. R. 766.

A contract is voided by the act of one of the joint debtors,
and the payment of part, or a promise by one, is acknowledged
indisputably.

The Statute of limitations requires to operate on simple
contracts from the time at which the right of recovery ar-
rises.

There is a provision on the Statute of limitations that one
waives in favor of James Denton, infants, persons beyond
sea, etc. But the person so sued is not released from the right of the persons
there excepted, would not be affected by the Statute.
Contracts

was no provision.

But notwithstanding the justice of the
Statute against nullifying the contract, it cannot be taken
out of the Statute in favor of the persons accepted in the
justice—

of one of several joint creditors is within the
realm the Statute attaches to the others are abroad.

There is some contradiction in the authorities as to
the question whether the Statute affects an Indebted
Act or not. The rule however appears to be that, if the
indebted act is founded upon contract, the Statute
extends to it; otherwise it does not.

The Statute does not affect a running amount when
the demands are mutual and creditors of credits have
been given within the time limited 6 Siam. 189. 139.

A title to lands cannot be acquired by the any
length of quiet possession, if such possession was foun-
ded on a mistake of the parties in making partition.

The Statute does not operate when the contract is an im-
plied trust 2 Bent. 346.

A declaration counting on a promise to Egypt's
testator, on which the Statute has run, is not supported
by proof of a subsequent promise to the Egypt himself.

Sound Bill! giving part of the Indebtedness to the Jordain himself.

1 Sound the public of the whole to the public may be given in evidence 2 Dan. 63.
Contracts

No one or tenant is obliged to take advantage of the Stat. of limitations
Sec. 154

The principles of law as to property being vested in the vendor or vendee on a sale, of what time it vests.

3 P.M. 186. One complying with an order, by delivery of the articles to a carrier, the property so far vests in the vendor by whom they were ordered, that in general, he alone must bear any loss that may happen. The consignee therefore must bring the action. This case, however, is to be distinguished from those in which the consignor proceeds against a carrier, by way of assumpsit, on the agreement to convey and deliver.

The general rule is that, that delivery to a carrier in the usual course of his trade, or to any one particularly nominated by the consignee, is a delivery to him. This, however, will not prevent a vendor who actually takes upon himself the delivery of goods to the vendee from standing to all risks of conveyance - acts which might in common acceptation amount to a delivery may be so qualified by express terms as not to be tantamount.

2 K.B. 316.

As to the law when the bargain is the refusal until a certain period or is to purchase upon certain conditions see 3 S.P.

65.
Contracts.

II Accord and Satisfaction.

A deed of satisfaction agreed upon between the parties for the purchase of land cannot be pleaded in bar of an action to recover damages as a consideration for the non-performance of the condition.

According to this rule it would seem that an accord of satisfaction is a good plea to all other than single contracts.

It is said that the defendant may plead accord of satisfaction in the money due on the bond itself.

A deed of satisfaction made before a right of recovery has accrued may extend the bar of an action grown out of the bond itself.

A title to land cannot be affected by an accord.

1. The satisfaction must agree as to the full amount, or at least the contrary must not appear, therefore a payment of a less sum of the same description of money as satisfaction of a greater is no satisfaction which can bar an action unless the time, place, or other circumstances are added.
Contracts

Any composition of which the value is not distinctly less than the sum due, may be a full and ample satisfaction, if given in receiving as a satisfaction. But when the thing which is due, is that which is given as satisfaction for it, one of the same species, the difference in value, if any, will always be intuitively certain or evident. When they are different, distinct in value is not regarded.

The equity of redemption or any other new equitable claim, as it of no value in contemplation of law, cannot be the consideration of an article of a legal claim.

II. The satisfaction must be valuable: Grant will not

make enquiries into the value of the articles given as satisfaction.

III. The satisfaction must be certain, for if it is left uncertain by the parties so that it will not amount to a binding contract by and between the parties, it is not good even after acceptance.

IV. The whole satisfaction must actually be received in order to bar an action. Tender of the thing agreed on as a satisfaction would not bar an action. Great inconvenience may arise from this rule, since the

award is exemplary.

When the award is so framed as to bar in the nature of mutual promises, it has been adjudged to be
Contracts

binding without acceptance.

The award to give or repay anything at a future time, is no lien to an action before that day arrives, but at the day the execution may now if the judge refuse the satisfaction.

If part of the award has been executed, the residue tendered if refused, it is no lien.

To plead the award, it is necessary to state that the satisfaction stipulated for, was given and received.

In Strange § 26 it is said that giving a note for five pounds cannot be pleaded as a satisfaction for fifteen pounds. But it is said this can be done repeatedly denied to be law see 2 Bl. 26 12 28.

A negotiable note or Bill of Exchange has been held in note the B. A. an extinguishment of a simple contract debt, the debtor being liable to pay the money to a third person.
III. Awards.

Arbitration is the order of one or more persons, or persons mutually chosen by the parties in variance as judges to decide on the matters in controversy, which, under determination or decision is called an award is final.

A mere award is not a ground of action.

When a court decides an award, an action can never pass a title to lands, even if a deed is to be delivered as an Escrow to arbitrators to be given up to the prevailing party as title would vest by the delivery, since delivery of seisin is absolutely necessary to convey lands. If this cannot be given by arbitrators, the arbitrators can award the conveyance of lands, if the party against whom the award is made does not convey, his arbitration bond will be forfeited.

If the old duty, that is the right of recovery on contract is one of the parties is superseded by the award, if a new one created, it is generally the case that no action can be lost on the original contract or bond.

Yet no idea of this kind the old cause of action is not in any instance so completely extinguished as to be incapable of being renewed. For even a mere
duty is created by an award if no obligations have been given to abide by it. 4. So that the parties have nothing on which to rely except the award itself, re- 
1
must have paid the original contract of action, un-
less the award be enforced at the suit of a third.
4. If the award itself created a right of recovery, 
then it enjoins the making of a conveyance, relative to 
what may be done to the original contract of action.
1
Phy. 29th.

Bonds are given to abide by the award, no such 
4456 Oct 31

the same rules are adopted as are mentioned already.

under the head of

According to Eng. principles, 
no evidence can be admitted to prove payment of a 
bond, unless the evidence is of as high a nature as the 
bond itself, an award therefore would be nugatory.

Arbitrators have all the judicial powers of a Court 
of law, of a Court of Chancery; if in some particulars 
more than both, they give damages or award a spe-
cial performance of a contract.

The Court of Chancery does not except in very special 
refusals since a specific restitution of personal chattels 
yet it is not uncommon for arbitrators to decree such 
restitution; if the award rests the property of the chal-
llet to do completely that wrong might be brought against 
the person refusing to restore them. Here, if this rule
judicial arbitration. The powers of a court of chancery in procuring evidence, except that they cannot compel the production of papers.

A submission to arbitration may be

I. By formal writing where an action of debt may be

held on the award; an action of debt on a promissory

contained in the submission, provided that the award

is a sum of money. But if the award is not for a sum

of money, an action lies on the promise to recover damages

for the non-performance.

If two persons having distinct interests, make a

submission on one part of promise jointly and severally to

perform the award, the the award against them be sus-

ceptible, they are jointly and severally on the promise for

the whole.

II. Bonds may be given to abide the award in which

case an action lies on the bond for non-performance.

If the time limited in the bond for making the award
be enlarged by favor if the award be made after the time first limited, but within the enlarged time, no action for non-performance lies on the hand.

The obligation in an arbitration bond is completely discharged of all obligation by tender of refusal.

III. The submission may be by a written agreement, in which case an action may be maintained on the covenant if a sum certain be awarded an action of debt lies to recover it.

IV. The parties may by Stat. 94 2d. 3. make their submission a rule of court.

In this case an attachment will issue for contempt against the party refusing to abide by the award, as an action may lie had on the bond.

A prior submission cannot be made a rule of court.

If an agreement enjoining the term of making an award does not contain a consent that it shall be made a rule of court, non-performance of the award made after the time first limited, will not subject to an attachment.

The principles of the civil law have been gradually interwoven with the old common law respecting arbitration. As that this title of the law has undergone an almost entire change.

Thus the ancient and modern authorities are extremely contradictory.
When a submission is by law part the submission may be with or without a consideration. In all the cases if a sum of money was awarded debt always pays to recover it.

If a collateral act was awarded, there was no remedy to enforce it. Afterwards it was established that if there was a promise with consideration to a little, the award respecting a collateral act might be enforced; but if there was no consideration for the promise the award could not be enforced.

At a later period the rule was that if there was a promise to abide that without consideration the award as to collateral acts might be enforced. But now if there be a mere submission that there be no promise to abide the award may be enforced.

The law is the same. Since the submission, if the writing is under seal, it is a written covenant, if the remedy is somewhat better.

While bonds are given, the submission itself may be either written or seal.

Bonds are sometimes given to an arbitrator in his own name. They may also be given by third persons.

Respecting agreements between merchants on entering into bond to submit to arbitration, most often

A testator cannot oblige a legatee to submit to arbitration. No can a third person in any case lay another under such restraint.
Arbiter—

Persons submitting their claims to arbitration, may restrain the power of the arbitrators within such limits as they please, as to award according to law to.

But when the submission is general or unqualified, the arbitrators have the extentions from us before mentioned.

Some time period of time must be fixed within which the award must be made.

Where a party indebted owes money to another, if consent to pay over that money to a third person, the latter can maintain against him for it. 1 B. & C. 204.

An action for money had & received will be in favor of such third person against the debtor of money, has actually been received by him of his creditor 1 P. B. 239. 243.
Awards

The Revocation of a Submission

A submission to arbitration by either is revocable by either party at any time before the award is performed. If the party revoking knows what the award is, the suit at law cannot be withdrawn after judgment is known. If the submission by rule of court can it be revoked?

8 Rep. 50

8 Rep. 50

If the submission is by fraud, the revocation may be by hand.

If the submission is by writing, the revocation must also be by writing.

Shenandoah that in Connecticut a written submission may be revoked by hand.

The party revoking prefers his hands if any one is given, if the whole penalty is forfeited.

In cases of a fraud or submission of a fraud or revocation, that being no bond given nothing could be given recovered according to the old form law.

But in some late cases it has been determined that an action on the case will lie to recover damages for the breach of promise.

Refusal to abide by an award, under a submission made by a rule of court, is a contempt of court & must be held as such.
Awards.

If a contract of any kind is made with an agreement that if any controversy happens respecting it, that it should be referred to arbitration. This is no bar to an enemy's suing at law or Equity 2 Hob 606.

If submission is pleaded in bar to an action, it must be on the original cause of action, before the day fixed for making the award—can this be law? I

Persons capable of submitting to arbitration.

Those persons who cannot contract are incapable of submitting to arbitration.

Infants one bound by an Infant who submitted to arbitration might here avoid the bond. But the bond is now good.

The submission of one Co. was former by good will, but it is now good.

But if the Co. obtained by the award left a deficiency a greater sum than he would have obtained on the former, as left in the latter case at law, he shall be answerable for the deficiency in the one case if for the surplus in the other.

If an Co. to submit to arbitration of the award is that he has a sum certain, he cannot afterwards owe the want of offsets.
In Eng. Stat. enables the assignee of a bankrupt
sued, with the consent of a majority of the creditors present,
at a meeting legally warned, to submit to the arbitra-
ment.

21st Nov. 18.

The submission of one partner in trade does not
bind the other.

If a number of persons agree to submit
for the acts of his agent.

25th.

If in a submission one is bound for
another, the principal must also in other cases answer
for the acts of his agent.

Similarly all actions in which the party was to
wage his law, died with the party himself. But
24th.

A bond is not arbitrable, yet a bond to a
hide by an award to be made respecting a bond,
is forfeited by non-compliance.

If in case of a bond to arbitration, the
submission is by itself, yet an action on the
case lies for non-compliance.

When a right of action arises from daily default
or injury subsequent, coupled with the bond,
the controversy may be settled by arbitrators.
Awards

Who may be Arbitrators

All persons except lunatics, idiots, persons of unsound memory, Infants, & persons attainted of treason or felony may be arbitrators.

May not Infants of Sons be to be arbitrators

Persons interested in the controversy even the party himself may be an arbitrator appointed to make an award, provided the arbitrators cannot agree or neglect to act.

A single arbitrator is called an umpire.

Formerly if the forces given to the arbitrators of the umpire was so adequate as to impart a jurisdiction in both at the same time, the whole proceedings were said whatever the apparent intention of the parties might be.

If the appointment of the umpire was delayed to the arbitrators, if the appointment was quashed a new rumple was to be held before the other authority expired; the consequence

The power of appointing an umpire, they may choose during the period fixed for their award, if the period in which

The umpire is to decide as the same as not to do that the power of arbitrators to first choose an umpire where such power is given, extended till the expiration of
of the time in which the umpire is to make his award.

A person named umpire refuses to act they may ap-

point another.

The arbitrators cannot decide just what is the

controversy submitted to permit the umpire to de-

side the act, unless the parties so direct.

In the case of a submission to three persons an award

by two of them, a majority is not good unless the par-

ties especially agree that the decision of the majority

is good for the law considers them vested with a joint

authority.


but even if the parties empower a majority to

make an award, still if all are not present a majority

cannot act. Unless these who are not present wilfully ab-

cent from themselves.

The award respecting all the matters referred

to arbitrators, must be pronounced at once.

Arbitrators cannot reserve to themselves any auton-

omy to do any future act, or rather to make any future

decision after the award is pronounced. It was formerly

1205 1891p 75 315.

146.

12 215.

3/15.

if the reservation is within the submission the ascen-

dation is not void, but if it is not within the submission

the reservation of authority is said, if the award is

good.

The nature of an act merely ministerial to be
done by the arbitrators themselves, or by others under their directions, or that of another of the three arbitrators, does not vitiate the award, such an order not being considered as a delegation of their authority. The award that one should pay the costs of the action, or amount of having been submitted, does not include the costs of the arbitration.

lyd. 88. If the arbitrators' award that one party pay costs, 101.
20th June, 1859, without specifying what costs, they would be understood from 330 to mean mere legal and equitable costs. 6th June, 1859.

Arbitrators may award costs without any express authority in the submission. 6th June, 1844.

The award must be conformable to the submission. There has been much dispute as to determining what is within if what is without the submission.

It was formerly held that if A. B. should submit all sums or all controversies of action it would not be included in the complaint, where holder to mean personal thing only. 2 Mod. 383. 25th May, 1839.

But whatever may be the words of the submission, if the parties be absent, being before the arbitrator of an act or part submitted to them any controversies respecting them is good.

May 1859.

If a controversy respecting lands be submitted to arbitrators, the arbitrators may award money or any thing else in satisfaction of the claim.

If the claim be an award not immediately affecting the
...and was said.

As in case of personal disputes, it is now settled

[Note 12]

that any collateral things may be awarded in satisfaction. - Formerly nothing but money could be awarded in such cases.

The award that one party shall give a bond to secure the sum awarded has been adjudged yes, thus, the arbitrators were empowered to award satisfaction merely.

[Note 96]

A direction that the parties should set their seal to the award was also held good if parties in trade with all matters in dispute

[Note 98]

to arbitrators, they have of course power to dissolve the partnership.

Their power to dissolve the connection between

Matters of Land and the Same.

[Note 118]

The words all matters in dispute in the above

26th 146 between the parties comprise only the dispute arising out of the matters specified. - Here is no

10th 116 refection in wording the submissions.

It was formerly held that an award, that

10th 107 one party shall pay the expenses of measuring land is good, if being in fact but part of the

Costs.

The award that a bond given subsequent to that of the submission is good, if being virtually the same as an order that any collateral thing
should be paid, as given up.

Formerly an award directing a release of all demands, the time of the award, was adjourned on account of the possibility that some demand might have arisen between the time of submission and the time of the award.

But now such an award is good unless the party wishing to avoid it actually shows that some consideration or demand had in fact arisen in that period.

But if such party should have signed a release in this case, not knowing of some private injury which had really been done to him by the other parties between the submission of award, it would be supposed by pleading the whole matter he might avoid the award.

An award directing anything to be done by or to a stranger was formerly void in all cases. But the rule of

towards established was, that if the act awarded be done to or a stranger appears beneficial to the prevailing party or if the act directed to be done by a stranger is one of which the parties against whom the award operates, can compel a performance, the award is

The case is good.

An award that one party shall make a payment to each person or the other shall appoint is void.
The award directing an act to be done to a third
person in view of the evidence that it is
beneficial. So that to avoid it, it is necessary for
the party who would take advantage of it, to show
that it is of no advantage to him.

The unscrupulous part in this case had no cause
to complain, for it is immaterial to him whether
he performs the act awarded, to the party not to urge
this reason.

As to an award directing an act to be done to third
persons, the rule still remains as stated above.

If an award is to be made where there is no agent per
say, and interested on the respective sides, the arbitrator
may award according to the rule laid down between
how or more of them. - Due to testimony.

According to the old rule of law an attorney submit-
ting to arbitration, for his principal, beyond his prin-
cipal only, then he may bind himself morally, becomes
himself his obligor.

If an award orders a release of all claims by one
she is trustee of the land, for the use of another, this
land is not included in the award unless it was
itself the subject of the controversy.

If the parties submit all controversies to arbitra-
tion with an intent that one controversy only is de-
cided, it is notwithstanding an good award, even tho'
there were other controversies actually submitted, provided
Awards.

No other case was actually brought before the arbitrators.

The award in this case is an order to return in the form of 146, which were not decided. If the fact that only one was heard may be proved by record.

But if in cases of such submission more controversies arise and one were actually brought before the arbitrators of one only decided, the award would be void. And if no more than one cause submitted be heard, there were no more than one cause submitted between the parties. This presumption arises where all controversies are submitted and one only is decided.

But if the arbitrators declare that they will decide on one or more of the disputed only, the award is good.

When certain controversies are specifical.

5 Ref. 95. 6 Ref. 200. 355. A determination, if any of those which were decided in the submission are omitted in the award the award is bad.

When specific controversies are submitted with an ita quo, others were decided & none of those which were specially mentioned are omitted.

The award as to those which were specifically mentioned is good unless there was no offset. Awarded between those which were specifically mentioned in the submission & those which were not.
When reference is made of chance to such

If specific controversies are submitted without

And this it would seem even then, other con-

If controversies between B and C on one part, or

If controversy is best tween before the arbitrators

event and in which B and C only are interested, the
award on this controversy is good; otherwise if there
had been an ita quod.
**Requisites of a good Award.**

I. An award must not be against law, that is, an award directing some unlawful act to be done is ill.

II. An award must be possible to be performed. For the legal method of the word "possible" see contracts both. Yet an award that the promise for a deed or pay a certain sum of money, is good that it may be impossible to perform the deed, for this award is in the alternative.

III. An award must be reasonable, therefore an award that one shall seize the other, is void, for it is unreasonable, as infringing personal liberty.

IV. An award that would endanger the person performing it, no law is void. Upon the strength of this rule an award directing B to pay money to C at 6 house was formerly void, but it is now good. 3 Lev. 153.

V. An award must be certain, the an award is now good, the no time or place is fixed for its performance, the time being in this case a reasonable life time, if the place, that in which the successful party is, 560; 77: 1 Sound 84: 154; 463.

The requisite certainty is now reduced to this rule:
Awards.

If an award is uncertain in itself, it is capable of being made certain by avowment. See 423.(383)

2d. An avowal to pay业主 tastes the uncertainty is capable of being reduced to a certainty. But if the award cannot be made certain by avowment, the award is ill. Ex. an award to pay what 558.(73)

is reasonable. — 2 Thes. 670:92.

VII. An award must be final by this rule; an award must be final to the identical controversy.

VII. An award must be mutual; formerly an award was not good unless something beneficial was awarded to both, at a later period the rigour of this rule was relaxed. It was said that if something was awarded to one party, the particular thing for which the award was made should be formally specified.

The former part of this rule is now wholly discontinued. And, as to the latter, it is presumed that an award made on the submission of any controversy, is intended as a satisfaction of that particular injury out of which the controversy arises. Formerly, when several controversies arose on all 328.(328)

submitted, and an award was made "that all controversies should cease," the award was void.
because there might be other controversies subsisting. Such an award in such a case is now no good. For the award is understood to contemplate no other controversies than those submitted, if no others are affected by it. Notwithstanding the generality of the submission.

A release to the time of the submission is know a good performance of the award. What is a release? A release to the time of the award. And if in obedience to such an award, a release of all such demands to the time of the award shew actually be given, still the release would operate on those controversies only which subsisted at the time of the submission.

In some cases of part of the award is void, the whole is of course void. In others this consequence does not follow.

It is a rule if there is uncertainty in the award, of that part which gives satisfaction to one side, for what is awarded to the other. And according to the law as it formerly stood, if A were awarded $100. to pay costs, if A were awarded $100. to pay costs to B. If in consideration of this part of the award B. was commanded to pay $100. to A. the whole award would be void, because formerly arbitrators could not award the payment of costs, if costs in this case constituted 100.
In some cases also when the award is in favor of one side only, the residuum of a past controversy the whole cause of a part decided the whole cause of a part submitted, if award an aggregate sum in favor of one party the whole is it. One might have been no damages given if they had decided all the controversies which were submitted. Not in this case the particular sum awarded for each injury had been kept distinct from the rest. The award would be good as to the controversy dies actually submitted, I said as to the others.

A governing rule laid down under this head is that, if the justness of the case is or may be affected by the award made on the controversies not submitted, or by that part of the award which is not submitted, said the whole award is bad.

But if the justness of the case cannot be thus affected, the award as to the controversies thus submitted may be good, as to the rest unfair. As if what is awarded to one party is void, if that part of which is awarded against him is good. In this case, the party mentioned can receive the full benefit of what is awarded to him without its being actually performed. The award as against him remains good. Ex. 179 if the award be that...
Awards

To make a release to A. that A in consideration of the release pay B a certain sum, if the award as to a release is void, still the award as to the sum to be paid by A is good.

For the award itself is as good as a security to A as a release.

If one party has actually received what was awarded to him, he is bound to perform his part, even tho' that part of the his award which was in his favor was itself void.

If one is required to an award to give a bond with 2 doc's, a bond in his own name only, is said to be a sufficient security, if he cannot be compelled to demur.

According to an authority in locus jure gentium, if any part however small of an award, in favor of one party is good, the rest, too, is good. The whole award against him is good. This authority is declared to be Law. 12 Mo 5 37.

The decision that if the submission be in writing 2 Mo 24 that the award must be not supported by any authority 2 Mo 25. Award. Colo 9. Ann. 5 6.

If indeed by the submission the award is required to be in writing, the award must be in writing, even for an award must conform to all the minute requisites contained in the submit-
Performance of the award.

If an award be substantially, that is literally, completed with, it is a good performance.
If it be awarded that a release be given by one party to that payment the afterwards made by the other, the money awarded is of course excepted out of the release.

According to the terms of the award there is to be any precedence in the performance.

If a person in whose favour an award is made accepts a satisfaction, different from that awarded, he cannot require any other performance.
Awards.

Formerly, payment at a day was frequent....

According to the law, if the award was not made to an action for non-performance. It had since been allowed to operate as a good law.

Formerly a tender of payment after the day specified by the award was no bar to an action for breach of the award. Such a tender, if made before a right of recovery has attached by the commencement of a suit, is now a bar.

If it be awarded that B. shall pay to A. at that time, the tender in the case of the lease $20 per annum if it fails to pay at the end of the year. Such failure is no breach of the award, for the original dispute is now at an end, if A. does not pay, he is guilty of a breach of covenant on the lease, but not for the breach of the award. The same would be the consequence if a bond was awarded, if being given, were not paid according to the condition.

For the learned reasoning respecting the breach of an award, that is just pending, if a submission during the term, I should refer vide Hyde. 188.

Hyde 188. 183.
The remedies to compel performance of an award.

As to remedy in a sealed agreement, Vide ante.

If a suit be commenced for non-performance, the plaintiff must state in his declaration the submission to the arbitrators, the award, the breach of it, the mode necessary by the submission on the award, or request on his part.

When any thing is awarded to one of the parties, an action for non-performance cannot be sustained, unless an actual demand be stated if proved.

If the breach stated is on a bad part of the award the declaration may be demurred to.

If breaches are assigned in more parts than one of which some are good and others void, if upon issue joined upon all, the jury find all for the part of give entire damages, the verdict is ill. Judgment may be arrested. In the present case is that part of the damages was for breaches of void parts of the award. But if the damages for the respective parts of the several breaches were several to distinct, the verdict cannot be arrested only as to the void parts of the award. The verdict as to the breaches of the good part of the award would stand if be ill as to the rest.
As to the remedy for non-performance when the submission is by hands of the surety.

Surely if refused it is laid in the ease of such a hand, discharges the obligor’s whole duty.

Understanding the rule before laid down, there is an action cited by Strange, in which the action was sustained on the award, and the submission was by hands.

If when an action is laid on the submission by hands,

the Deft. after age pleaded no award; the Off. can not in other cases reply that there was an award.

If it is not to be submitted to the jury, but the Off. must in this case set forth on his replication the whole award.

So that if the defendant relies on the illegality of the award, the Off. must set forth on his replication an observance of the rule of every thing required of him by the terms of the submission.

So this the deft. if he relies on the illegality of the award must demurr; for the illegality is apparent on the face of the award.

If the award is void in part or good in part of the contract, the Off. must over performance on his own part.
In most cases when an award is set aside by
replevin or breach of contract, the assignation of the breach
in the alternative of which one part is good and the other part is
by the award as against the Deft. is in the alternative of
which one part is good and the other part is ill, the Deft.
must assign the breach that neither part has
been performed.

It is said in the Commonplace Books
that in a suit on an atonement bond, only one breach can
be assigned in the replication. After all actions are
nulled. The same rule is applied in all cases of a suit on a
bond given ad a security for a performance of any thing.
But it must be taken advantage of by special decree.

As a simple breach+offsets a forfeiture of the bond,
the assignation of one appears in general to be sufficient.
But there can be no substantial reason why the Deft. may not
assign more than one. Indeed from some repose and
relaxation in the law there is reason to doubt whether the rigor of this
rule is now enforced.

This rule is now relaxed in some cases by Stat. 849 1/2 3.
As the Deft. after having sued on the bond, pleads imperfect
same or any collateral matter the court, if it is of opinion
admits that this strict legality of the award, it is the
fore altogether unnecessary in this case for the Cpl. to
set forth the award.

If the Cpl. denies the existence of a legal award,
he cannot afterwards plead performance or any collat-
eral act or matter in bar, for to plead that would be
a departure.

If the Cpl. after issue states the amount of debt
put forth by averment that there was no other award, this
is considered as a truce of the validity of the award.
If the award be back in front of good in point, the Cpl.

Hearing stated it as it is, may plead performance of
the good without notice the ill part.

Sender that denial of the thing awarded are as good a
loss as the thing awarded had it been executed, but
in pleading the Cpl. must aver that he is still rea-
dy to perform.

If the Cpl. after issue sets out the award for
creditor of pleads performance, the Cpl. may reply oppos-
ting out the whole award, if pleading that he ought
not to be spoiled "without that", there was no other
award than that stated by the Cpl.

If the time for making the award is by agreement
enlarged after the bonds are given, neither party is in-
able to a perjury for non-compliance with the award.
If made after the time originally limited in the bond,
Chancery will enforce the performance of an award
for a collateral thing, when the submission was vague.
of that Court, or in case of an award for money, if the
award was made under a rule of that Court or any
other Court, an attachment will issue for non-per-
formance. In other cases the parties are left to
their remedy at Law.

If by an agreement subsequent to the
award, a party engaged to perform what the award re-
quired of him, Chancery will issue a specific perform-
able in the ground not of the award, but on the ground of
the agreement. Chancery will in this case as in all
other cases to compel a party to discharge a fact
which would subject him to a penalty.

Why a Court of Equity should make this distinction
between a penalty of damages or a case not arising to
determine
The manner of setting aside awards

In Eng. a court of law never set aside an award

20th. 155. on account of any extrinsic circumstances, as corruption,
16th. 155. partiality for the reference was by rule of court of prob.

Will anim. of law vacate an awards for extrinsic

16th. 155. extrinsic causes, unless the submission was by rule of 16th. 155.
20th. 155. Therefore a reference was not by rule of court, the
16th. 155. award founded on the reference cannot be set aside.
20th. 155. for any thing, extrinsic except in chancery. 20th. 155.

A mistake in law or in fact not appearing upon

20th. 155. the face of the award is not of itself sufficient to induce
20th. 155. at court of chanc. to annul an award, if that court will
20th. 155. not go into an enquiring an on an averment of such

20th. 155. mistake. But if the mistake appear on the face of

20th. 155. the award itself, chancery will vacate it, unless the

20th. 155. mistake lie on a doubtful point of law.

Corruption or partiality in the arbitrators is always

20th. 155. a ground for chanc. to interfere if set aside awarded.

20th. 155. of any thing afterwards which renders a ration.

20th. 155. all suspicion of partiality apparent, chanc. will vacate

20th. 155. an award. So for indolence of the arbitrators

20th. 155. is always a ground for chanc. to interfere if set aside awarded.

20th. 155. to a law when the submission is by rule of court.
If any important fact is concealed from the arbitrators by either of the parties, or the arbitrators or one of them will swear that a knowledge of that fact concealed would have altered his or their opinion, then will vacate the award on the presumption of fraud. But if the arbitrators in the case should swear that the knowledge of the fact would have had no effect upon the award, then will not vacate it. When an award is made under a rule of Court, if the arbitrators were ignorant of some important fact which could not be brought forward, the Court will, on motion, recommit the award of the arbitrators for reconsideration.
In what cases the plaintiff may sue on the original cause of action.

When a new duty is created by the award, no resort can be had to the original cause of action till after the time fixed for performance. But if one party, by neglecting what was enjoined upon him, treated the award as a nullity, the other might do the same of the upon the original cause of action. Hence if bonds are given.

Formerly when a collateral thing was awarded, as no new duty was created, it might become necessary if the award was not complied with, to resort to the original cause of action, not if there was an obligation created, for there was a right of recovery on the obligation. But as the law in this respect is altered, it is probable in this as in all other cases, when a new duty is created by the award, no suit can ever be brought on the original cause of action, but each party must in case of non-compliance sue as prescribed before. Hence if obligations are not given, like ante.

Formerly when no new duty was created by the award, but the old one was extinguished, the award itself could not be pleaded in lieu of an action grounded on the original cause of complaint. Yet the thing awarded might be thus pleaded, as a release. If a new duty was created the award itself might be pleaded in bar there. If no obligation was given, unlike ante.
AWARDS.

It is said that if one of the persons should pay dam-
age for the trespass, by an award of arbitrators, the
award may be pleaded in lieu of an action against
the other party, after the award has been performed.
But the efficacy of such an award, as a plea in
this case, opposes to defend wholly upon the circum-
stance of the satisfaction received, if not at all
when the operation of the award itself, for before
satisfaction to the party injured was received or
accepted, such an award cannot be pleaded in
the case.

There is an old adjudication that after a
submission before an award made, neither party
can recover on the original cause of action with an
express revival of the bringing of a suit not be-
ing considered as being a revocation thereof.

IV.

TENDER.

Tender is an offer to pay a debt or perform a duty.
Tender is a good plea in lieu of all actions in which the
damages or demand are certain, or capable of being af-
certained by an determinate rule, as in debts. So in
an action of Tender, after the market price may
be ascertained. In trespass also, if the damages are
certain as being hinted by law, or ascertained by the
parties, tender may be pleaded. But in all
actions, where from their nature damages are un
 Certain tender is a bad plea.

In Replevin the court granted, per may be paid
into court, if being certain. 3 Kent 687. Beverst ed. 204.

Plea that the Debt was ready to dismiss the
his contract not good. 5 Com 89. 2 Will 74. 1 Bl. 465.

If Debt pay money into court if the Debt not forth-
dring, proceed so that if a verdict is given against
him, he is not entitled to costs, even to the time of pay-
ment into court. But if the Debt does not proceed,

Payment of money of money into court is an ad
1 Com 465. misprision, that the Debt had a right of money to the a-
amount of the money owed him, but as to any further
sum he is not likely to contest,

It is unquestionably true that if a Note is given for
any thing but money, a tender discharged the note if
en迫使 is incapable of being recovered. If that the
property tendered is absolutely the property of the
bodice. Note, in this case is the tenderor under any
obligation to keep the thing tendered, as Bailee for
the tenderor.

But when the note is given for money, it is
2511n. 27. contended by some that the tender does not discharge
it, for the, the rule is sufficiently affirmatic to en-
able the holder to recover his money by debt, if also
comparable of being specie, as it originally was by
a subsequent refusal on the part of the tenderer to deliver the money on demand.

Whereas if the note was extinguished, it would have no efficacy, even if it could be revived by matters of just contract.

But the tenderer stipulates that the note for money is in fact discharged, if the property in the money vested in the creditor by the tender.

But the tenderer is by law constituted a Bailee to keep the money, if he is not permitted to avail himself of his plea of tender; unless he will deliver the money into court.

It is also intimated to Mr. Reeves opinion that the suit must always be laid on the note. Whereas if the property vested by the tender in the creditor, some other action would seem more proper.

So this it is answered that the reason for laying the action on the note is, that the law will not suffer the creditor to recover his money without bringing such a suit as will lodge the note with the court. lest at a future time, it might be lost.

In cases where other articles than money are tendered if refused, the tenderer may if the articles are afterwards refused kept by the tenderer if not delivered on demand sue for them in livery, instead of bringing this action on the note. The reason of this differences in the two
eas appears to be this, the tender of money is obliged to keep it till it is demanded by the tenderee. And as the tender is thus made liable to be called on, he ought to be answerable in the manner which is most for his benefit.

But as the tenderer of any collateral thing, as a bailee, is under no obligation to keep the articles tendered, the law does not deem him such indebtedness, for he is not liable to be called upon at all except for his own fault in keeping as bailee articles which he is not required to keep. If he will make himself liable, the tenderer is not obliged to sue on his note. With regard to the principal question whether the note is discharged by the tender of the money, there are no English adjudications directly in point. There are however two cases in one of which it was determined that the note drew no interest after the tender; in the other that a loss or depreciation in the value of the money should be borne by the tenderer.

To consider the note as renewing by default of payment on demand, this not altogether agreeable to technical nictity, is not absurd or unnatural, as a statute repealing a statute receives the first.

With respect however to the principal question, the most rational opinion seems to be that the
note does not revive on a subsequent demand or the tenderee if refused by the tenderor. But as in
this case he negates his duty by assailing, he should
not be allowed to avail himself of the discharge
created by the tender unless he continues to do what
the law requires of him. He shall not avail him-
sely of the advantage which the law had put in
his hands.

In some few cases the tender is a good
Barrett plea where the damages sought are uncertain as
281.
7 Simeon 59. in the cases of an involuntary trespass, tender of suf-
ficient amends before action but is a discharge.

What are sufficient amends must be de-

tained by a jury. It is supplied in those few
cases in which tender is a good plea in trespass. It
is by Stat. 16 Geo. 3. c. 577.

Str. 822: 2 Simeon 57: 1 Hil. 123.

After a right of action had accrued, tender

is not at common law as less to an action? By Stat. 16 Geo.

In cases any debt having leave of court may

bring debt of the court to the time of his
application into court, if it shall operate as a

It is a rule not to permit debts to pay money

into court, unless the justice of the case requires it.

By an old rule of law money due on a personal
duty, which is defined to be such a duty as the person
any money usually paying is a good tender.

Tender of money in a bag is a good tender.

5b. 115. for it is the tenderer himself who cannot the money, tender of a large amount in copper is not good, either in Eng. or this country, it being unreasonable.

It is said by the old authorities that if an insufficient sum be tendered if accepted, that the tenderer can have no remedy for the remainder. This rule is directly opposed to the equitable one adopted in the action of stede aff't.

5b. 116. tenderer according to an old Eng. authority must be near the coin.

6b. 396. Bear's notes have been considered in Shan.

5b. 554. as a good tender, if it is probable that they would now be considered so in law. They have been considered as a good tender in law if the tenderer made no objection because they were not cash.

If no place is fixed for the payment of rent tender on the land is good.

The two rules already mentioned as to the place of tender apply to money only.

6b. 211. But by articles if no place is fixed for delivery, must in general be tendered to the creditor at his dwelling house. In this case is meant the residence of the creditor at the time of entering into the obligation.
Yet in some cases when the creditor has changed his residence, the tender must be made at his new abode. The rule of discrimination is this: If it is more convenient for the debtor to deliver the articles due at the new than at the old residence of the creditor, he may tender them at the latter; otherwise he must deliver them at the new dwelling of the creditor.

The obligee may direct the delivery to be made at any place provided it is not more inconvenient to deliver the articles there than at the dwelling of the creditor. In some cases the obligee must be of the trouble of transporting the articles which he claims as where the goods were purchased of a merchant at his store. For a transaction of this kind usage directs the delivery.

The obligee must also call on the Est or Asst as also on public officers for payment.

If money tendered has been accepted, the acceptor has no remedy at the same; some of it be counterfeit, or deficient in value or at the time be not so much as it was tendered for, because it was his duty to have examined it, told it, before he accepted thereof.
Tender at a time and place fixed.

3rd 
7/12, 
6/12, 
5/27.

If the time fixed be or on before a particular day, the last day mentioned is the legal time for making a tender. So if the time appointed be on the tenth day of, or within a month, the last day of the month following the 10th, is the legal time.

Yet in both of these cases, if the parties meet on a day before the last, the money may be tendered.

The time of day fixed by law for a tender, is the "most convenient time," which is understood to mean such a time as that the money may be counted on before sun set. Yet if the parties meet at any time of the day fixed, the money may be tendered then.

There is not the last moment early enough for a tender.

If the place is fixed but not the time, the debtor must give notice to the creditor of the time when he could make payment, if the time is reasonable.

If neither time nor place is fixed, but money is payable on demand, is notice necessary? If bonds, notes, or negotiable assignments, it had been questioned to whom the payment
Should be made after assignment.

It is an established rule, that the obligor.
must suffer no inconvenience from the assign.
ment of also that the money shall not be.
paid to the assignee if the assignor is a bankrupt, it.
is incumbent therefore upon the assignee to
render
the payment of the money to himself as conve.
ient for the obligor, as it would be to pay it to

Monr. 137. the assignor; the obligor will then be obliged to
make payment or tender to the assignee

If A. promise B. to pay money to C. to the use
of C. the money may be tendered to C. But it is
said if A. promise B. to pay money to C. a
tender can be made to B. only and not to C.

If after tender it refusal the tenderer shall
call for his money, he must demand it in a re.
sponsible manner, the law not obliging the ten.
derer to subject himself to any great inconvenience.
The consequences of tender and refusal.

In case of a gratuitous mortgage, tender of refusal discharges the obligation as well as the right of action: for the obligation is discharged by tender, if there be no preexisting duty or consideration, the mortgagee has no grounds on which to recover.

In cases of other mortgages, Pawns, De the tie of the mortgagee is perfected by tender of refusal, tho' the old duty in his favor still remained.

If a single bill is given with defeasance separate,
6th. 20.
1st Nov. 2d. discharge not only the principal part, but the whole duty.

The reason of the difference between a single of a joint bond, as to the effect of tender or refusal is not easy to determine.

As in this case of a bond given where there was no preexisting duty as in a submission to arbitrators by bond; tender of refusal is a complete discharge of the whole.

In some cases a person by making a tender acquires a right— as if A. agrees with B. that if B. pays $10 on such a day A. will grant him such a farm. In this case A. by tendering the $10. acquires the same
right to the lease as if he had made actual
payment of the money.
Also where a man promises a collateral
thing to make a tender of his service according
to contract. In court he would recover actual
damages in this case; the tenderer acquires the
same right that he would acquire by perform-
ance.

Indeed it is a general rule that in all cases
in which a right is acquired by tender, that the
right thus acquired is as extensive as it would
have been in case of an actual performance.

Thus, if A. contract with B. to build him a house
for £100. at the time appointed tenders
him his service if B. refuses to employ him
A is entitled to the full stipulated...This
rule of law if admitted in its full extent will
operate very inequitably.

The manner of pleading a tender.

In pleading a tender it is not sufficient for the
2d. 17. 350
35 2.
Doug. 689.

Nov. 687.
Tender at the time fixed. The reason of this particular
is that the question of law respecting the legality of the
tender ought to be referred to the court.

To be more precise, to state the refusal of the creditor
was present at the time of the tender: if he was not
present at the time of the tender, his absence must
be stated to that effect. T. tenders de. Nott. 59.

But omission to make refusal is excused by notice
of payment is to be made on or before Saturday,
it is not sufficient to plead tender before
such a day, but the day of tender must be speci-
ified. 9 Bo. 79.

The debtor must also plead in case
of money due, that he had always been ready and still
is ready to pay the sum of money tendered to the court.

When the debtor after tender refused payment
May 257, it would on principle be sufficient for the Court to
592 the idea of tender, to reply that he ought not to
be heard, without that the debtor had always been
ready to, but the uniform practice had been to
reply at length the subsequent demand refusal.

If the Court traverses tender, if the issue is found
against him he cannot take the money tendered
out of court, tho' Mr. Justice supposed that he does
not finally lose his demand, but that he may after-
wards recover it in an action. Yet by suffering a non-
...ut the Deft. might have taken his money tendered out of Court.

If a tender is made of collateral things the Deft. must plead the time of place but need not aver that he has always been ready.

Gende is always a good plea to an Ass that quantum valebat.

It is also a good plea to trespass when lost for the recovery of money. It has been a custom in 6 Ch. of permitting the Deft. an motion to bring into Court collateral articles wrongfully detained.

The practice obtains in cases in which it is apparent that the restitution of the specific articles is the object of the suit rather than damages; as where an involuntary trespass had been committed.

Paying money into Court is an admission of the execution of the writing on which the action as to the mode of proceeding after money paid into Court. Order 30m.
V. Payment.

Payment of a collateral thing must be pleaded
on 412.

The holder of a bill of exchange
is entitled to security from a give time to a party on the bill, it is
no discharge to make a party liable subsequent to him in order,
but not to one liable prior to him in front of time.

By supreme court in the State of N.Y. if a
counterfeit bill is received in payment of cattle
the vendor may maintain an action of trover for
the cattle on the ground of the notes running back
to be of no value. 2 Johnson's Rep. 114. 114. 114.

VI. Bonds given for the same demand.

For authorities to this title see 129, 129, 169.

129. 164, 313 a 134. 2 Term 479. 44, 44, 1011, 219.
VII. Release.

A release to one of several joint or several ob. digers is a release to all. See above page.

Otherwise, if a covenant not to sue one. This is no release even to him. Suppose a covenant not to sue one of two joint obligors.

The term "all demands" in a release comprises debts in present or in future, but does not extend to demands growing out of the covenant not broken or to amounts payable as rent.

Bonds. $60.70.

Courts will however often confine the meaning and operation of such general expressions to

5. In the subject matter. 1 Rawl. 322, 329, 332, 334.


"If a enters into an obligation to b, if b after

10. 6. breaches the covenants not to sue a, without any time

11. Wall, 125, 127, 129, 132. It amounts to a release, if may be plea.

12. dented as such. But if the covenant be limited to a certain time, this is a covenant, for the vi-

13. lation of which covenant is the proper remedy. But

14. cannot be pleaded in bar." The words of Baron

15. Black. The obligation of a bond, either notice of its being assigned to the release
A debt arising after an act of insolvency, on a contract made before is not so disposed of. The discharge of a bankrupt partner under the Stat. 4, 5 1/2 of 1802 does not discharge the solvent partners. Bankruptcy is no bar to an action of covenant. Acts of insolvency operate on contracts only, not on debts.

The insolvent act in other States has been construed by the courts in Connecticut, as a good bar to an action in this State. Suppose the creditor lived here? In the State of New York it has been decided otherwise. A judgment in one state is indeed a good bar to a recovery in an action in another state for the same cause of action. But this is expressly provided for by the constitution.

A person whose estate has been confiscated is still liable on his antecedent contracts. So that the confiscation is not a good plea to actions of this kind. So if the estate confiscated was applied as appropriated for the payment of his debts, it was sufficient, which may be had in equity.

Bankruptcy is no plea to an action of covenant for rent accrued before. It is a good plea under Stat. 2 of & Geo. 2. 1736. 7 Oct. 813.
IX. Covenants Broken.

The words Covenants, Contracts, agreements, are often used as synonymous. 1 Sam. 5:26, 2 Pet. 2:2.

The word Covenant in its more limited sense means a covenant written and sealed. Ezek. 22:26.

A covenant may be created by indorsement or deed.

If this agreement is by indorsement, it is sufficient to maintain an action against the covenantor, if the indorsement he has indorsed or delivered it to the covenantee, tho' the covenantor never sealed it himself. 11 M. 579.

Indorsement will be as well as a deed, ball, or indenture.

The usual remedy to enforce a covenant is by bringing an action at law for damages, the debt will be 1 Sam. 429, for a breach of covenant in a deed.

But when the covenantor is to do something in special.

1 Sam. 5:27. As to convey the ex parte deed to the mortgagor.

156. The common remedy is by bill in Chancery to obtain a specific performance.

In cases where there is an ad

1 Sam. 5:27. equitable remedy at law, the party seeking relief

2 Pet. 3:24. will not be permitted to go into Chancery; that is, 1 Pet. 5:7. It is a good objection to a Bill in Chancery that there

1 Pet. 5:26. is no adequate remedy at law. Therefore the matter of the bill is, no right to damages on the covenant; merely only, it will not be sustained for
Covenants Broken.

But even in these cases, that is, where
2 Covenants are not susceptible by the conscience
of a deponent,

1. Equally the remedy is in damages only, if the relief pray-
ed for is merely consequential or collateral to
2 a ground of relief proper cognizable in chancery.

Banc 66.
526. The bill will be retained as where a matter of

1 fraud is mixed with the damages. Thus if A
1 Covenants on a covenant at law, B files a bill

for an injunction, on the ground of fraud, B

files a novel bill for relief on the covenant, the

Court will retain it because the validity of the

covenant is disputed in that Court. If on a head

properly conversable there, if therefore the valid-
ity of the deed be established, the Court will

direct an issue for the quantum of the damages.

All covenantants are divided into two kinds, cer-

266. enants by deed, if covenants in law. The former

67 Co. 80.
6 C. 334. are expressly mentioned or recited in the agreement

between the parties. The latter are raised as

implied by law. Thus if a demises to B for a
certain time, the law raises a covenant that
the lessee shall enjoy quietly during that time.

This division of covenants arises from the form

nature of form of the stipulation.

Again: covenants are divided into real or fiction.

Covenants real are those by which one binds.
Covenants broken.

Covenants broken.

1. A personal covenant is such as is annexed to the person, if it is merely personal, as to do an act of service to pay money build a house. This division is derived from the reference to the object of the contract.

To set form of words is necessary to make a covenant. Any form of words showing the commence of the parties in an agreement are sufficient. Thus:

- Words reserving such a rent, or by paying such a rent, are exist to the lease. Covenant for non-payment lies against him. It is a constructive covenant by the lessor as he execute the lease.

- A covenant may be as to something past, the lessor. The covenant is as to something past when one covenants that he has done a thing. If he has not, covenant lies against him. As to something present the case of a covenant of seisin. If to something.

- Covenant in common executors' agreements, covenants of warranty.

Covenants in law differ from covenants in deeds, in that covenants in deed are founded on the words used as amounting to a covenant express. Where the words are not the most direct, soft of explicit, thus: "yielding of paying" reserving rent, as well as...
the words "covenant, agreement, etc. are verbal covenants, the covenant being expressed. Covenants in law are implied, not from the phraseology but from the nature of the contract or agreement which is expressed, or from the express covenants. Thus the words "demise, grant, etc. import a covenant in law that the grantor has a good title, if the lease is vacated, covenant runs against the lessor.

It seems also that covenant will lie before eviction for the covenant in the lease to be a covenant in the lease of seignior, which is violated, from the mere fact that the lessor granted what he had no power to grant.

But covenants in law are restrained by covenants express as a lease by the words "demise, grant, etc., which amounts to a covenant that the lessor has a good title, if the lease be held by the grantee, shall quietly enjoy, followed by an express covenant against eviction by the lessor or any claiming under him, since the covenant is not broken by the stranger's existing.

In one case it is laid down as the rule that if lease to another by the words "I have granted, if to party let, covenant will not lie on eviction by a stranger, but this must mean a trespass, entry, otherwise it cannot be reconciled.
Covenants Broken.

A recital in a deed of a former agreement creates a covenant on which that action will
lie—as where it was recited that whereas it
Exe. 268. was agreed or had been agreed that he shall pay
30 Jan. 465 £1000 for the deed confirmed the said agreement
16 Feb. 22. of intent by reason of making an express covenant
But in covenants in deed if the word coven-
ant is not used, there must be words which
imply an agreement on the action will not lie.
Thus, if the lessor for years covenants to repair
Exe. 267. provided if it is agreed that the lessor furnish
2 Jan. 560 timber. This is not only a qualification of the les-
ses's covenant, but a substantial covenant.
But without the words it is agreed, it would be
made a condition precedent to the lessee's per-
formance.

If however a lease to B for 60 years, with
the promise if B dies within 20 years his son shall
10 Dec. 155. have the premises for so many years as remain,
Moor 478. this promise is a covenant, if not a lease, it is not
16 Jan. 578. in the nature of a grant or demise but of an agree-
ment executory. Besides it is void for a lease that
uncertainly as to the beginning of length of continu-
ance.

If a lessee executes a bond conditioned for the
5 Jan. 530. performance of covenants be in the said deed; this
Covenants Broke
extends as well to covenants in law, as ex-
press covenants.
A lease "provided of an condi-
tion" that the lease does some suit is not a cov-
1Rom.5:6.
10Wthfinament, but a condition to defeat the estate;
or 575.
do where a stipulation in a deed is in the ma-
ture of a defeasance, covenant does not lie
at law.
The construction of covenants.

It is a general rule that covenants are to be constructed literally. That is, that the meaning of the words is to be sought, without such strict adherence to positive rules as in cases of deed or grant executory conveying a present interest.

Therefore in many instances a literal performance will not be sufficient. — Bar 539.

Thus: if A. covenants to deliver a Bond to B. on such a day, if before the day dies B. on the bond of movens, if then delivered on the day, he is liable on the covenant.

On the other hand a subsequent performance, once this, not a literal one, will excuse the covenantor. Thus: if one covenants that his son being under the age of consent shall marry the covenantor's daughter, before he obtains that age, if he does marry her if afterwards dissents, there is no breach; there is strictly no marriage. But this is not a literal performance.

If the lessor covenants to leave all the
9 Mar. 464 timber on the land if cuts it down if there legally it
11 Mar. 276 it is a breach of the covenant.

If A. covenants to deliver a certain piece of cloth
4 Mar. 444 to B. if cuts it into rags if then delivers it at the time
18 Apr. 291 5 42.
Covenants Broken

This is breach – so where the Deft. was a Breach

I comment that the Deft. should have his gran

I consider that the Deft. should have his gran

In case of a covenant to pay $30. money

And it not being mentioned, it had been generally held

that a delivery of $30 upon deposit of a collateral

article is no performance

1 Ec. 102

When the words of a covenant are uncertain

they are to be taken most strongly against the

Covenanter, it must be prejudicial in favor of the co-

venantee; for they are the words of the covenantor,

of he is presumed to have made them most favorable

to himself. Thus, where the Deft. covenant that if

the Deft. will marry his daughter, he will pay the

Deft. $20 per annum. It was held, therefore for

the Deft.’s life

There are certain cases

1 Je 61. 66.

iii a lease amounted to a covenant by the lessee of

Rom. 431.

others in which it does not. Thus,

Gal. 1. 23.

this rule rests on that where persons are agreed upon

1 Thes. 46.

a thing if words are used to make the agreement, that

1 Pet. 2. 38.

they are not apt to usual words yet if they show the

intention as to the agreement, the law will give them

effect by construction, for the law always regards

the intention of the parties

Mark 16. 57.

A distinction is to be observed between express

1648.

specified covenants and the construction.
Covenants Broken.

The former are to be construed more liberally than the latter. Thus, if one expects a covenant to perform a voyage in a given time, he is guilty of a breach unless he performs that the performance is rendered impossible by causes beyond control.

It is a question whether if a lessee covenants absolutely to pay for a certain number of years the thing demised destroyed, so that the lessee does not have the use of it, a court of equity can give relief, as one chancellor has decided that the lessee should be discharged. But Fortbland, 22 Y.R. 33, contests this decision.

But when the covenant is fulfilled such accident will excuse the covenantor, as in case of waste of the house he destroyed by tempest or enemies the lease is thereby excused.

It is a general rule that the performance of express covenants is not discharged by any collateral matter. For there must be an absolute performance. By this rule there are exceptions.

If a man covenants to do a thing which is lawful, if a subsequent statute makes it unlawful.

If one covenants not to do a thing which is unlawful, if a statute compels him to do it, the covenant is repealed. So I suppose if the covenant was unlawful at the time of covenanted.
Covenants Broken.

Unlawful at the time, a statute making it lawful does not annul the covenant. Thus a covenant by the lessee to pay all taxes extends only to such as were in being at the execution of the covenant, if not to those of another kind imposed afterwards. It is a general rule that covenants are confined in their obligations respecting any particular subject matter, to that which is in being at the time of the making the covenant.

A covenant contrary to law or good policy is void. This rule is applicable to all covenants. 1 Deo 164; 176; 3 Hen 253.

A covenant is implied in the assignment of every lease or action. 1 Term 621.

At common law, choses in action are not negociable, yet they are often assigned; if such assignment is an implied covenant by the assigner that the assignee shall have the benefit of them. 20 Th 608.

If the assignee receive the money due an assignee of the same, he is liable on the covenant. 1 Mod 111; 2 May 6. 83; 1242.

An assignment of a lease in action need not be by deed; it of course may be by simple contract or by word, since there is no difference in point of solemnity between an assignment by simple contract or by word.

A covenant not to sue a debtor for a certain time set us heir to an action. But the covenantor by doing within the time made himself liable on the covenant. The reason of this rule is, that if the covenant

...
Covenants Broken.

The covenant is construed to be a temporary release. It would be a perpetual bar for a personal action once suspended is forever gone.

But a covenant not to sue at all is a bar. This rule is adopted to prevent a multiplicity of suits to produce the same effect, for if a bond should renew he would be compelled to pay the whole back.

But a covenant not to sue one of two joint obligors, is no bar to suing the other.

But if the obligor is only joint, a covenant not to sue one of two joint obligors, I suppose a bar as to the other, for it would seem the covenantor had bound himself against all the remedy which he might have upon the obligation. Here.

If one grant to his debtor that he shall not be sued before such a day, if that if he is he may plead the grant as an acquittance of that the obligation shall be said if that the debt shall be forgiven, this is a release for the grant is in the nature of a dependence on the part of the grantor.
Covenants Broken...
Covenants used in conveyances.

In all deeds of conveyances except quit claim
there are two covenants 1st. Covenant of Dei.
quit and 2d. a covenant of Warranty. These
covenants are generally expressed but some-
times implied.

The difference of a covenant of Dei.
quit of a covenant of warranty is this, the former
is a covenant that the grantor has a title. The lat-
ter is a covenant to defend the grantee against all
claims. This division leads to a difference in the en-
edy between the two covenants.

On a covenant of Dei quit the grantee may
not use before eviction if it is sufficient that the
grantor was not seiged.

In actions on covenants of Dei quit it is suffi-
cient to aver that the Def. was not seiged to
without stating who was seiged. It is then in-
rembunt on the Def. to show that he was seig-
ged or which party the Def. to show higher tit-
tle in another.

But on the covenant of warranty it
is sufficient to show that the grantee has not
been seiged. This rule is the last ought
to be transfused.
Covenants Broken.

On covenants of warranty, the lessor cannot sue till eviction. He must also state the reason that it was under claim of title or by lawful act; also it must appear that a lawful right of title in the evictor is not sufficient for it might have been derived from the lessor himself.

But if it appear that the evictor was under other title, from the declaration it need not have been formerly stated to have been so.

It is not necessary to state under what title the eviction was.

It is however laid down in some authorities that the lessor must state what title, but this is not law. If the words "what title" mean anything else than "good of clear title," the words in these cases were "legal of good title." The reason why eviction must be stated to have been under title is that the lessor can not warrant if eviction extends not to the tortious acts of others who are liable themselves.

Stating that the eviction was not by evictor sufficient, for it might have been brought a suit by the collection of the grantee of evictor of this the default of the grantee if not through
But one may expressly covenant against tortious acts of third persons, and
Chap. 373. the averments under "good & lawful title are
not sufficient necessary.

Chap. 374.
Sec. 37. particular person extends to tortious erection by
Chap. 32. that person.

If the covenantor himself disturbs
the grantee even by a tortious act under claim of title, that is, by such an act as appears to
be an election of right he is liable on the cov-
enant, of the uplift need not state that the
deff. had no title or even that he claimed
any, if the act appears from the declaration to
be an election of right.

The same rule holds
where the tortious erection is by any person included
in the covenant as heirs Ex. 25. So even tho' the heir
is not named. 2 Comm. 564. Ex. 2 57

A covenant by Ex. 3 as such for quiet enjoyment
against any person whatever, is attained it is said
1824 34. to themselves & persons claiming under them, that is
Sec. 169. the break must happen by some act of the Cof.

The rule of damages in covenants of seisin & warranty is different. On a covenant of seisin the
Covenants Broken.

Off. meets the consideration of interest.

On a covenant of warranty he meets the consideration of all his damages in being existed.

On a covenant of design, the essence of the grant.

Exp. 295. He cannot maintain an action against the first year.

39. 395. To, for the covenant was broken at the moment of execution. Therefore the right accrued before assignation. If a right of action cannot be assignated.

If jurisdiction is brought against the grantees.

105. He ought to notify his grantor that he might appear, hear, and defend. Thus, when the interest is free.

116. Hold it is called warranting in the grantor.

The usual mode of giving notice is by writing.

But according to the long authorities writing is not necessary.

Just claim deeds contain neither of

the above covenants, yet in some cases the grant
claimant is answerable for defect of title in
indebtedness, for the consideration.

The rule is that if the conveyance was a bona
fide contract of hazard, the consideration is
not recoverable. If not a bargain of hazard it
is recoverable. The deed itself, if sufficient, is
conclusive that the contract was a bargain of hazard.

39. 395. If one covenant against two joint covenants
the Off. had judgment by default, against one
Covenants Broken.

It is afterwards traced as to the other by plea.


This rule does not hold in actions on torts against two, unless a justification is pleaded by one, which shows that the party had no right of action against either.

This is the usual action for a breach of covenant, but in some cases a bill is preferred to a suit at law, requiring a specific performance of the covenant, if the keeper will be denied.

The action of debt may be had for a breach of covenant, when the covenant is for the payment of a certain sum to

The rule that debt on covenant lies only when the sum is certain, connected with others, had led to analogous distinctions in the books relative to the actions which will lie on covenants to pay sums of money by different instalments.

The following distinctions appear from a con
Covenants Enforced.

Section of the decisions to the just.

On a covenant to pay an aggregate sum by instalments, the actions of covenant and debt fall. If the same actions lie for damages when the first instalments become due, but debt on the covenant to lie not till the last is due. This distinction is clearly supported by authorities.

The ground of this distinction is the difference.

The actions covenant & debt of debt, the two.

The action of covenant is to recover damages for every partial breach of the covenant. But the action of debt lies to recover a sum in number. The latter action therefore being upon the whole covenant or contract will not lie until there is a failure of all the stipulations.

For a covenant to pay several sums, not aggregate, action lies on failure of the first pay-ment.

In this case, the actions of covenant & debt of debt is said debt will lie.

In a lease reserving rent in an aggregate sum to be paid quarterly, the actions of debt & covenant will lie, when the first quarter's rent become due. For rent is an owing interest, and in judgment of law no debt exists on a covenant until the time of payment. Therefore
Covenants Broken.

Rent for the first quarter only, is due till the expiration of the second; of course it is an entire debt, it may be recovered in an action of debt.

A distinction is to be taken between a covenant to pay an aggregate sum by different instalments, and a special bond conditioned to do the same.

An action of debt lies not on a simple bill unvarying to pay an aggregate sum by different instalments till the last instalment is due, for a simple bill in an entire contract it cannot be sued and, if as debt is the only action which will lie on a single bill, the rule will hold that no action will hold till all the instalments are due.

In the case last cited, 292, and in speaking of bonds, evidently means single bills.

In an action on covenants any number of breaches may be assigned, but in an action on the bond only one may be set forth, for one breach is a perpetuity.
Covenants Broken.

of the whole of said law.

from some expressions in Wilson the rule of
years to the somewhat relaxed. 2 Hals. 267.
2 Vent. 175 193 1 Rob. 112.

Also by Stat. 8 & 9. Wm. the 4th.
16c 54.
27c 35.
61 Hen. 3.
1 Rob. 112.
61 Hen. 3.
10 16.

for the performance of covenants in deeds e.
But even where several breaches are of
62c 82.
46c 635.
A breach contrary to the rules of said law, advan-
tages must be taken by special demnus, for
it is mere matter of form. in the nature of du-
nicity, which is not reached by general demnus.
And assigning cause of demnus that the
demnus is uncertain and wants form, is not special
enough.

d 62.
2 Vent. 215.
3 Hals 635.
1 Digs 216.
2 Leon 663.
1 Rob. 619.
2 Mod 268.

It is a general rule that the executor of a covenan-
t is implied in himself, if found without being named.
But an exception is to be taken to this general rule
where the covenanant is to be performed by the testator
personally.

So the executors cannot sue in the last case.

if the covenanant is broken in the lifetime of the testator.

2 Com 563.
So the executors seized in fee may bind his heir
on 564.
by covenanter. 2 Vent. 213. Dyer 338.

Thus if a covenanter to sell lands, if died before
conveyance his heir will be deemed in chancery to convey.
Covenants which run with the land contra.

Leases were assignable at at once. Law of the covenants contained in leases were in some cases binding on the assignee while he continued on the premises assigned. In some cases the assignee may have the benefit of the covenants made of the lease to his lessee, if assignee may have an action on them.

The assignee is sometimes liable on the covenant of the assignor or lessee, the not named them, he is sometimes liable when named first otherwise, if sometimes not liable the named.

The assignee of a lease is bound by the covenants of a lease the not named, if they run with the land. Covenants are said to run with the land, when the thing covenanted to be done, or concerning which something is covenanted to be done, was in effect, at the time of the lease of period of the demise. The assignee of the lease is liable on a breach of such covenants happening during his possession. the not named as covenants to repair the building.

So the assignee is liable on a covenant to pay rent, which the not substantially, is practically in effect, & that there is a covenant which runs with the land or is annexed to the estate. But by a covenant on the
Covenants Broken.

Where's part to build a wall de nous on the land.

The asigee is not bound unless named, the thing is not possed of the demise, such a covenant is said to be a collateral covenant which does not run with the land.

As a covenant runs with the land if it goes to the support of the thing demised.

When the asigees are named, they are oblige to perform all the other covenants, whether they run with the land or not — as a covenant to build a wall on the land.

But the covenant in this case must be to do a thing which relates to the demise. For the asigees thus named are not bound by a covenant to do an act which does not concern the demise, as to build a house.

For if it is for other land, or to pay a collateral sum, for there the act to be done is collateral.

But when the asigee is named, it is only for rent incurred, or covenants broken during his possession, if the breach was before, resort must be had to the asigee, to the asigee was named; for the asigee is bound on the ground of possession, his liability rests upon a privity of estate, which continues during his possession only — as if a lessee covenant to rebuild within a certain time assigned, his asigee is not liable on the covenant.

So the asigee is not liable at law for a breach.
Covenants Broken.

After his assignment. — If he assigns the property before rent is due, he is not liable for any part.

8th. 177.

It is said in fact indeed that "fiend may be unpleased," but this decision is now overridden.

1st. 36th.

But Chancery will compel the assignee in this case to account for the rent while he was enjoying the land.

87. 88.

Whether Chancery will compel the assignee in this case to account for the rent while he was enjoying the land.

8th. 177.

Whether Chancery will compel the assignee in this case to account for the rent while he was enjoying the land.

87. 88.

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Whether Chancery will compel the assignee in this case to account for the rent while he was enjoying the land.

87. 88.
Covenants Broken.

remains. Lev. 21:22, 1 Sam. 36:4, 2 Mace. 15:2.

But if the covenant is only implied by law, the
Lev. 21:22. lease shall not have any action, even the action of car-
1 Sam. 36:4. suant against the lessee for any failure, after accept-
1 Sam. 36:5. ing the assignee, the he otherwise may, such case
3: 8, 9. not being founded on priority of estate which the
3: 22. lessee alone cannot destroy.

18: 16. 8: 3.
4: 39.

The lessee may accept the assignee by accepting
18: 16. 8: 3.
4: 39.

by assigning to the assignee etc.

When the covenant is express the lessee may pursue
18: 16. 8: 3.
4: 39.

his remedy on the covenant on two against the lessee
18: 16. 8: 3.
4: 39.

Co. 2: 16. 36: 2. 22.
4: 39.

of assignee at the same time, but only one execution
18: 16. 8: 3.
4: 39.

shall be enforced. After satisfaction of one execution,
18: 16. 8: 3.
4: 39.

of the debt in the other is taken, except for costs.

Auctia aliena lies.

By Act. 8: 2. Nov. 8: 12. the grantee of the lessee has
18: 16. 8: 3.
4: 39.

the same remedy on covenants running with the land
18: 16. 8: 3.
4: 39.

against the lessee or as the lessee himself had
18: 16. 8: 3.
4: 39.

at common law.

The common law extends the remedy
18: 16. 8: 3.
4: 39.

by to the representatives of the lessee's grantee, as
18: 16. 8: 3.
4: 39.

he had before against the grantor.

A distinction is to be observed between the
18: 16. 8: 3.
4: 39.

derivative lessee and under tenant, is one
18: 16. 8: 3.
4: 39.

who takes a conveyance of part of the remainder
18: 16. 8: 3.
4: 39.

sum of the term, not as tenant to the lessee of the whole.
Covenants Broken.

A derivative lease is not liable on the covenants in the lease, so there is no priority of contract between him and the lessee, yet he is liable to a distress, for rent on the ground of assignment.

The assignees of the whole term are liable on the covenant, if according to the preceding distinctions, they have within, whether the assignment was actual, or by demise or by sale under execution.

If the lease covenants for him self and assignees as long as they shall be in possession after the term, he is liable on the covenant the not strictly as assignee.

In actions on a covenant running

term.

with the land against the assignee is heir, in fury is not pleaded in bar, for he, an infant is incapable of contracting, yet as heir he is able to make satisfaction for a breach of covenant already made.

If a covenant with his heir of assignee for
great enjoyment, even in a real covenant as in the

377 great enjoyment of an inheritance, if this is broken

Eph. 296. in B. life, his Est. the not named shall have the

240:26. action. For damages are to be recovered, if they accrued

B. life, in B. life time, if so belonged to his personal fund

112:14. If a covenant real is broken after the covenantees

Eph. 296. death, his heir must have the action

112:15. It is a general rule that the covenant
Covenants Broken.

[A page from a handwritten legal document discussing covenants, damages, and the death of a covenantor, with references to specific cases and statutes.]
Covenants or bonds to save harmless.

A covenant to save harmless is an agreement by one to
save another from all harm, trouble or cost, arising out
of some collateral transaction.

With regard to such covenants or bonds it is a gen-
eral rule that they are not taken by a tortious act of an
other, as in covenants for quiet enjoyment, whereas the
one who is guilty of the tortious act is the trespasser again
whom an adequate remedy may be had.

But if the covenant is particular, that is, to save harm
against the act of a particular person, the covenan-
tee will be liable, even for the tortious acts of that per-
son.

If a sheriff takes a bond to save himself harmless
against one escaping, having the liberties of the jail paid
of the person escapes, he may sue immediately on the ground
of liability, he need not wait till sued himself, for the
creditor might delay bringing his action against the
Sheriff till the one to whom covenanted to save him ha-
rine becomes a bankrupt, by which means the Sher-
iff would loose his remedy on the bond.

If a surety takes a counter bond of indemnity
and the Debtor fails to discharge the debt for which
the surety is bound according to the terms of the bond,
the bond is immediately forfeited, the condition broken,
of the principal has been compelled to pay the duty on the mere liability of the
latter, if he afterwards has been compelled to pay the rest.

Mr. Guthrie observes that he can discern no reason why
a court of law might not give relief in this case
by allowing the principal to bring an action of third
parties.

It has been objected it is true that this would in
some instances reach a former judgment. But this is plainly contrary
from 266 to facts. The judgment on the land of indemnity was
strictly just at the time, but something ex
post facto gave it an inequitable operation.

If one having obligated himself as surety
took a bond of indemnity after his liability had at
265, 263, 264, 264, no right of action accrues till special dem-
unification—otherwise it would be absurd, for little
ability commenced immediately.

If however the had executed a penal bond an
560 24, taken a bond of indemnity, of indemnity before the
condition was broken, it would be otherwise.

If a duty takes no bond of indemnity, but pays
525 the debt of the principal, he may maintain an ac-
527 count.

Secondly, he could not, yet in this case mere liability does not
Covenants Breken.

But if a Bond of Indemnity is taken, the

reasonable must be on the land; for it is a maxim in

law that where there are concurrent remedies that

one of the highest nature must be taken of the

remedy on the land in this case is of the highest na-

In cases of assignments of obligations on the obligee

may in some cases release after assignment, if in the

did not. The ground rule is, that if the obligation on

instrument is not negotiable the release is good oth-

wise not. But the instrument being negotiable, is

here meant the legal interest of the assignee may be

do transferred as to rest in the assignee the right of

being an action upon the instrument in his own

name. The reason of this rule is that, where the

instrument is negotiable, the property of the as-

signee has passed by the assignment, therefore the

release has nothing on which to operate. But

where the instrument is not negotiable the legal

interest still resides in the assignor, of course he

may release after assignment.

So if the lessee after assignment of the reser-

vation release to the lessee all covenants to yet

the assignee of the reservation may recover for all

breaches of the assignment, for the covenant runs

with the land of it is assignable since the Stat 32 Geo.
and according to some it was so at com. law.

But when a lease has been assigned by the lessor, he may assert the assignee of his action. In Esp. 318. breaches committed after assignment, by a relaj. prior 5 Com. 235-lease after action lost: yet a release after action lost, is 6th. 361. not operative, for the right has attached to his person.

2d. 4d. The first branch of the rule is obviously opposed to the general principle laid down, for a lease is obvious by negotiability of course a release by the lease after assignment ought to be no bar to an action by the originer.

As it is, the rule is well established.

1st. 4d. before covenant broken of all demands, 5th. 3d.
does not release the covenant, because there was no demand at the time of the release. There having been no breach as a release of all actions, suits, &c.

2d. 4d. does not discharge the covenant. 6th. 17d.

But a release of all covenants before a breach is good, i.e., it is a bar to any subsequent breach.

6th. 4d. Where the defendant at the instance of the plaintiff became a joint security for a third person, and the plaintiff was forced to pay all the money, he cannot call on the defendant for contribution of a moiety. 2d. 21d.

1st. 4d. Had become a joint security of his own motion.
Pleadings of covenants broken.

In an action of covenant broken the declaration should state that the covenant was by deed, that the case will lie on an instrument not sealed, from the above rule "parol covenants" as used by Powell, seem to lie an improper place. Formerly the court in action of covenant laid ken must always make a part of the covenant and it were lost in the debt's possession. But he may now declare on a covenant as other deals that it was lost by time and accident.

In that action a breach of covenant must always be assigned, when the covenant is good. A breach will, in a general assignment of a breach is sufficient. If no such action is, this was a covenant not to buy or sell certain an in the title in two years, an avow that that the debt had sold to A. or others not mentioning to whom it good at divers times is good.

The most general assignment of a breach is in the words of the covenant with a negative, as in alienation a covenant, "that the lessor is seized in fee" and an avow, "that the lessor was not seized in fee" is sufficient.

A breach should be assigned so as to appear clearly to be within the covenant, therefore in an action on the covenant by the lessor "not to cut more
Covenants Broken. timber than is money for repairs," an argument that he not timber to the value of \$100.

is not good. If by subsequent words this Def.

repairs over the breach first assigned, as if he a

see that the Deft. had not sold the land in

an husband like manner, but had committed

waste." He will be allowed to prove nothing more

than that the Deft. committed waste.

When there is a proviso in a deed, defeating

the covenant then covenant in a certain event,

ex. 302, the Deft. need not set it out, but leave the Deft. to

prove it. Thus, in an action to on a covenant to

deliver, if, with a proviso that if the Deft. was pre-

vented by the Deed, the Deed should be void. The

proviso need not be set forth in the Deed.

But if there is an exception in the body of the co-

er. 300, must, the Deft. must notice it, or assigning the breach

otherwise it would not be known, that the breach
did not fall within the exception.

If the Deft. sets out his covenant, if assigns an

inconsistent breach, under w. Ifb, such a breach

shall be rejected.

If the covenant is in the alternative to do one

er. 300, of two things, the breach must be assigned as

both. Thus, on a covenant by the Def. not to cut

wood without the effect an assignment of the
Covenants. —

If an covenant, that "the execut of the lessor" is not good. —

But on a covenant to pay an estate to the

paid "an covenant that the covenantor "has

Ex 302. not paid" is sufficient, for causing to be

paid is paying. —

If the covenantor is to pay

May 32.

on one of two contingencies, "which shall

Ex 302. first happen" an covenant that one had

shall happened is sufficient, without renewing it to

be the first. But on a covenant to pay on the

"death a marriage of Sally ailes" it is sufficient to o-

ver that Sally ailes is married.

If the covenant is that an act shall be done

Ex 228.

by one or his assigns, the breach must be in the

Ex 302.

disjunctive, that is, it must be ascertained that the act

has not been done by him or his assigns. This rule
does not hold when the action is against the ori-
ginal covenantor himself, for there an assign-

ment cannot be presumed, that is, it is construc-
ed to actions against the assigns.

But on a covenant to do an act, as to convey

Ex 302. to a man of his assigns, an covenant by the

3 Kev 446.

covenantor that it was not done that due to the

5 Mod 263.
covenantor himself is sufficient. If it has been
to his assigns, the Debtor must show it.
In a covenant for a sum certain, there can be no objection against the demand, if the breach must follow the covenant, that is, a non-performance of the whole covenant must be averred. As if one covenant to pay $100 per ton, a covenant that the covenantor would not pay $50 per half ton would be ill an defense.

But if the covenant had been to pay $100 per ton, demandum return, such covenant would have been good.

When the covenant is to perform some act precedent to the right of action, he must own performance, as in a covenant to pay $100 after bond and request made.

As if the precedent act is to be done by a third person, performance must be averred; otherwise it is bad after verdict.

But where there are mutual and inde.

 Conditional covenants, viz., where A covenants with B, if for one thing it be for another A in his own right, an action need not aver performance—so in all cases where the engagement on one side is in consideration of an engagement on the other, either party has a right of action before performance.

A plea that the depth had not broken his covenant is not good, for it answers the ques-
Concerning Covenants.

The law of the land. Besides it is laid on 21 Vent. 2356. denarius, as it amounts to no issue within. 61 Bar. 88. as an especial issue to a plea in bar, it suggests no new matter.

It is laid down as a rule that 61 Bar. 83. Est. 445. when covenants are affirmative, pleading per.

3 Bar. 83. performance is generally sufficient.

4 Bar. 91. This general rule must relate to cases in 5 Bar. 88. which the things conveanted to be done are 3 Bar. 91. in some measure indispensable, either in kind or number, as a covenant by a sheriff to return all writs to or to discharge the duties of his office. 4 Bar. 91.

4 Bar. 91. In this case a plea that he returned all writs to or as sufficient, but even here I suppose a plea that he had performed his duty would not be good.

4 Bar. 91. For otherwise, the terms of the rule would contradict 4 Bar. 91. another well-established rule which is where a Deed 4 Bar. 98. has covenanted affirmatively to do a number of the 3 Bar. 98. specific acts, he must plead performance specially 3 Bar. 98. as that is of each act.

3 Bar. 98. The rule that where there is one of 3 Bar. 98. affirmative covenants, for the performance of an indefinite number of acts, the Deed may plead performance generally, is established merely to avoid possibility of unnecessary delay or being enjoined. If the Deed 236.
Covenants Broken

neglect, the Deft. cannot plead performance generally, but he must plead specially that he had not done the act in covenants at against advantage is to be taken of pleas of performance by special demurrer only

If the negatve covenants are void, he may plead

as if they did not exist Sec. 6 232. 3bom 236. 283.

Where the covenants are in the discription

Sec. 305. 306. the Deft. must show he had performed, otherwise it

4bom 23. 3bom 32. 2bom 239. 2bom 32.

4 5. 2d. 3d. Sec. 30 3d. 3bom 8 2d. 3bom 8 3d.

All on special demurrer only Sec. 31 22. 1Deom 34.

When the covenants are to do some act of which

Sec. 229. Law as to convey discharge let. the Deft. must plea

5bom 8 2d. 3bom 32. 3bom 32. 3bom 32.

6 2d. 3d. 3d. 3d. 3bom 8 2d. 3bom 8 3d.

7Deom 25. the County.

Sec. 366. 366. 366. 366.

So if the covenants are to do an act which

3bom 22. 3bom 22. 3bom 22. 3bom 22.

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3bom 22. 3bom 22. 3bom 22. 3bom 22.
Of the covenant a bond is to secure harm.

If the covenant is bond to secure harm, 3 Mod 2516

by anything ascertained in the instrument,

as the payment of such a bond, non dammification

is not good. He should plead that he had saved

the 374 harm left, if shown by what acts.

If it presume if the covenant is to save

395 harm left in general terms, that is, for things under

1, 2011 ascertained, as from all acts, damages and trouble

that may arise from a lawsuit, by any particular

act, as by paying or non dammification is

not good.

But if the covenant in bond is general to

916 be saved harm left from all acts that subject to costs may

be saved, or, especially if no specific mode is prescribed

94, 2516, non dammification is good.

Yet in this case if the Deft. pleads affirmatively, that

he had saved the Deft. harm left, he must plead one

of the covenant if for an act to be done, even

1 Roll 154 by a stranger, performance must be pleaded. 2

1, 501 especially, that is according to the preceding distinction

1, 451. There is an exception. Suppose in cases of a multiplicity

of acts to be done.

If the Deft. pleads non dammification,

1, 924 a replication consisting of a general traverse will.

104, 69 of the Deft. not shown the special dammification.
Covenants Broke.

Thus if the Declaration is that the "Debt has not
18244. saved the Debt" from the plea that the "Debt
has not been defaced" a special breach in
the replication is necessary.

A covenant in one
deed cannot be pleaded in bar of an action
27out27
of debt on a covenant in an other deed,
Cp. 305.
unlesst there is the nature of a defeasance.
Cp. 306.
But however a defeasance on a separate
Cp. 304.
deed, may be so pleaded. 3dibk. 293. 8d. ib. 67235.
But the second deed must clearly appear
to have been intended as a defeasance, if to contain
proper words for a defeasance, as meeting the first
Cp. 306.
deed in declaring it to be void.

But one covenant may be pleaded in bar
to a covenant in the same deed without words of defea-
sance, for the sense is to be collected from the whole
Cp.306.
deed, as where there is a covenant that the lessee shall
pay some rent, if one by the lessee that the les-
see may retain so much for repairs
Cp.306.
3ibern78.2
3ibern698 be sued on one, but two cannot. The reason of this
Cp.2b.6.
4d.23q.
is that the covenant must be treated as altogether
joint or several.

This last rule is common to all cove-
nants. If the covenant is joint only, all the cove-
nants must be sued.
If there be two or more joint covenanters, by the rule all must join in an action, otherwise the 
Debt. would be charged doubly. 

This rule is also common to all contracts. 

If all do not join, the Debt. can only be 
demanded in some cases, where one covenantor 
with two or more obligees, jointly or severally, that is to say, and either of them, or each of them, one of the ob- 
egees may sue alone, in others all must join. 

The rule is this, "If the interest of the obligees 
appears to be several," each may sue separately, 
as where there is a devise to A. of Black ace of 
White acre to B, if the leasee covenant with 
both of each as to all. 

But if Black ace only is devised 

To the 696. 

50. 18. 19. to 

of the leasee covenant with each of the interest 

ent. 212. of the leasees is joint of both must sue jointly, in each 
action on the covenant. 

So the two obligors as covenantors 

may bind themselves severally for the same cause; 

50. 19. yet no obligors cannot have several actions in 

interest, nor rights of action for the same cause. 

So against two jointly of severally of the same 
thing, is joint only: 50. 19. 

If two covenant jointly of severally each may be 
induced alone, for the neglect of the other, that the 
697: 1374, one sued has not been negligent, recovery.
Covenants Broken.

If several are bound jointly and severally, if one is made Ex. 2 to the obligee, the obligation is released at law.

So in chancery, as to obligees representatives, but not as to the creditors or depositors. 2 Vern. 244, 5,

If an instrument recites that A. B. the 146, if B. on one part covenanted to execute a certain agreement, if A. does not execute the covenantee may sue B. alone if ever that A. did not execute.

If two or more bind themselves as an obligor.

3 Vern. 677,

but together, or make a promise together, the co.

if A. B. is joint, of course I suppose the word "juni-

obligation or duty are owed.
Notice and Request.

As soon as a request by the Deft. is clearly necessary, but in many cases it may be by suit only.

The Def. must always give notice to the Deft. when action lies not without notice, as where the suit on which the demand arises, is as between the parties confined to the Deft. knowledge - as in cases of a promise to pay, which be at such a rate, as any other person shall pay the Deft. for the same.

5 Rom. 53. 
5 Cor. 45. 2 
5 Ned. 2. 
5 Phil. 6. 3. 
5 2 Cor. 6. 26. 
5 2 Cor. 4. 3. 
5 2 Cor. 24. 2. 
5 2 Cor. 24. 2. 
5 2 Cor. 24. 2. 
5 2 Cor. 24. 2. 
5 2 Cor. 24. 2. 
5 2 Cor. 24. 2.

...as a promise to deliver so much corn of the Deft. approve it; the Def. must give that he did approve it.

...as on a contract to account before auditors.

...when the obligee shall assent, the Def. must give notice to the Deft.

...so it must appear that notice was given in due time, as on a promise to pay before the end of such a term, as much as the Deft. desires; the Deft. should give notice given in before the end of the term, otherwise it is too late.

5 Roll. 46. 2 
4 63. 
5 Roll. 46. 2. 
4 63. 
5 Roll. 46. 2. 
4 63.
Notice of Request:

notice, but in this case the Deft. must take
notice of his fault, or where there is a promise
316. to pay if he when I. I. married.

So in some cases it seems, that the Deft. is
bound to give notice as when he promised to
deliver so much rum when he shall receive it.

In some cases the Oft. must make it over a
special request, as the Deft. engages to do a
collateral act, no pay being fixed, or on request.

It is laid down that no actual request is necessary
when the duty or duty is precedent to the contract, as prom-
ise, in which the demand arises, tho' the contract be to do on
request, for here the request is not the cause of action.
But this rule must be understood of those cases in
which the subsequent contract does not vary the duty al-
ready existing; for the subsequent contract may be
to do a collateral thing on request i.e.

But when the right of action is founded on the prom-
ise & request, thus being no precedent duty, a special
request must be annexed, as where there is a promise
to pay on request such sums as the entertainment
of the Oft. should come to.

When a partial request is ne-

The want of an annexment of a special request when
necessary is not cured by verdict.
Notice of Request.

To pay an accommodation, if it does not pay on request.

On a promise to pay the debt of a stranger upon request, a special request must be alleged. For there was no precedent duty, if the request is part of the agreement.

When a special accommodation request is necessary, the accommodation is transferable: when unnecessary, the accommodation is not transferable.

It is a general rule that where there is a contract to do a certain thing "on demand", if the Debtor cannot discharge himself by tender without request, a special request is necessary. Thus on due bills, given by merchants, to deliver such a sum in goods to the holder, request must be made not only because the merchant cannot discharge himself without request, but because the common course of business has established the necessity of a demand.

So I suppose if a merchant engages to deliver such a sum in goods at a time fixed, for he cannot select the goods, for the same reason as operated in the example just put on the score of general convenience, requests must be made for payment from public officers in their official capacity. On the other hand, where the Debtor can discharge himself
Notice of Request.

By tender, a Special demand is not generally neces-
sary, nor the agreement to be to "pay upon de-
mand."

The two last rules do far as they inter-
pret with the particular ones laid down are
subordinate.
Questions which have arisen under the Constitution of the United States.

The 10th section of the 1st Article of the constitution of the United States declares 1st. That no State shall make anything but gold or silver coin a tender or payment in payment of debts. 2d. No tax or export taxes shall be laid, no tax impairing the obligation of contracts.

The Supreme Court of the U.S. have determined that an export or export tax is not a law which extends to criminal cases only, it differs from a retrospective law which extends as well to contracts as to crimes.

A retrospective law which regards civil cases only is not then forbidden by the constitution, nor is it by the clause above.

So that no law shall be made impairing the obligation of contracts is a like law doctrine. The two last repeated clauses then are merely declaratory of the latter law.

Every thing respecting retrospective laws of putting "civil contracts" is meant to be provided against by the clause forbidding any laws being made "imparing the obligation of contracts," therefore by the constitution all laws having a retrospective force operation, whether civil or criminal are prohibited.
It has been a question whether special acts of insolency have the forbidden retrospective operation. The first insolent acts which were ever made undoubtedly had this retrospective operation. But there never till now been any special insolent acts made they would have come within the constitution. But at present men when they enter into contracts are fully apprised of their liability to be defeated by insolent acts passed by the legislature. The great question has been whether the constitution intended to make any alteration in this state of things.

The question was first best put before a branch of the national court in the State of Kent, in this manner. Mr. Huntington petitioned the legislature for a special act of insolvency. While the petition was pending, he asked for a writ of protection that he might come to attend the assembly free from arrest. The writ was granted. While he was attending the assembly under their protection, his creditors directed the sheriff to attack his body, commit him to prison on the ground that the assembly had no right to grant his petition. Of course the writ of protection would be void: the sheriff accordingly committed him.
Constitution.

Huntington then procured an act of Congress (enacted by the assembly, which was granted command to the sheriff of Chester) to release him which done the creditors but an action against the sheriff before the national court. It was then determined by Judge Law of Chase [with the additional opinion of Bushing] that a state had a right to help insolvent debtors in insolvency without infringing the constitution. This was about the year 1795. This opinion had been affirmed by the Supreme Court of [illegible].

If even the first insolvent act was the making an infringement of the constitution from laws that communin and fair just would at this day answer such consequences, as is the constitution at present given to mortgages.
Private Wrongs.

Private wrongs are an infringement or deprivation of the private or civil rights belonging to individuals, considered as individuals.

The subjects of torts are either the persons or property of those who suffer.

The tort may have also been committed on both. If the tort be done to the property of the injured person, his real or personal property may be the subject. In every case of a tort the injured person has a remedy, unless it be accompanied with a penalty. If it is doubtful whether there can be a remedy, the injury being merged, as in the Enc. law. In some cases of tort there arises two actions: one in favor of the party injured, and one in favor of the public. If all the rights of the public are altogether paramount to private rights, the wrong done to the individual is merged to as swallowed up in the public offence, if that offence amounts to a felony.

It is a true position that the right of the public is always paramount to the private right; and in cases of felony, the public by the old law, always had a right to the person in sight. Life of the wronger, and also to
Private Wrongs.

all his property, it followed that nothing was left for the sufferer.

But as there are now in the U.S. States, but few cases of felony where the life of the wrong doer is taken, or fewer still where all his property is taken, it is submitted whether the sufferer ought not in every case to have relief when either the person or the whole of the property is not taken, the Eng. learned the doctrine of meagre noughtithstanding?

As the doctrine of meagre results from the pecuniary requirements of the law, i.e. of the person or the wrong doer that it might be held out for an example, if of all the property that might be compensated for the breach of the laws as far as might be, if the law in America do not require these things but it changed, the rules of law which resulted from this pecuniary state of things, ought as the pecuniary ought to be changed also, for where as in this case the reason of the rule was escaped, it is the height of weakneth of folly not to change the laws also.

And even in Eng., if from the melioration of the punishment, either the life or some of the property of the offender be spared, Mr. Reeve thinks, they ought upon the genuine principles of the same law to be made subject to the demands of the injured person.
Private Things

No suit, however, it is true could be brought against the representatives of a person who was charged for the commission of the offence, but this rule depends not upon the principles of merger, but upon the idea that no man's express shall be sued for the wrongs of the testator or decedent.

In pursuing the subject of torts we must of course advert to the several actions arising of delicts, of which some arise from simple tort, disconnected from the idea of any force or violence. Some arise from the idea of actual force or violence used.

From the first division arise the several kinds of actions of trespass on the case. This is an action arising of delicts, simply from tort or wrong where no breach of any contract is suggested. If no forcible violence is united to the defect.

This negative description is the only one which can be safely given to this action; for it would be impossible to account all the various acts bringing these anomalous suits. They may be used for injuries affecting the party's person, in his reputation, safety, health, or other personal or property, or of some pecuniary right, or some
Private wrongs.

...ANY person or corporation interested. It may be, inENSINO of plain trait or fraud, to avoid charges of improper negligence from which damages may result, hence a conviction of the.

...plaint and answer which are for acts accomplished without real or implied as necessary. It being false imprisonment having wrongfully taken, if.

mentioned act of slander.

Slander consists in maliciously defaming a person.

Malice and falsity are the essential ingredients of such injuries to the reputation of one at the injured person may recover damages for. If neither of these exist the action must fail in his action.

It is speak a truth of one therefore at this he said in the malicious with a desire to injure will not entitle to a recovery.

...is also to utter an untruth without malice will not support an action. This will necessarily lead to some surprising with the legal effect of the word malicious. This term does
not convey exactly the same idea as in law as in common parlance. The extent of the term is better understood by the Latin word _malitia_—as used in the Fshes, it means any mischievous motive, or wanton disregard to one's fellowmortals, which may actuate a man in a particular transaction. It is not confined to any special ill will or spirit of revenge against an individual.

When a man only relates any absurdous report of another, not having any substantial reason for it, the law will presume him to have been actuated by malice of this sort, he really believed the story which he propagated. For it was at least idle, if unnecessary for him to repeat the story, if having told it of course wound the reputation of one who should make retribution, unless he can prove the story to be true.

However if there be an evil report about a man which is accompanied with such circumstances as to cause it to be generally relied on, if one man tells it to another, he will merely be presumed to have been actuated by malice, of this presumption he may by the at.

Standing circumstances rebut.
Private Wrongs.

Slander may be had in two classes of cases viz. where the words spoken are actionable in themselves, or where the words spoken are not actionable in themselves, but being attended with special damages to the person about whom they were spoken, are sufficient to support the action if the special damages be proved. In the latter case the special damages must be stated in the declaration.

Words actionable in themselves are divided into 3 classes viz.

I. Where by them one charges another with the commission of a fact punishable by the law more severely than by mere fines, then are the words actionable in themselves. If tho' the party cannot prove any special damage whatsoever, of state none, yet he shall recover, for it will be presumed that the words spoken or had or may suffer damage. For as to the facts charged, if true may subject the party accused to punishment, but to none of a higher degree than fine; yet the words as a general rule are not actionable of themselves.

But there is a middle class, wherein the words are or are not actionable according to circumstances.

As it respects this class of cases the books of decision
Private Wrongs—

are quite confused. But from a collection of
the several decisions Mr. Coke thinks that
the following rule may result. 

If the charge be a civil, which according to the general idea
as of people affects the reputation of the per-
don charged, it being a charge also, which
is true, would subject him to a fine, then
the words shall be considered actionable in
themselves. If the charge do not if true, sub-
ject the party to punishment by fine, the
words are not actionable of themselves. Or
the words subject to a fine, yet if it be not
such a charge as according to the prevailing notion
of mankind, had a tendency to injure the reputa-
tion of the man, the words are not actionable of
themselves. There is a law of the city of Newbor-
en, that if any one throw out ballast from
his vessel into the harbor, he shall be fined.
If a sea-bill be accused of it, if it were true,
that the charge would subject him to a fine,
it would not have been according to the com-
mon notions of people injure his reputation
materially; such words therefore are not action-
able. This class of cases may however be
included under the first division.

II. The second general class may however be
involvements of cases of words actionable in them
I. Those words are actionable in themselves, which charge a man in office with principles inconsistent with it; or with inability to perform its duties. Whether the office be one of dignity, trust or profit. Under this class that species of scandal called *scandalum magnatum* is by the Eng. books included. Of this we know nothing in Connecticut.

To say of a man holding an office that he is not fit for it, or a collegium, restricting...
his office or him as an officer is actionable. So
day of a justice of the peace in a colloquium respecting
his office, that he is "a butt for all of a justice", or
a beetle headed "justice" he is actionable. But in
which case it must be ascertained in the declaration
that the words were spoken respecting his offi-
cial acts or ability, if must be so viewed as
the Off. will fail.

Under this class, a distinction
has been taken between offices merely honorary or
those which are lucrative. This distinction the
theorists suppose not to be founded in principle.

IV. The last class of words upon which a recovery
may be had, without knowing damages, are those
which may operate to exclude a man from society
as a day of J. S. that he has the leprosy, or the venereal
disease, and an action was brought in Count
against a man for saying of the Off. that he is
but the Off. did not receive a legal denomina-
tion.

In these cases of words actionable in themselves
the Off. need not to entitle himself to a recovery,
d State any special damages. But if special dam-
ages have occurred, it is well to state them,
in order to increase damages, for unless they
be stated in the declaration, the Off. cannot
go into the proof of them.
Private Wrongs.

Words actionable in themselves may be, if frequently repeated with other words, which show that the theft did not except them in their legal sense. So say of a man that he is a thief is actionable; but in order to show in what sense they were spoken, or meant to be taken, the whole of the conversation must be taken together, from which it appears that the Deft. did not understand his exclamation in the legal sense, for his words were if I is a thief, because he stole my trees; now as placing it not reducible of trees. The words appear not actionable. So when Scalby states sued Tom, what's in slander, for calling her a thief, it appeared on trial that he called Red Sally a thief, because she had stolen his heart. From fellow, the Deft. failed in her action. But the last need not be stated in express terms, provided the idea he unquestionable conveyed, it will suffice. As if the Deft. say the witness told me that if I stole it, or as if in a significant manner the Deft. asked the witness I did hear that if I stole it, or the Deft. let the witnesses to guess who stole it. If the name being mentioned, he tells the witnesses significantly so that he need not guess again. For to convey the idea by words would seem sufficient. But it would seem that words were absolute
Private Wrongs.

If necessary to constitute the offence of personal slander, since when a man joined but a method of convincing all his neighbors that J.S. stole his the theft, was a suit in slander was lost. The suit failed. This was a common decision of the Scotch thinkers an expressed one. And on this principle it would seem that a man could not be guilty of personal slander.

The words spoken must import some degree of guilt; therefore to say of a man that he would steal, and intend to steal, he is not actionable. In these are not charges of the commission of any fact, but merely an indication which is not in law actionable. However words spoken adversely may be actionable, as in the Daff day "I left my saddle here of what last nignt I was passed by some one. This morning my saddle was gone. If you know J.S. is a Daffish Day" these words taken in their connection are actionable, as they were held to be untoward. Words not actionable in themselves by agreement of proof of special damages will support an action.

For such words do not except by distant implication, affect the moral char
The authorities on the subject of slander are more numerous than any other title in the law. At one period of time the governing principles have been wholly inapplicable to those which sprang at another. At one period it had become a maxim that all words should be taken in their ordinary signification. This was a very easy rule of construction, whereby words were tortured to convey some wrong meaning, that the party might be subjected to another. But another period the rule of construction was that the words should be taken in their common sense. The consequences resulting from this were most ruinous.
rule is that the words, connected with the circum-
stances shall be taken in such a sense, as that
in which they would be most usually understood
by people in general, if those who addressed them.
And the intention of the Speaker is a genuine
rule of the question whether the Speaker intended to
fix the charge upon the Offender, as the most
material one.

This last rule, without doubt is
by far the most rational one. It is perfectly
well calculated to do complete justice.
The law having been so often reversed it is
easy to conceive, that the authorities must
be as they are, irreconcilable.

Restricted as in the foregoing remarks it may now be laid down as a rule
that words charging the Offender with such a
crime as is punishable, is actionable.

Moreover the rule laid down in the books
is, that such words are actionable, as if true
would subject the Offender to corporal punish-
ment. It is observable that words may be ac-
tionable though they do no injury to one's reputation;
if they may also injure one's reputation materially, if
yet not be actionable.
The rule as restricted would
stand thus: words which, if true, would subject a
Private Wrongs

mean to corporal punishment of words, which if true would subject a man to fine. Being such words as according to the common modes of thinking, would derogate from, or impeach his morality are actionable.

As it respects this first class of words, namely such as would support an action without proof of special damages, it may be remarked again that the charge which the Defeant meant to fix upon the Offender must be of a thing which is a certain of definite crime. Thus to call a man a

reprobate, is not actionable without a جديدة the Offender receive a damage for because the charge is not of any definite crime. But where is the difference

between calling a man a Bankrupt, calling him any other thing which imparts no charac
tude in the public standard? Relative to this part of the subject there has been much contention. It is generally held as the rule that to be called a man unnecessarily wantonly in maliciously does of the filthy which to imply either to a destitution in some degree of integrity, honesty, or of morality or an inac
dibility in any degree to pay his debts, or to put

fit his situation in whether the person slandered
Private Wrongs.

suffers any particular damages, if the words he not actionable in themselves, then if true the words will maintain an action as in the case here put of a Bankrupt for granting that there was no implication of want of integrity in the term yet as the expression implied an inability to pay his debts, it comes within the rule.

3d. Hence to day of one that he is a liar, is not of itself actionable, so that he is a corrupt man and on the ground that the law did not recognize adultery as a pecuniary as crimes to charge one therefore with the commission of adultery was not actionable at the spiritual courts. With the present day punishment is meant well temporal punishment. But there is a custom of the city of London that common prostitutes shall be called round the city to London therefore to call a woman a prostitute is of itself actionable.

So also it is in courts for it is a rule of the common law that any class of words which arise of themselves do not actionable on the ground of the commission of the facts being punishable are no longer actionable when the facts is no longer considered as a crime by the law. This rule is converse to the one since adultery in Connecticut is
Private Wrongs

Punishable, it follows, that a malicious or false charge of it is not actionable.

It has been remarked that when one accuses another of a slanderous thing, the whole conversation of the person of his mind at the time must be related to, for then may he avoid the particular observation made above, so that it will no longer import to be the name of such a charge as is punishable.

1st. Such words as have a tendency in a direct manner to affect a man in his trade are actionable in their

2nd. Thus to say of a lawyer "he is a knave" is actionable, for it will prevent clients from trusting

3rd. Him with their remunerative concerns, which will be to take from the lawyer his means of living.

4th. By "he'll milk your purse for you" meaning to convey the idea that he charged extravagant

5th. Usually fees, of such an infraction connected like

6th. With an allusion to a want of honesty, perhaps goes directly to take away his business.

Also to say of a lawyer that "he is a quack lawyer," which plainly implies that he did not under

stand his business very well, has been held to be actionable, although a previous decision had determined it not to be actionable. So say

day of a physician "that he is a quack," has been

held actionable. So say of a clergyman that
Private Wrongs.

He preached heretical doctrines, had been held actionable in Massachusetts. But a difficulty arose for the claim justified by alleging it to be true how to ascertain what theory was in this case the Board recommended to the Court that a canvass of clergyman be called of the same sect in religion with the parish in which the Off. lived was settled, if of the same to which the Off. pretended to belong, and be requested to form of determine whether the doctrines preached by the Off. were consistent with the principles professed by the sect, if of course whether they were heretical. This method was pursued if the doctrine found to be orthodox. This being determined the case was determined in favor of the Off.

341. This class of cases has been sufficiently treated of before. It may be added that a warrant for the charge of corruption or want of integrity is not accords to the general rule actionable, but when spoken of a man in office is a collegian or respecting his office, or him as an of Mand. 38. To the contrary they were so. But the words must direct. 161. 542. Proved and apply to him as an officer on that "he is a rejected or corrupt judge" or it must appear from the conversation that the words were applied to him in his official capacity. Thus in
Speaking of Mr. *W* who was a judge — he said he was a "blood sucker" — but as this did not appear to refer to him as a judge (which might perhaps if it did, that he was a corrupt type of an unjust judge) it was not held actionable — for it applied to him only as a physician.

A distinction has been taken in a case in Southend that when the words are used to a person in an office of profit, if used in one of credit only — e.g., in the office of profit words which implicate either want of understanding, of ability or integrity, are actionable. But in those of credit words which import want of ability only are not actionable — as to say of a justice of the peace "he is an ass" or a headless judge" is not actionable, if the reason given was that a man cannot help his want of ability, as he may his want of honesty, if that be a want in fact no corruption or dishonesty. But Mr. *B* does not think that this distinction would at present obtain — the case in Southend ought to have been decided as it was, not because of the preceding distinction — the words used did not seem by the case to have been applied to the *P*. in his official situation — it is true the word "justice"
Private Wrongs—

was used, or mentioned, as descriptive

pronoun. So day of a justice, "Surely get any

justice from him, but nothing but justice"

was held actionable. Yet according to the

above distinction, it probably would not be

so considered—

The last class of words actionable in

themselves, are such as tend to exclude a

man from society— as saying one with

1 Sam 13:4. having an infectious disease— as the left

Ex 20:17. roof. Next the

But as to this class, the construc-

tion is somewhat strict, for the words must

be in the present tense, if in fact that the Off.

had the disorder at the time of speaking the

2 Sam 17:9 words. However, if the Def. has used the past

tense merely as a cloak to avoid the law

the Judge supposes it would not avail him.

Lev 4:7. It is agreed on all hands that no other

Lev 6:22. will not justify a slanderous assertion—

Ex 5:20. A proposition is to be found in the books

that the least of a forgery may be given in evidence

if will go in mitigation of damages— and may or may not go in mitigation; if the Def.

himself begun the dispute, as is in the wrong of

without much provocation brought himself up

into a forgery (Sam Baldwin) then, it will
rather aggravate the damages, than in mitigation of them. But, on the other hand, the Dft. highly abused the Dfts. & forced him to say some intemperate things, then it will go to mitigation.

The idea has been held up generally, when upon an argument, that there can be no great criminality in repeating a story which the Dft. had heard from others, but this is an erroneous idea altogether, because if a man will wantonly spread such a story about him, he will show that law left misconduct its spirit which is the gist of this action. By, Matuie.

It had been strangely conceived that when A. tells B. that C. told him (see A.) that D. was a thief, A. might, by proving this, protect himself, because it would be furnishing the truth of his assertion. But this it was decided should be no justification, but might under particular circumstances go in mitigation of damages.

And indeed the circumstances might have been such as to operate as a full defence, if rebut the presumption of real, i.e., altogether as if the assertion he as a man...
"Private Wrongs.

...with appearances which are nearly convincing proof, that the story was true in such a sense, that there can be no harm in repeating it.

So if the words were spoken out of a motive of friendship, I without an intention to defame — privately perhaps, if in confidence, the action is not supportable. As where a servant said:

"B.K. D.B. an action against her former master, for saying to a witness who came to inquire her character, "That she was dandy of incontinence, I often lay out of her own bed, but that she was a clean girl. Folio she with well." He, the defamant, proved that she was by this mean prevented from getting a place — yet D'Blangford said that not.

That was the gist of the action for slander — it does not appear here. This was a confidential declaration, of ought not to have been told or discovered at all.

If the words were used in the course of legal proceedings, the general rule is no action will lie. But in such case the words may not be used but as tending to prove some point important in the case; for if this he not the

1 Pet. 3:3;
2 Pet. 3:9;
10 Bk. 9;
Rom. 6:6;
Gal. 6:6;

...false to lay such a charge to the defamant.
Private Wrongs—

To charge one with an intention or appetite to commit any given crime is not sufficient to support an action. A charge must not only be a particular definite crime committed, but it must also be definitely charged, against a particular one. Thus, if these reasons be present, I did say one of you stole my horse; neither of the three according to the rule could sue the slanderer; there can be no provider in such a case, if the crime were a punishable one, against whom could the prosecution be commenced. Yet the reason appears to me that if the argument it could be made out for whom the charge was meant, such person ought to maintain his suit—as if the party had hinted such things of the off. before, as if there had been a reasonable ground between them.

For whereas I told Tom Notes that his son or his wife or his brother (and he might guess who) had been guilty of something, either of the three may by argument show that he was intended.

If two persons say the same words of another, yet a joint action will not lie.

Where the expression is "the bosom (the name of a family) are traitors" the it is not actionable.
Private Wrongs.

If the intention to charge a particular crime upon me be apparent, it will suffice... as if it be done by way of question. Have you heard that F.S.
Stole his horse? so if the idea be conveyed by way of conjecture, as if significantly to say, "I guess it is F.S."

So where F.S. says I know what I am, I know what Tom Jones is, if I know that Tom Jones was held at arms, because the idea was clearly conveyed that Tom Jones stole.

So where words are used adjectively, they may be actionable.

Of the Pleadings in slander.

Great strictness formerly prevailed in regard to the pleadings in this action—particularly in regard to the declaration. The declaration would fail, for instance, if the phrase words alleged in it were not exactly supported by the evidence.

But of later years if the substance he stated, and what is stated be substantially proved by the evidence, then not in the very words the declaration is good. It is usual in the first place, for the party to state his character to have been immaculate in
in every respect, that he was always of good fame, and no particular mention of this freedom even from the abominable vice of stealing (for what ever the offence may be) then stating that the Deft enjoining his good character in these allegation are not perhaps necessary, for they are not proved, however they are usually made - but it is often next to state the words spoken - the place and time are next to be stated, if that they were said in the presence of hearing of the Deft -

When the word "maliciously" is left out, the declaration had been held good often after verdict, but the ground was that the word "false" implied the malice. If such a meaning could be given it would seem that the declaration would have been good as determined. Therefore, it is absolutely necessary that either this construction should be given, or that both of these words should be inserted in the declaration, for they are the gist of the action.

So, it is necessary that the either the words "in the hearing of the Deft" or "in the presence of the Deft" should be inserted, but it is common to insert both.

It is to be remarked that the decisions that either might be left out, were all had after verdict - the kind of proof publicly should be inserted. It is necessary also to aver that the words were
Despite of the Riff. — But sometimes the declaration may be passed without a direct avowal, but by inference, as if A. said of B'y and did steal my f. B. in repeating this in his declaration, may immediately introduce this inference, Riff. meaning the Riff. He it is usual next to state the acts of friends for his but this cannot be essential, and so, as it is not such a fact as may be proved.

If the slander were spoken of a man in office, he must state in his declaration that he was in a certain office, or the Josef is of his official standing, in case the words should be spoken to apply by way of description, as if T. B. says to T. B.'s son is a thief or, then the Riff. must allege that he was the son of J. A. which the Riff. meant for.

But where the description is by way of addition, as the addition of C. to a C. to the Riff. need not allege that he is C. because the words spoken have relation to the existence of another part, as if the expression were "R. is as great a thief as any in Eng." The rule requires an allegation that there are thieves in Eng. in this case the principle seems to be extended.
Private Wrongs—quite unnecessarily far—there may exist cases, however, where the principle may properly apply—as where the words were: "There had not been a robbery in this town of late for three weeks, but that if I, A., had had a hand in it for in this case the Off. may perhaps be compelled to prove there were one or more, but he is never compelled to adduce proof that there are thieves in Eng.—"

Again, if the words spoken are A. poisoned B., the Off. must aver of prove that B. is dead, for the expression has relation to the fact of B.'s death. If the expression were that A. killed B. perhaps the rule might be that he is supposed to relate to the fact of B.'s death, if that of course the Off. must aver the death of B. But the Rule requires that such an allegation is wholly unnecessary, for whether B. be dead or not the apprehension to the Imam: the liability of the Off. depends more upon the intention of man of the conversation. The rule took it over when the words were taken favorably for the Off. in another sense—

There words not actionable in themselves, are said in conjunction with those that are actionable in themselves, as if to call B. "a rascal, a liar, a thief," it is to be observed that when all are connected, and stated in one count, the declaration...
Private Wrongs

will be good if the verdict found for the plaintiff will presume that the jury found their verdict on such as would actionable.

But when words are actionable in themselves, the court will be arrested if the verdict, for how can the court determine whether the jury found their verdict on the words raised in the declaration, which includes the words not actionable? I plead the general issue of anything else as to the existence. And if this be not done, why not in this case as in the former case? Assume that the jury found their verdict upon that count which includes the actionable words.

It is a rule that words not actionable in themselves, may be proved on the trial, which are not mentioned in the declaration. But for
what purpose? if the words be actionable in themselves, they cannot be introduced to increase the damages, since they may be the foundation of a separate action. But such words are introduced merely for the purpose of proving the most essential allegation in the declaration to wit, malice. for as the deft. is suffered by extraneous matter to rebut the presumption that the words spoken were maliciously spoken, so may the deft. to prove this allegation, but for this purpose only, introduce other words most actionable in themselves.

If actionable words are stated, words not actionable may be given in evidence. the reason assigned for this rule is, that the admission of such testimony is to aggravate damages. but this reason is founded on principles evidently false. the only rational ground for introducing evidence of this kind, is that the deft. may the prove malice in the deft.

Then the deft. means to rely on the truth of the words spoken. the engl. rule is always to plead it specially, as by way of justification. in count it may be given in evidence under the general issue.

Mander, i.e. personal slander, is not by the engl. law a crime; i.e. it is not punishable
Private Wrongs—

commenced, or by a quietus action. In law, it has been held a crime.
Of Libels.

1 Thes. 2:12
1 Thes. 2:15
3 Mar. 430

A Libel is any malicious defamation of a person living or dead, made public by writing, tending to excite resentment, or to expose the object of it to damnation, contempt or ridicule.

This definition seems framed chiefly with reference to libels considered as public offenses.

Waiting of sending a letter to a person is not a sufficient publication, for a public prosecution.

Not if it be a friendly admonitory letter.

1 Nov. 58
2 Nov. 62.
To a party.

Saying or repeating words libellous may be a sufficient publication of a libel.

Reading a libel to other persons may be a publication.

It is a general rule that whatever words would be actionable if spoken, are clearly so when written.

Therefore to publish of a person that he is a swindler is actionable, so it is the same if spoken only.

1 Thes. 2:15-16
2 Thes. 3:12

Acts written however are not actionable, when spoken they would not be so by writing therefore to call a man a rascal, vile...
lain I heard an actionable words without
alleging special damages. The case cited in
Wilson is a leading case. I go to establish the
preceding proposition—But authorities proceed to
to the case in Wilson, recognize different principle.
The action in an action for a libel need
not be laid in the county in which the libel was
printed, nor it circulates in other country.
In an action laid on a libel for a civil
injury, the defense is the same as to an action
for words spoken.

All libels whether upon pri-
ivate persons, magistrates or the govern-
ment... are punishable as public offenses. It was
formerly doubted whether the truth could be
given in evidence in an action founded on
a written or printed slander. It appears
now settled that it may, and in other civil suits,
but cannot in a criminal prosecution.
In some it may be given in evidence on a
public prosecution, by statute.
Of actions for a vexatious lawsuit

I now bring vexatious suits against an
other party, for libel to an action, to recover damages.

But this cause is not to be ranked with those
that maliciously cause the Off. to be prosecuted
criminally.

In this latter case the loss of reputation
of personal danger of punishment, are the prin-
cipal rule of damages, whereas in an action list
for having been hurt to expense by a vexa-
tious suit, that expense whatsoever it can be pro-
ved to be, is the rule of damages.

But in order to entitle the Off. to recover
for this cause, there must be much more in the
case than that the Def. lost his suit against
the Off. of failed.

The following are the three
sets of cases in which this action may be list.

1st. Where he goes in a Court That has no

2d. Where he goes in a Court That has no

3d. Where he goes in a Court That has no

4th. Where he goes in a Court That has no

5th. Where he goes in a Court That has no

6th. Where he goes in a Court That has no

7th. Where he goes in a Court That has no

8th. Where he goes in a Court That has no

9th. Where he goes in a Court That has no

10th. Where he goes in a Court That has no

11th. Where he goes in a Court That has no
Private Writs.

29th March,

365

however, allowed the plaintiffs declaration to be good, nothing he did not aver that the defendant that the court had not jurisdiction, but it was with some difficulty, therefore the better course to always once that he knew.

2. When he dyes another when he knows that he has no demand against him, but his object is merely to vex the other.

As where a man brought an action against another before the county court, if the defendant beat him; if in an action for a vexatious lawsuit, it was proved that he had said that he had no idea he should recover, but his object was merely to vex the other.

where the court determined that an action lay.

where a person brings a second action for the same thing, the first having been determined.

3. Where a person for the benefit of vexation and holding another in custody, sues him for a greater sum than is really due, this action lies.

As where a person for a debt of £40, on the purpose of holding the debtor to expense, bails of keep ing him in goal, sued out an attachment of 

held him to bail for £5,000, in consequence of which he was sometimes detained in goal,
Private Wrongs

an action was adjudget to the special in
jury

As if the Def. attach an exorbitant quantity
of property as for a claim of $4. he should attach
$50 worth. an action would lie

But it has been held, that as arresting the
Def. in the executions, without cause of action

an action will not lie, unless he held to ex

repose bail — *Ex. 5 2 6.*

It is not necessary that the first action should

have been heard & determined in the defect of fa-

vor. for this action equally lies for any grounds of

prosecution whatever.

This action cannot be commen-

ced till the final determination of the vexations

of the vexations suit. because till then it cannot

appear that it was unjust to vexations. Therefore

it must be shown in the declaration that there

is an end to the vexations suit.

This must not only be a thing done at once,

but also a damage either already fallen upon

the party, or else incalculable.

For more trouble & vexation of mind

this action cannot be lost, it sustained. However

if there be any pecuniary damage, this plague

trouble will undoubtedly enhance the damage
given by the jury. for they are generally in such
cases liberal in a tolerable degree.

It has been a question whether seizing
 debtors abroad, under circumstances which
 afford no particular benefit to the creditor
 but serve a malicious intention is retaliative.

The Superior Court of Connecticut have de-
termined that it is not (3 judges vs 2). They
decided principally on the ground of policy, not
wishing to make any rule respecting the pow-
er to go out of the State to sue, when both the
parties lived in the State of Connecticut.

This was a case in which the creditor of debt to
both lived in the State of Connecticut. And the
creditor went to
attacked the debt collector in the State of New
York, where the debt was then an encumbrance
on his goods. But here as to this de-
cision for great injury is done in those cases
not only to the debtor, by rendering his credit sus-
cious, but by depriving him of the means to
becume the most accidental, if not the most
injurious consequences to which he would not
be liable if called upon among his friends
of his property. Judge Trunam is of opinion that
if a creditor will make use of a legal process
to harass his debtor unnecessarily, without de-
iving any benefit himself, this action ought to
Where there is a good cause of action as debt due, if a person without the knowledge or direction of the person to whom the money is due, does out a writ, if arrests the person body of a debtor, he maintains the action against such person, for he was not liable 2 shift to be sued by him. The same rule must apply in case of a summons, as well as at attachments where one dues in the name of another without authority.

One of several joint creditors may arrest the debtor without the consent of his companion, if not liable to this action.
Actions for malicious prosecutions

In an action upon the case for a malicious prosecution, if the Plaintiff prevail it is usual to give very large damages, not only because the reputation and the existence of the Defendant may be at stake, but because of the large invasions of disposition manifested in the person who procures the prosecution.

This action lies against any one who has been instrumental in malversation, in procuring an indictment, information or presentment against another by which he has been put in peril of his life, or suffered in his liberty, property or reputation.

But this action is not sustainable unless the prosecution be false in fact, maliciously, if without probable cause. By false in this case is meant, not only that the debt was unfounded, but that there was no probable cause, or rational ground of suspicion.

Public officers commencing prosecutions upon false informations are not liable to this action, though the persons giving such informations, if knowing them to be false are liable.

But if a public officer of himself prosecute maliciously, if without probable cause, he is liable to an action for a malicious prosecution. If the officer.
is in this case the magistrate granting the warrant
safe could not be "heat of passion.

The case in S. 130. is denied to be the law, for
some civil action will lie against judges for an act
done this malice in the exercise of their judicial pow-

Does the above rule apply to the conduct
of judges in civil cases? No. Dem 503. 575. 544. 373

Famly the acquittal was the only evidence of
the want of probable cause, but this rule is now altered.

Did this rule ever apply to malicious prosecutions?

or to conspiracy only?

must always appear from the
declaration, that the malicious prosecution for which the

is always sufficient for
the proof to show probable cause. If there is no prob-
able cause, malice may be inferred usually is sufficient.

But from the most express malice, want of probable
cause cannot be implied.

If probable cause of conviction,
is meant such a fact, or such a concurrence of circum-
cumstances, as that a cautious reasonable man, intent on
the good of the public, would think that there was such
grounds for suspicion at least, as that he ought to be
Private Wrongs.

Part of a suit of supreme Connexion before
1. Wils. 332 a competent Jury's decision, is in all cases, conclusive
evidence of a probable cause.
Appellant however is not conclusive but much less
conclusive evidence of a want of probable cause,
but this presumption may be rebutted.

Part of a suit of Enquiry, or a Grand Jury, have
forwarded a prosecution by binding out for trial
in one case, or by prosecution on the other, on the
complaint of an individual, the party must the ac
quitted, show the want of probable cause. So this
rule however there is an exception, if a person is
prosecuted by being bound over, if prosecuted
for that which is no crime, the burden of proof
is thrown on the false complainant, notwithstanding
the intervention of a suit of enquiry.

The acquittal on a defect in the original proceed
ation is presumptive evidence of the want of a
probable cause.

Whether there was a probable cause is

a mixed question of Law & fact; the facts being
given, the question is mere matter of Law.

The same question it seems applied to the ques

of malicious.

2 Title 1485: 1493.

Furnishes nothing but a basis of reputation was a
ground for damages in this action, but now dam.
Private Wrongs.

1st. The crime of malicious prosecution may be committed not only for loss of reputation, but for loss of liberty, or the vexation and trouble caused by the prosecution incurred in consequence of a malicious prosecution. 15th. 63. 5.

The declaration should state the

5th. 6. 31.
25th. 295.

The manner in which the prosecution ended. 18th. 214. also that the prosecution was founded on malicious purpose.

But when it can be shown that there is no malice, it would elucidate the Deft from the charge of a malicious prosecution. This means malice in its legal sense, for negligence in wantonness is malice. There must be inscrutable negligence or a direct design to injure.

15th. 69.
27th.

61.
61.
25th. 216.
25th. 261.

It is laid in the books that there must have been a felony committed (if the case were respecting felony) or there would not be probable cause, 12th. to prove this the prosecution must be sufficient. But I believe doubts on this incorrect. I think that if an the latter opinion is that on this subject, that there need not have been a felony committed, if such has been the decision of the

Superior Court in Com.

When there are several defendants, the crime cannot be given separately, but must be given jointly with against as many defendants as are found guilty.

By the Cap. Law in all cases of an action for maliciously indicting the 59th of a felon of which he was an.
PRIVATE WONG.

Cps. 524, 134, 383.

There must be a copy of the record in the Court which must be granted by the Court or produced in evidence, the granting of which is discretionary with the Court. If therefore a right to receive money, with them to grant or withhold it, it is usual to keep a copy where there has been any at least, probable ground, to found a prosecution on.

Purs. in Law. The parties can exercise no such discretion, every person has a common right to such copy of record, attested by the Clerk of the Court, as are necessary to prove his cause, of which are sufficient in all cases, those granted by the Court, must be produced by the party in the action, for the purpose of having every thing respecting the prosecution appearing on record. 2 Swift 525.
Assault and Battery.

An assault is an attempt to offer violence to another, as if one uplifts his cane or his fist, in a
threatening manner at another, as strikes at him,
but misses him, or points a pitchfork at him stand-
ing, within reach of him, or draws a sword at
him, or waves it at him in a threatening manner.

This is an injury for which an action of trespass wi-
at times lie—But actions are seldom brought for
an assault unless followed by a battery.

The general rule is that words alone will not
amount to an assault, tho' what might be other-
wise deemed an assault, words may explain
away.

In one case, such threatening as prevented a
man from attending to his ordinary business, was
allowed to be an assault, for which an action
came—This however was an action on the case—
Blackstone says that the assault must be
accompanied with such words and actions, as well
put in fear a man of ordinary strength.

The reason does not like this rule, for that which
would be no interruption in the business of one
man, would occasion in him no disagreeable feelings
would be a most serious misfortune to one who
did not profess ordinary firmness—What would
Assault of Battery

An actionable trespass in favor of one man
would not, or ought not, to be actionable in
favor of another.

But when the action would be
sufferable if when not, would depend upon the
relative situation of the parties, if perhaps then
their relative situation at the time.

Hence therefore apprehends that the case in such
may under certain circumstances be for such
words, as a man of ordinary strength of nerves
would not mind.

A Battery is the actual ex-


ducing some violence to one—it is not nec-

esary that it should be a blow, nor striking
an arm or throwing water on him is a battery.

It is not necessary that the act be done insensately
for to wantonly whip another's horse, no consequence
of which he runs of him to his rider; an action will be.

To constitute a battery there must have been an
an unlawful act, or an act whether law-
ful, an unlawful, unjustly or negligently con-
ducted.

It does not excuse a man that he did
not mean, or had no intention to do the act.

But if he is not guilty of any blame or negli-
gence, as where he is punishing his lawful com-
mans, he is excused— as if to soldier by emer-

Assault & Battery

A man in hunting game of his own initiative, it is not actionable.

A man is hunting game if in pursuing at it, he wounded a person whom he did not know was there, he is answerable for the act of hunting as lawful.

But whereas a person is pursuing an unlawful act of his doing injury to another, an action will lie, whether he is guilty of negligence or not— as if a man should go into a lot to shoot another horse, if by accident he wounds a man, he is liable.

But in case of concealment, fencing, fencing with folks.

If the parties mutually agree it is an injury done, no action will lie except perhaps there should be foul play.

It is laid down in the law books that where the persons agree to go out if fight, if one die the other for a hurt given him, the agreement will lie of no avail, the death such agreement of fighting being unlawful.

But Mr. Denee questions very much the propriety of this principle— in a criminal prosecution there is no doubt of its correctness— the agreement would lie of no avail— but in a civil suit albeit the injury be purposely done, yet with what an ill grace does one of the parties come into court if claim damages for the breach of that law, which by express stipulation he agreed to.
to break. If it were thought it more agreeable to law, to policy, to reason, that the Off. should not recover.

There are many cases wherein a jury, upon a consideration of the circumstances, do not think that in justice the Off. should recover any thing at all, if it be believed that it was sufficient injury, for instance, to the wife the Off. was ever

Upon receiving an injury which they judge to have been committed, the law obliges them to give some damages—as a penny, but it seems that in such a case the jury ought not to be compelled to give anything. For if they may whittle it down in this manner, to amount in all to no compensation, it gives nominal damages. But it is said the jury ought to give some or account of the flagrant breach of the law. The principle is too often introduced to aggravate the damages, in a civil suit, but it is essentially wrong. If a man has been guilty of an open insult upon a violation of law, is he not guilty to punished? For it criminally, or liable to be so punished? If then the jury give higher or vindicate damages, so any damages at all in the case, yet, the Off. incidently gets punished twice for the same offence—than which nothing is more contrary to the spirit of the law.
Assault and Battery.

However, there may be some cases where the law not having provided for it own vindication, it may be proper to introduce the principle— as in case of slander in Cyp.

The act causing an injury to the Off. need not proceed from the immediate assault or act of the dft. for any manner act by which another induces a battery will maintain this action— as where the dft. threw a lighted eギスク into the market place, which being tossed from hand to hand in their own defense, at last hit the dft. in the eye and put it out— the action layeth, the injury was not occasioned by the immediate act of the dft. himself

Ex. 313.
Ex. 16— another if hurt him, this is actionable as an assault of battery— But if he intended to do a rough act as where one man seeing another lie drunk in the street, if out of mere pity lastingly (not Jeffersonian) if to conceal his shame was pulling him into a house, if he accidentally got hurt if then died the person assisting him, the action would not lie.

As where one was riding a horse which was not very remonstrably ungovernable, but which being suddenly offhghted ran away with the rider, if broke another man lay, the rider was held not to be responsible...
But it had been attempted to draw a distinction between horses with, if wholly unprovocable, if those which have been instigated to violence. Some distinction might not doubt be used in these cases, but if common prudence be used, the reason conceives, that he who creates the injury, ought not of course to be subjected, for all men who are bringing up horses to be compelled to break them in their own fields. I prevented from riding them in the street.

In a case in Commonw Heath, it was said that one licence and then to beat him, each licensing is void if an action will lie, because it is against the peace. But Judge Broom supposed that an action at the suit of the horse ought not to lie, provided the horse at first did not exceed the limits of his licence.

Wherever a person is acting under statute given by law, that shall be a sufficient justification in this action.

As where an officer has a warrant against one who will not suffer himself to be touched, he may justify a touching or even a wounding, in the attempt to arrest him.

But a battery cannot be justified, by an arrest unless process only, if it will only justify the assault, for
to justify a battery, resistance on an attempt to
resist himself out of custody; I should be a braver
man if I was way of gentle imposition of force,
in which way only the last may justify beating
without fixing any resistance as an attempt
to resist.

Every person when commanded is bound
to assist an officer in arresting a criminal, this
factor when once a battery is committed on arresting
a criminal it will not excuse—

When a man is in a violent passion for subject
to do mischief, a person will be justifiably in laying
him hands on him to present him, as it is con
sidered useful to society.

The most usual justification in this action is
an assault demence, or that the first of

Ex. 315—sensed proceed from the off himself. It is

not necessary that the off. actually gave the first

stroke, for if you mean that he offered to do by

letting up his sticks to strike you, it is suffi

cient justification, for if he had stood till the off.

had actually struck him, he might have been
disabled by the blow—so that an actual stri

king is not necessary—

But if the person commits a
greater battery than is necessary for his defense,
it will not excuse him.
Assault of Battery.

Therefore the commission of any enormous battery, 

Ex. 315.
will not be justified by a small assault; for 

35th 62.
the law will not protect a man in making use of 

this justification as a weapon of revenge.

1 man may justify this same assault 

Ex. 314.
in defence of his wife, parents or children, as he 

36th 62.
may in his own defence. This is as complete a 

justification as don a. Item.

36th 407.
So a wife may justify an assault in de-

fence of her husband,

36th 407.
so a servant may justify in 

defence of his master. But a master cannot jus-

36th 407.
tify an assault in defence of his servant, for 

Ex. 314.
he may have an action against the person who 

31st 658.
beasts him, with a free good servitude against; but 

the servant cannot have any such action for 

treating his master. Deline this last rule 31st 658.

a man may justify a battery on any one 

Ex. 314.
who endeavors wrongfully to dispossess him of his land.

31st 26.
To take away his goods, but in case of an entry 

on the lands, it must not be justified as a battery, 

but as a gentle multiplication of hands.

But if a person has actually taken my goods into 

possession, I cannot take the peace to retake 

them, but if I can take them in a peaceable man-

ner, I may do it. Where the injury is a mere breach
of a prudent edge, the Deft cannot justify a

\text{Exe 31:15:}

battle without a request to defend; but it is the

\text{Exe 25:14:}

cause if one breaks down a gate, or enters with

force & arms, for then it is lawful to oppose

force with force.

So where a man attempts to enter

another's mansion, he may resist him with vio-

lence. So if a man enter my house in a

peaceable manner, I after he is in, behaves disor-

derly, I may lay violent hands on him if put

him out.

So in the exercise of his office a church

warden, if the hands of reason a tything man) may

justify taking of the hot \# a laying hands on

out who is disorderly in church if turning him out

for disturbing the congregation.

So a person may justify even a mayor-her

\text{Exe 11:10:}

if done by him as an officer of the army, as a

\text{Exe 31:15:}

punishment to the Deft. for disobedience of or-

ders, a other military crime.

A parent is especially justified in giving rea-

sonable correction to his child, a master to his

servant or apprentice, a school master to his

scholler, if it is done a faster to his prisoner.

\text{Exe 31:15:}

When the injury proceeds from the Deft's own

doom, it will be sufficient to justify the Deft.

as where the Deft. of Deft. being at play the Deft.
In case of assault and battery, the only evidence that can be laid on a day certain, is at divers other days and times, for if as assault is one entire individual act, it cannot be committed at divers times, nor laid with a continuance. In cases it is impossible for the plaintiff to know whether the assault is made to prove one assault or twenty. Therefore, he cannot be free from either to justify. If the act is stated to have been done on one day, not the actual day when it was done, yet if after trial it is proved that it was done before action last, it is sufficient to maintain the action, provided it is not feared by...
Assault of Battery

the Stat. of limitations. It is the common
practice in law not to state any day, but that
it was committed within 5 years last past.

The declaration must charge the fact to have
been done, with force aimed at against the peace
or to that person.

The fact must be positively charged,
not by way of rebuttal as whereas the be
such a day made an affidavit

Where a battery is committed on the wife, the
wife and husband must join in the fact of it and
is put to whichever be the case, i.e. bringing the ac-
tion, and 2nd. because if he dies the right of action
passes to her, or whoever the injury was committed
Where an assault of battery has been committed on both
9 May 1208.

two separate actions must be brought one in his
own name alone, but the injury done to himself, for

675. the wife cannot join in an action for an injury done
to him, if the other in conformation to the last rule
above mentioned.

The declaration may lay many
2d. 642. things in aggravation of which the party could not
677. himself maintain an action, as for frightening his
this family, etc.

In this action and in all others founded
on torts if the battery had been done by several the
Page 388

**Assault & Battery:**

If the battery is not willful, the act is not battery. If it be willful, the party may recover damages for the assault only. If he brings his action against a person only, the court shall have but one satisfaction for his injury.

Section 19: No actionable injury to damages

Section 20: Each person willfully guilty shall be liable.

Section 17: To this action the defendant may plead

1. The general issue, not guilty, or matter of excuse
2. A justification

If the defendant has been convicted of

Section 18: If on demurrer, the defendant shall have

Section 19: Judgment

If the defendant has once recovered damages for the assault and battery, he cannot afterwards recover in a new action for any further mischief or injury arising from the same battery. Likewise, if the defendant has recovered damages for the battery, or

Section 11: A new action was not out of the same suit in consequence of the former wounding or which he lost a new action.
but that the justice held it would not be.

In conformity to this decision was the case of
John Shuttenden before the Superior Court of Law.
A battery was committed on the Shuttenden
which injured his eye. He sued to recover damages: after this recovery by means of the writs
he entirely lost his eye, for which he brought a
new action, but it was determined not to lie
for the consequence of the battery is not the
ground of the action, but the measure of the
damage.

The Stat. of limitations may lie pleased
after
ed in bar to this action in England, where it
is not commenced till the expiration of four
years after the battery is committed.

The Stat. of limitations in Louisiana is 3 years, but it may
be given in evidence under the general issue
of judgment in a criminal suit for this of

Ex. 320. power, can never be given in evidence in a civil

Ex.321 and for the same offence, for in the civil criminal

suit, the person injured may give a witness, whereas
it would be allowing a man to testify in his own

case.

For an action by Baron of Gence for the battery
Ex. 480
Ex. 321 of the wife, under the general issue first cannot

Ex. 321 be admitted, that she is not the wife, nor it

should be pleaded in abatement, that the 321st might
Assault of Battery.

It is a general rule, that the Party shall be recompensed but once for his injury, tho' it be done several, if the his action be first joint or concurrent.

1160. 6 of 7.

As in this case. They don't case.

As in this case, where an action was brought against two one pleaded not guilty, the other dened a dem. of both issues were found for the Def't, it was determined that there should be but single damages suffered.

So if one demns of the other pleads not guilty, 1160. 6 of 7. if both found for the Def't, whatever the verdict of the jury is, judgment will go against both the Def'ts for the same. If one who demns succeeds in his plea, both will have equal bene fit of it.

Sna. 1722.

Again; suppose one suffers a default, if the other pleads not guilty, goes to trial if a verdict goes against him for £ 5 00. Here the Execution must go against both for that sum: but if on the plea of not guilty, the Jury acquit him that pleads, it likewise acquits him who suffers a default.

Therefore where the Def't declared jointly, the Jury cannot decree the damages, so as
to give more against one than another. But
But the jury may find some guilty of others not.
the jury, having returned their verdict, the court
may assess the damages where the wound is
amounted to a mayhem, but subject to a num.

There is no distinction in law,
as to mayhems, they are merely considered as
atrocious batteries.

If a jury find B. to be guilty
he joined in an action for it, if they thought it of
their interest to plea the jury, sometimes thought proper to
order the appropriation of the damages between them. They
may bring in the fine that A. pay $50 to B.$40.
In such case the verdict is null, if A. elect
to take it as lead if set aside, but the debts
are bound by it if the jury chooses to take it as
good. But in such case the execution can go
out only for one of these sums. A. may therefore
take out execution for $50 if since A. has a
right to look to both as in the case for his recompence.
The execution goes out against both, as in the
Assault of Ballott.

The former case may be decided on both, or on one only of the sections of the 5th. - Thus 6. who was awarded to pay only $40 may be compelled to pay the whole $50. - But if the 5th. object to the verdict the court will not accept it, if the jury will be sent out again. The reason contained that no substantial reason can be urged why execution should not be taken out for the whole aggregate sum of $80, but so the rule is,

The construction of the action of theft is peculiar in this respect. viz. that a number of distinct batteries upon the same man by different defendants, may be joined in an action against all. The jury having found the different times when the different thefts were committed, may be sued to apportion the damages among each.
Fals Imprisonment

The only violation of the right of personal liberty is by false imprisonment.

False imprisonment is defined to be an unlawful restraint of one's liberty, or rather a violation of one's right of liberty.

There are two requisites necessary to constitute false imprisonment: first that one person be detained, and secondly, that the detention be unlawful.

The unlawfulness of the detention consists in the want of authority. Authority may arise from some legal process, or from some special cause amounting from the necessity of the case to a justification as in the case of arresting a felon by a private person.

Every arrest of a person for a civil cause which is not warranted by legal process, is an unlawful restraint of liberty.

To arrest a person for the better of another amounts to false imprisonment. By confining a person one is also guilty of false imprisonment.

A private person is not guilty of false imprisonment by confining a person arrested by a proper officer at the officer's request.
False Imprisonment.

The most common cases of false imprisonment, are those of arrest in the false arrest of a man. In Eng., a Judge of a Court of record of general jurisdiction, if its proper case, against the Commissioner of violent presumption in favor of the thing of record of every person.

26th 114. 3o. 26. 27, 24, for any judicial acts whether it happen that he makes a mistake or mistake if he confines himself to his proper jurisdiction.

The reason of this rule is that no proof can be admitted, in this case, against the "character" of the judges. The part of a court of record of every person.

24th 114, the jurisdiction, trespassing on its jurisdiction, as to the 26, only at matter of entwinedly, the judges are liable, for here they are not act judicially. Yet if in trespassing on their jurisdiction they nearly make a mistake, it seems they are not liable.

Judges of a court of limited jurisdiction are liable for their mistakes, if in making them they trespass on their jurisdiction. Yet if it appears that the judges of a limited jurisdiction, act maliciously, but within their jurisdiction, they are not liable. Thus this is a question.

Counts not of record as practised by the law in Eng. 26. 268. 57, 58, 58, 2. 57, 26. 26. 26, if he acts act judicially, within his jurisdiction.
False Imprisonment

will be the liable of the sign of the above law.

Law rules is mitigated by several Statutes.

When a Justice issued a warrant for the col.

of the party, which was held, or the person

to be arrested, but he was held liable

that the justice was in mistaking, or the sign of

its being so mistake ministerial act—But

the Justice had committed a person, which was a

judicial act. He was held liable, because he did

not proceed according to law—The extent of their

liability is not hereby settled in all respects.

But the Lord of the Bench will not grant

against an ex parte imprisonment information against

a person who appears to have acted unright.

Fully. Whether Justice have not

The power of committing a person for refusing

To answer questions relative to his settlement,

I apprehend they have.

All courts which have the pow-

eral to punish by fine if imprisonment, are consider-

ed as courts of record. By fine imprisonment

is meant where the confinement is for the punish-

ement of punishment, if not to compel an answer

231

4. This position is denied to be universally true, that

a power to fine if imprisonment makes a Court of

record.

Elo 32

328.
Safeguarding the rights of the deceased or their representatives is essential to prevent illegal acts. The act of commission or omission may lead to consequences if not addressed promptly. In cases where the attorney is involved, the rule is clear: the attorney is liable for the actions taken on behalf of the principal, even if the principal is not present. The office's responsibility is to ensure that actions align with legal standards. In situations where the office is not aware of the facts, the liability of the principal may be brought forward, highlighting the importance of thorough investigation. The sanctions, if any, are the subject of the court's decision and are subject to local laws.}

Examinations from arreste cases, sometimes in English, connected with the character of the individual, as in the case of an estate. Sometimes, it arises from temporary circumstances, as in the case of attendance. The privilege of a attorney extends to his horse, money, necessaries, as well as to himself. In the latter case, the arrest is not illegal in the first instance, but a subsequent issue, after which, detention is illegal, if an action lies, but it is the privilege of the court to not act on the party. This is the office when dirty in the first instance. Aware of the privilege, he is
False Imprisonment.

not liable. The suit in this case is not ... but the suit continues...

The privilege is disallowed in cases of collusion as in vexatious actions, if being discretionary with the Court to allow it is not. So where the party attends as a volunteer, when a prisoner or with a view of availing a free suit when there is none...

A gaoler or sheriff is not guilty of false imprisonment in detaining a prisoner for the payment of his fees; either in cap. a lunat. Brot. 14 Port. 158 it is otherwise. I suppose, when he detains them for his board...

If the order of a court be, to commit a person in a certain prision, the confinement of a person in any other prision is false imprisonment.

A peace officer is justifiable in arrest. 

If he arrests a person without a warrant, or a charge of felony, even if there had been none committed.

It is otherwise with a private person.

for if he arrests another on a charge of felony, without a warrant, he is guilty of false imprisonment. But if he hath a cause he doth put him on reasonable grounds of the
not mitigated by Malice, he is not liable although the party arrested be innocent of the felony.

An original arrest in a civil action is, &c. 2d. if consequently the officer making such arrest is liable to false imprisonment. Yet in public prosecutions, the arrest is good. At Law, law an arrest an arrest in civil cases is good 2 Buls. 72.

It is said that a bail may take his principal on the Sabbath, for he is not the nature of a frost, the principal is considered as his prisoner, if the taking by the bail is considered as a retaking on an escape. But this rule is denied to be law by Blackstone.

The breaking open outer doors to serve a civil process, is unlawful. Therefore the party is liable for false imprisonment. But if one enter any outer door he may break open any inner door for the illegality arises from the breaking an outer door. Only a stranger enter into the house of another, the outer door of that house may be broken to arrest him.

It has been questioned whether an arrest is made on Sunday or otherwise ill-
Fallen imprisonment.

the principal act of the State.

To alter a breach of con-
tact arising from a claim may be served on Sun-
day. This rule proceeds upon the supposition that
the person in the custody of the Court. It is, how-
ever, stretching the principle a great way.

And out of this Stat. [29 & 30] which has made
the bargaining provision, part of this provision has
grown a question of much importance. But what
the almost frequently have arisen must never
have received a judicial decision. Suppose a
be arrested in a civil suit on Sunday, if fa-
cility obtained until Monday, if then served
with another process. On this question there is a
diversity of opinion—some maintain that the
last arrest is valid, others hold to the contrary
opinion, of that opinion is Judge Bruce. The
principle has been decided both ways.

It remains if the Court held that in
such case the second arrest would be good.

It is an illegal act for a Sheriff in a civil
suit to break open any door to serve process.
If he does without subject himself to an action.

And at the same time, the service would
be good.

This decision applies in principle, strictly
to the case under contemplation. The detention
Full Imprisonment.

It is an illegal act. The service being void, and if this decision he law the arrest on Sunday is valid,

But the Reeve apprehends that the law has undergone an alteration, which is fully stated in the case of Lee of Gansel. This case did not necessarily decide the point, but the Judge thought the case went upon this supposition that the duty as the office was enabled to make in consequence of an illegal act, should be utterly void.

He thinks it a perversion of reason, justice of feeling for a court to suffer any good to arise to a person from his breach of the statutory laws of society when it can be avoided. For it is holding up the utmost inducements for their breach. These are cases, however, in which it would not be wise to enforce this doctrine on principle - as where a wrong fully took this horse. To seeing him ride him 2. New 1048. off, forbids it and demands the horse of whom A. refusal to deliver him, strikes him off with a club. New the law in such case permits B. to retain his horse reasonably, but forbids such force, but A. is very properly subject to an action for the 2. New, yet it would be insufficient to compel him to redeliver it to A. The horse: In cases of possible entry of detainer, however, even this is done.
False Imprisonment.

It has been questioned whether if an illegal arrest is made in consequence of which another arrest is made, which would otherwise have been good, the latter is valid. It is settled however, that the 2nd arrest is valid, if there has been no collusion between the parties.

The officer is liable to false imprisonment.

If he arrest any other person than the one designated even if the person whom he arrested, declared himself to be the person sought for.

It is very questionable whether this rule will be adopted in law.

A private person may without

5 Bar. 27.

4th 127.

1st 86.

2d 74.

172.

2d 115.

2d 86.

1060. 76.

6th 175.

1st 49. of a man for a short space of time, under the par.

1st 52.

2d 167.

2d 167.

76.

6th 76.

2d 86.

2d 167.

2d 167.

2d 167.

2d 167.

2d 167.

2d 167.
Of the liability of officers

Chap. 391. If an officer makes an arrest in a case from
Rule 823, the face of which it appears that the Court found
State 234, it had no jurisdiction, he is liable according to
Cont. 20, the text of authorities, from whatever cause
the defect of jurisdiction arises.

But this rule has been expanded
1060, 76. much further. It has been held, without any
Cont. 347. regard to the circumstances, whether the defect
378. appears upon the face of the process or not. The
2041, 388. law states, when the Court has not jurisdiction of the cause,
1955, 509. from whatever quarter the defect of jurisdiction a-
716, 793. rises, the officer would be liable.

Such as the reasoning laid down in the Man-
whalset case. But this has been denied. And it
1060, 76. is laid down by a number, together with J. B. and
2041, 993. that neither the party nor the officer, are bound to
2041, 388. take notice whether the cause of action arose out
1955, 238. of the jurisdiction. This is contrary to the resolution
2041, 388. in the Man whalset case. But if the cause
of action arose out of the jurisdiction of the Court,
the A., any not to plead it, if he does not the
defian of the jurisdiction is true. If he shall not
2041, 388. take advantage of it in any collateral action
against the A. on the officer who executed the
process.
Liability of Officers.

Volunteering all that has been said in opposition to the resolution in the Marshalsea, Safo still it seems to be Law in Camp. Vrigi that where

Ex. 391. Court, arising. the process was no jurisdiction of the

Mark 85. subject matter, every thing done under it is ab-

Deb. 65. solutely void, whether it appears on not upon the

face of the process.

1. Ex. 329. Where the Court have jurisdiction

2 v. 171. of the subject matter. Seced.

444. 1. Officers are not liable for their acts done in pursuance

2 v. 634. Command of the

106076. of the各县 of Westminster Hall, tho' the suit be void.

But this does not hold where the Court has not ju-

risdiction of the subject matter.

3. v. 231. Where the jurisdiction is con-

Sec. 106. st. of the process is maliciously unfounded, the

office is justified to the Court, or magistrate, as the case may be, is liable.

Where a Court having jurisdiction of

4. v. 231. the cause proceeds improperly, still if the process

2 v. 231. appears regular, the office is justified.

According to the weight of authorities the rule in

Bull. 83. Camp, seems to be, that where the subject matter is out

of the Courts jurisdiction, the process is void, if the

office is liable, but where the want of jurisdiction is as to the person, or place, the office is not liable

unless it appear from the face of the process. But

the latter branch of this rule the true of mean pro
Liability of Officers.

If the process is void, it is said, to final process, if

such a process is void, without qualification.

Thus, where an arrest is under final process of

an inferior court, the officer's justification must

show that the cause arise within the jurisdiction

or that it was so laid.

But this the process under

this qualification justifies the officer; the original peti-

tioner is liable. He is bound to show the extent

of the Court's jurisdiction, if to such if, of where the

cause of action arose. That the original debtor,

now debtor, is not barred, by having pleaded to the

first action.

In 1 P. Hammond it is demurred, that even

the original debtor is liable in this case; if the doc-
tine has been approved in 700 by two judges

Law J. Elwes et al. 311.

In some cases where

the jurisdiction being the process is limited, the

process is void, if the party of the court are liable,

over the cause,

when the jurisdiction of the court is complete

as to subject matter, person of place, and

where an authority by statute is not strictly pro-

vided.

If the original arrest was lawful, yet for any

subsequent oppression this action lies, against the court

or as the case may be, the officer as where
Liability of Officers

wanton cruelty was exercised in confining a 
prisoner in a dungeon without air.

So where a constable detained the Off. till 
he paid a greater sum, then would it be demand 
by law. He was considered as a trespasser at 
initiation.

In other cases, the process even of the treasure 
345. aside from any objection to the jurisdiction of the 
Court, if the Off. in the process is liable to this act.

Thus where a writ is not returnable on a day su-
tain, the process is void. But the contrary opinion 
has been held. The officer however is not 
liable in this case, the process being from a Court 
of Westminster, tho' the irregularity appears on 
The face of it.

The last rule applies to mesne pro-
cess only. There is a distinction as to the operation 
346. of this rule between mesne & final process.

which is, that to a capias on mesne process, the 
return of the process must be set forth, but 
on the final process it is unnecessary for the 
Off. has the effect of the writ.

But if the original Off. is dead, he must shew 
not only the final process itself, but the judgment 
for which it issues; for there must be a subsisting 
judgment.
Liability of Officers

It is a general rule that an arrest under an
irregular process is void; or under a process of
nullity founded on an irregular proceeding — as when
an arrest was made on an execution issued
on a judgment set aside for irregularity.

A distinction is taken between process
irregular, of process erroneous. §66A. 989.

If it be irregular it proceeds from the fault
of the party or his attorney. Therefore the party
is liable. But if it be erroneous, it is consid-
ered as the fault of the court, which excuses
the party. In the former case it is absolutely
void, but in the latter it stands valid if good un-
til it be reversed.

The process of arrest had been
held to be irregular if void in the following cases: first,
when it has been filled up without proper authority;
and second, when it has been filled informally.

A process, the irregular, if it be issued by any
judge of the court, it is a justification
of the officer issuing it. But not of the
party in whose favor it issues.

But an irregular process issuing from an in-
jurious Court, or any improper authority, does not
justify even the officer who executes it.

All arrests made under general search
warrants are void — so general warrants of any.
Liability of Officers.

Since an illegal act as a warrant to seize the author of a libel wherever they are.

The requisites of a search warrant are these: 1. Every search warrant must be granted on the oath of the informer. 2. The grounds of the suspicion must be sworn to. 3. The search must be made in the daytime by a known officer. 4. The warrant must be served in the presence of the informer. 5. It must be directed to some particular place. 6. It must be against the person suspected of having the goods. When these rules have been observed, the justice of office are both irreducible. But the informer is justified, not by the event, but if he is justified if his suspicions are verified.

Where the officer, during a process, justified under it, he need show only the writ or process itself, that it is returned, if returnable.

In a case, the Sheriff under Sheriff is not obliged to show the return, because his power extends as further than to the execution of it.

But if the original Writ is Sealed, he must show a Judgment as well as execution, in case of final process, for Judgment may have been reversed before the seal of the original Writ ought to take notice of it. The same rule applies.
Liability of Officers.

When an action is laid against a stranger who acts for another for he is considered in the same light as if he were acting for himself. But if he acts in aid of an officer, he will be no further liable than the officer would have been.

If a Sheriff do not return a writ when he is bound by law to do it, or make a false return, he may as in other actions.

This rule varies from the general principle of law, viz: that a microscope is necessary to constitute a trespass by relation.

When this action is laid against the officer. If the office jointly.

They may declare in the defence, for the writ might be a good justification for the officer, if not so for the office. And so a conjunction. But if the officer join the original office in a plea which is insufficient as to the latter, he loses the benefit which he might otherwise have had. If the plea be.

head as a justification to the other. Judgment shall also lie against him; vice versa.

When a false imprisonment has been done:

By the influence or procurement of another, this action will lie against the person.
Preplevin

This action is to recovery a private wrong to the property of the Pledger, by an immediate invitation of it. The word Preplevin is interpreted to signify the substitution of one pledge in the room of another.

II.

The Writ is best in Eng. for two causes, 1st when property is distrained for rent. Dther cattle are distrained, damage follows.

Anciently, landlords distrained property at pleasure for rent, unless the tenant had no remedy in case of hardship or injustice.

But afterwards, this writ of Replein was granted.

II. In cases of the whole of the Eng. law respecting distresses for rent is excluded.

This writ applies only in cases of distraining cattle. In common cases of any action on injury done to property, there is no other remedy than to bring suit, if want the tady motions of a lawsuit, but in this case, the cattle which do the injury mic be taken for the injury done.

If the owner of the cattle will bring suit in filling the security, he is allowed to get possession again of the cattle.
Replevin.

In the mean time the person injured keeps the security until the debt is paid. The suit of replevin does not therefore deprive the person of his security, but merely exchange it, being compelled before he can get back the cattle or other thing distrained, to procure the bond of some secure if unexceptionable person that whatever damages should be actual and by the jury should be found on the cattle returned — as it is in the prosecution of the action for the said judgment be recovered, if the execution proves ineffectual, the bond will be perfected if the debt might come upon the security.

III. But there is another class of cases where this rule applies in law, but not in Eng. 11th, where the debt is attached by his property to answer into suit but against him. Despite these attached must be considered by the law, law as in the custody of the officer or of the person until judgment. But the law here has given in this case the suit of replevin, whereby the debt may retain his property by an exchange of the security as in the preceding cases.

1. Most of the cases which come wherein the suit of replevin is noted are cases of distress for want of

The law of Eng. was originally regarded
of the rights of freemen of all other than
the nobility of great men of the time. This dis-
position to pour out exclusively the riches of great was
peculiarly manifested in the law of land-lord
of tenant. Whether rent was really due or not
the land-lord to gratify his tyrannical disposi-
tion—so to fill his purse—would distress perhaps
one half of what his tenant was really worth if
the sum demanded was not paid: in a short
time would sell the property to raise the money
nor had the tenant any relief but in the slow-
progress of a lawsuit.

To remedy so great a griev-
ance the writ of repelsum was given. This enabled
the tenant to redeem his property by giving good
security that what was due should be paid.

In the property distressed was delivered and
as every lord of a manor was surrounded by
others who were his rivals or violent enemies,
perhaps the tenant was not difficult to find those
who would give the requisite security. After
discharge of repelsum the cause was for the ten-
ant to summon the lord as a被告 at the
suceeding Court. If at the trial the land-lord
showed that rent was due, this when a certain-
ated the tenant is awarded to pay if third
is paid, in the case judgment will go against.
This cause for the purpose hereinafter is wholly excluded in law. If very little used in the U.S. cases—

II. The second cause for which this writ issues in Eng. is in common use over the U.S. cases—

W Fraser fielded horse, cows, other animals doing mischief, has two remedies whereby to compensate himself for the damage done—

1. He may commence a suit for the treble damage, or he may immediately distrain and confine them, both that they may not break in again, and as security for damages done; for while in human the cattle are considered as in the custody of the law, I must there remains as security for the damage, unless the parties compromise, or unless they be explained.

If the parties can agree as to the quantum of damages done & whether the fence was good or not if they come to a compromise the keeper of the hounds will be compelled to deliver up the property. If the object cannot be accomplished by
Replication.

This mode, a suit of replication must be sued out, if a bond substituted in the
room of the cattle. When the suit is obtained the Deft. in replication must summon
the distressor to appear at least as at that before. The amount of damage if any are
now as contained in a jury, and as in the other case judgment will go for the Deft.
who will recover damages of the Deft. as if Deft. execution will be against him.

But if the Deft. is guile was not a good one, is not a lawful one judgment will go against
the injury done notwithstanding if he will be compelled to pay as a trespasser for con-
fining the cattle. Wheresoever the jury may say.

In harm of in most of the States the law has ascertained what shall be considered
as legal fence-in Eng. this point is just to the jury.

But if the cattle entered the fence law
over a fence bounded by the highway the law
may be essentially different— for the common
law, that provided the fence bounded the high-
way. If the cattle entering were not commandable
heats they should be distressed if the distressor
should recover damages, at that his fence was bad.
Thus if hogs get over a fence from the highway which is a lead fence & doing injury the owner shall be liable if the animals is pursued. for hogs are not unreasonable beasts.

There is a statute in Con. allowing the several Towns to make by-laws in order to regulate the other subjects. The town of Southfield made a law that hogs if unproved might run in the highway. Before this it was law if any one found a hog in the street he might catch it to be ensued. This law preserved the hogs from being thus ensued. But a question arose whether the owner was not liable to pay for all damages they committed. This law notwithstanding if they entered any means field, provided that the fence was bad, or provided there was none. After many decisions that he was, if of that they were distainable the question was taken up to the superior court. It was then decided that this being the law, hogs were on the same footing with horses, if were distainable whether there was any fence or not. But in respect to fowl’s grace, if Turkeys for the law seemed to have made no provision. If they enter the lot or garden of another, Mr. Heald has
had doubts whether they may not be treated as animals fer a nature. It killed or treated as the owner or possessor of the land may think proper. Sawyer on the subject have had different opinions but one would see another go killing his hands which were doing injury in a garden. Mr. Reece thinks nothing would be recovered.

The following cases mentioned in law. Some speculation A hand taken 250 cattle damage present of unspoken then, it refused them to last his suit as for the cafe against B. before a justice - the cattle had done mischief to the amount of $20. The justice's jurisdiction extends only to $10. The bond which was given as a security in exchange for the cattle was at the custom is for all the damages. As the justice had no jurisdiction over so large a sum as $20 which the cafe proceeded to have been done the case must of course be discharged. The question then was whether the bond was not discharged since the judge rendered no judgment. If the cafe destroyed - the person injured was thrown as intended defined wholly of his security. But the question did not receive an ultimate decision. Mr. Reece is of opinion that the bond may be immediately used upon.
This action brought by the person whose cattle have escaped is in form of assumpsit & action of replevin.

If the Sheriff or keeper of the pound should suffer the cattle to escape, an action on the case for an escape will lie as in cases of escaped of prisoners from the office.

III. The suit of replevin will lie in the first place in cases of persons by attaching the debt is good, to compel him to appear at court. This is an entire beneficial rule, but it is entirely unknown to the law. But whenever the benefit of the suit of replevin is extended to this class of cases, it becomes the most important division of this title. When the benefit of this suit is not extended to this class of cases, a creditor may make a trifling claim attach and take away all the property of the indigent debtor, or even his last cow, if he define him of all means of subsistence until the final motions of a court of justice have decided upon the claim.

But in law, where a debtor's goods have been attached, if he can procure good security in lieu of them, he may replevy the good of hold possession until the determination of the suit; but in this case the security must be most ample for it would be wrong to deprive the creditor of his pledge for his debt without substituting another at least as good as...
The bond of a man in good exemplary circumstances would.

The reprieve in this case is not adversary but is a suit and suit an action against another as is now to be tried, but the object of it is merely to get back the property of to stay a proceeding for a subsequent action on the latter. The suit therefore is most entered on the files of the court but not placed on the docket, or added. In the event of the suit being determined in favor of the party of upon execution non est return, or if in other respects it be ineffectual, suit may be immediately last upon the bond.

A question somewhat difficult of solution has been raised under this bond, law — a creditor brings a suit against a debtor stating the damages very high of all the property attached in one case. A given a bond in the common form as security. If the suit is reprieved, the question is does the obligor of the bond become liable to pay all which shall be due to the creditor, or is he bound merely to pay the value of the suit? according to the letter of the law or according to the literal construction of the instrument. It is no doubt bound to pay the whole debt. But Mr. Reeve concedes that such ought not to be the construction — the object of the statute should consider is merely to place in the hands of the creditor as good a security as that which is taken from him, it to place the parties in a relative sita.
The case is certainly in analogy to that of giving a bail-bond if the rule ought to be the same.

A. gives B. 600. B. does not appear, judgment goes by default, in this case if B. demands the bond at any time before a new one is returned, the bond is literally perfect. But according to the construction given here, there is no perfection. If the reason is that the object of the law allowed is merely to place the parties in the same situation as the body of the debt had not been released, if before a new one has been returned by the Sheriff the body be delivered up, the parties are necessarily in the same situation as if no bail bond had been given.

If the Sheriff have a writ against A at the suit of B. if attach the goods of B. being in A.'s possession can B. reply them? This question must be answered in the negative. The reason is the want of replevin counts when an existing suit between the persons replying, if the person of whose suit the goods were attached in the case but there is none. If B. replying, replying will lie, but replying will not.

A question has been raised in court, whether the debt might not be compelled to take bond of the debt himself when the goods are reprieved — the court of jus
the said yes, thinking it perfectly good security—This however will not answer the law, for it would be turning a procès by attachment, into a mere summons—

It was however decided that the purpose of the law was sufficiently well answered in this way—and that the justice who took such a bond acted judicially, if that acting in a judicial capacity he was not be made liable if he did so, for an error in judgment—This decision was reversed by the Supreme Court of the State settled as above, both for the reasons there given of because the justice did not act judicially but ministerially, as is a parallel case the sheriff or other officer acts ministerially when he takes bail—This is a matter of judgment, but still if the sheriff takes insufficient pledges he is liable.
Prover.

2 Sam. 11. 1-2.

Prover. is an action in the nature of an action of trust on the case wherein one means a

true professed of the goods of another by delivery, binding or converting them to his own use without the consent of the owner.

It is a very extensive action for it lies in every case where one has converted the goods of another to his use.

Three cases embrace all actions of

1. When the def. came by them

2. When he gave them

3. When he gave them and refused to return them

In the two first cases there is no necessity of

But in the last case where there is no actual demand of refusal is prima facie evidence

of a conversion.

If this idea of an intention to con-

tract can be rebutted, Prover is not the pro-

fer action.

A refusal to deliver is generally sufficient
evidence of a conversion; this however is a part
This action is confined to personal property, it cannot be extended to real, as to corn growing.

Originally, this action lay on 5 Thre 265, by in safe where one found the goods of another who refused to deliver them on demand. Hence its name, and hence the practice of declaring the goods.

But it now lies to recover any personal property capable of being identified which has by any means come into the possession of one to whom it does not belong, to which has been converted.

This action was unknown to the common law.

In 2 June 23, it being the Lestis, after all actions on the safe given by Stat. Westm. 20 Edw. 13 Edw. 18, Prince

Sec 123, where not actions on this case known at Com. Law.

The gist of this action, is conversion, of conversion 5 Thre 266, as proved, is proved either 1st. By unlawful taking.

2d June 46, being 2. By an unlawful use. 3d. By unlawful detention.

A wrongful taking implies in itself a

Wrongful taking implies in itself a 2d June 66.

2d June 260, conversion, but when the original taking is law.

2d June 261, there is no conversion without either an un-

2d June 25, wrongful safer, or a refusal to restore the property

2d June 66, on demand.

For an allegiance of property in the own.
as professed, the horses must not lie. The professed action being an action of trespass.

The Off. must prove property in himself, professed conversion in the Off. Therefore if A finds property, if B finds property, A has no right to an action of trespass. If A finds property, it is not liable to an action of trespass. If A finds property, he has no right to an action of trespass against the rightful owner. There is demand of refusal evidence of conversion.

But professed is not necessary to maintain.

Bar 242. stare this action, for a right of possession (i.e. own.

Ex 257. that is sufficient. as if an A

2 Cor 219. of his testimony, thus they never were in his actual possession.

2 Sam 317. possession.

A finder of goods has no lien on.

Ex 285. them for his experience. 26 A 254.

If one man is entrusted with the goods of another.

Ex 281. puts them into the possession of a third person.

2 Sam 131. who had no claim to them, it is a conversion of.

1 Sam 260. horses may be maintained for them.

1 Sam 419. Whenever there is a tortious taking thereof.

2 Sam 131. also smiteth A. if the property had been stolen, (is concurrent with trespass).
When the property is destroyed without any taking away, trespass is the only action and a lease is that without removing him, but if the property is removed but one real cause may be maintained.


When the taking is lawful, trespass will not lie, unless the taking was not gratuitous, i.e. unless the original intention of the taker was to abuse the property, or convert the property taken. When property is taken with such an intention, the law considers that in fact there is no bailment, for the fraud annuls the contract. Therefore there is the same will lie.

It is not necessary in an action of trespass to have had an absolute ownership of the property taken, for if property is taken from a bailee, either he or the Bailor may recover it in this action, but if the Bailee does first, the Bailor is an instigator of his action against the wrong doer, and he has his remedy against the Bailee. Yet if the Bailee in this case anticipates the Bailor in suing the wrong doer, still the Bailee the instigator of his action of trespass, may have an action against the wrong doer to recover special damages.

It is to be observed in these...
cases that the commencement of an action by the Oft. whether Bailor or Bailee, he had a
right of recovery. Itcusta the other of his action
Judge Adair supposed that the Bailee ought
5-12-184 to be permitted to maintain his action
4-10-87 left under the circumstances of the case, he
18-24-2 is actually liable. But the rule is, that the
13-10-57 Bailee can maintain the action, unless he may
1-10-58 by possibility be liable. And as every Bail-
er may be responsible, the rule seems to be
actually no less than this: that the Bailor
in every safe maintenance — The Bailee
by doing the wrong does discharges the Bail-
eese

6-10-69
1-10-90
1-8-81
[1-10-221]
6-8-266.

A returning of the price of the possession
will go in mitigation of damages, but does
not bar the action of hovens.

The effect of a

1-8-7-93 Judgment in this action is to vest the property
5-10-78 in the Deft., unless where it has been previous
5-10-293ly returned to the owner.

Owner may be hurt against the first or
Bar 4-5-2 any subsequent takers, if the original taking
5-10-293 was without consent — as subject No takers
2-10-70. As horse, if sells him to B, who sells him to
6-10-176. If A may bring his action against either
6-8-83.
6-10-191, for tho D has given a valuable consideration,
Proviso.

16 Geo. 2, 243. If the magistrates prior assent in time forenoon, the consistory of the same must rule.

But when the pro.

& May 28th, petty treason is money in Bank Bills, it is from

& Geo. 2, 242. reasons of policy established that trousse can be lit.

16 Geo. 2, against the first taker only; but not after they have

been paid away in money.

Touche lies to recover a

rule in action.

A man's having a special property

is sufficient to enable him to an action of trosse against a

stranger, but not against the general

property man. Therefore trousse never will lie in

favor of the Bailer against the Bailer; neither will

this theft, but if property taken be wrongfully taken

from the Bailer by the Bailer, the former may have

an action on the safe against the latter to recover

special damages. The action however must not

be called trousse.

It has been a question whether the

action of trousse is barred by the Stat. of limitations.

For the Stat. does not mention trousse, it speaks only

of thefts. I believe supposes, that therefore where the

trespass is concurrent with thefts, it is barred by the

statute for it is the nature of the injury, and not the

form of the action but which ought to determine

whether the legal remedy is barred by such a statute.
It would be absurd to say that the remedy for the same injury should be found in one form of action
not in another. The Supreme Court of Appeals of New York have held that, contrary to the opinion
in the cases of

A claim for money on using having pawned property as a security, being paid to recover this property,
he cannot recover without first tendering or paying
the money actually advanced; for there is an equitable action.

Very great anxiety was formerly necessary in describing property toward which money was paid; but now convenient certainty is sufficient in description: there is no definite rule can be given in this particular.

The general issue is almost universally pleaded to this action. It is said, indeed, so far as Twiss has, that nothing except a release can be pleaded. But this rule is unintelligible. The reason is not discoverable, nor is it adopted in any other jurisdiction. The practice has been to give some defense in evidence under the general ground of

An insufficient recovery, i.e., where the defendant obtains judgment, but cannot get his money, has an action against another person for the use of the money. This rule has its two reasons, first because this is a ground of recovery, and secondly because a judgment merely is a complete satisfaction although no action be taken and upon such judgment. But this position is not meant to establish the point that no suit or recovery can subsequently be had on such judgment, for this may be done.
in some cases the property which is the subject of
the action, may, according to the principles of the
Roman law be brought into court if will thegravim-
ification of damages is the Deft. will not take
his property if receive also such damages as
were at the jury will give him.

But no very bulky

article with as a price of wine or can the this
tendered. Nor will the Deft. be compelled to
accept the article if injured materially. This
rule seems to have been formerly framed with
a view to cases of actions lost for family pi-
tures & things of that sort:

One tenant in com-
Add. 196
mon or joint-tenant cannot maintain this
action against his co-tenant; because the
Add. 200
is property in the Deft. unless the Deft.
has sold or destroyed the thing held in
common.

But supposing one tenant in common
he brings this action against a stranger with
out joining his co-tenant in point of law,
it is defective, if the Deft. may take advan-
tage of it by plea in abatement, if in no other-
way.

It is laid down that when a servant
leaves by the command of his master, the
latter only, is liable, but this cannot extend to a malicious taking, for no one (except a
wronged co-tenant I can justify a suit on the
ground of execration, therefore trespass on any
other proper action may be brought against
either. The servant can therefore be accused
in several suits only in cases where the
master comes by it lawfully, if the servant
persists in negligence.

Suppose a person finds
a tenant's goods before marriage of consents
them afterwards, the husband may bring two
suits alone, or join the wife.

A rightful
case may bring this action against one de
somest sort, if recovered all goods of the testator
come into his hands, unless he has paid
the testator's debts, if so far they go in miti-
gation of damages...

As to the evidence in an action of
Trover, Sec. Gillet's, 534.
trespass in its most extensive acceptance at com. 

treas. 

law is any transgression of law, short of treason or 
580, 581. felony. when not contested, as a word of technical 

impact, it is any violation of law. 

the word as now used in law, denotes in its 
general sense, any misfeasance committed 
to the injury of another person or property. 

in its most appropriate sense 

the word imports any injuries by force to the 

real or personal property of another. 

the right of personal property in possession 
is liable to two species of injuries. 

1. abuse or damage while in possession of the owner. 

2. Motion or deprivation of possession. 

3. Of abuse or damage to personal property 
without altering the possession. 

Poisoning one's cattle, or killing one's beasts 

or doing any act which takes away from the value 
of a chattel, falls under this description of 
injuries. 

the remedy in these cases if the act is 

accompanied with force it is immediately in 
jurisdiction, is by trespass at the owner's. 

if case is
Traver.

Last where trespass is the proper remedy, a judgment will be directed even after verdict if vice versa — says Judge Blackstone the party evidence that will maintain trespass may also frequently maintain case, but not a converse.

Every action of trespass with a fine quasi, included an action on the case — bring bring trespass for the immediate injury, if only in a fine quasi for the consequential damages. 2 P. & J. 897, over the immediate injury as in the case in 11 Mod.

So said Justice Gould? "I am persuaded there are many cases wherein both trespass exist and case or either will lie. 2 P. & J. 898.

II. Of action on deprivation of profession.

This species of injuries does as it is remedial by trespass or at onmens consists in a unlawful taking an unlawful detention being generally remedied by detention in trover.

The action of trespass exist onmens gives damages of not restitution in species.

But in some

instance when the original taking was lawful, trespass lies for subsequent injuries, thus if a theft is taken as an estoppel. Afterwards worked, these

tresspass lies of the theft is a trespass per ab initio, but in other cases it does not.

The rule of distinction.
between those cases in which trespass lies where
the original taking was lawful of those where
it does not as this. "When the authority to do the
original act is given by law, an abuse of that
authority makes one a trespasser at initio, as
in the example of the horse — so if one puts
in the example of the horse. So if one puts
his wine and merely refused to pay his bill.

There is one case however where it is contended
that a mere non-feasance
will never be considered such an abuse of a li-
cense as to constitute the Deft. a trespasser at
initio. Yet the case of a sheriff or other officer neg-
lecting to return his wint after having made
an arrest — in such case no doubt the officer
would be liable — But this rule is not com-
monplace, the case in strictness furnishing an exception
for he is not liable for non-feasance, but for mis-
feasance, his being considered as having acted
under no authority, because he can in no man-
ner assert himself of the wint till returned.
then the issuing of such writ is a fact provable only by the records, I as the sheriff can prove no authority except by proving this fact, it will follow that theLovest is a misprision.

But where the king gives the licence under which the original act is committed, the other can never be made a trespass after conviction; for tho' the law will punish in case of abuse, the very act authorised by itself, yet it will not allow in Party to treat so unlawful, what he himself made originally lawful, as in the case of unlawful detention or abuse by a Bailee.

But the mere exceeding the bailment does not subject the party where, where at the time of obtaining the bail, he had no such intention—yet whenever the party obtains the article for the express purpose of exceeding his trust, he will be a trespasser within the fraud deprives the party of the benefit indulged in other cases of licence given by the party. In hit 57. Mor. 248.

So also that it is generally true that the licence is given by the party, a mere abuse of the licence does not subject to this action. Yet it is said where he has it for a special particular purpose, I employ the article for a contrary purpose no way connected with the licence, it does as in the case of a shepherd who has sheep en-
TRUSTED TO HIM, if he kills them, or where he has them for a special purpose, as to deth his land if he kills them. 5 Roll. 556. 5 Com. 587. Sect. 58.
As if a lessee of will commit voluntary waste
5 Com. 587. by pulling down houses, cutting trees, Co. 577.
Sect. 577. So if a servant or an agent is trusted to sell them, 5 Com. 87. goods in a shop, embrogues them to his own, 5 Com. 87. Sect. 248. sale--in these cases a man is said to abuse the trust reposed in him if therefore will be a trust
ab initio.
Co. 574.
Sect. 574.
5 Com. 574. ment--but he is not, I conceive a lessee after
3 Bar, ab initio.

To maintain this action the plaintiff must have
5 Com. 574. Sect. 574.
5 Com. 574. possession of the goods at the time of committing the 1st. 556.
5 Com. 574. 1st. 556. 556. deed, possession alone not being sufficient.
This possession may be either actual or
5 Com. 574. Sect. 574.
5 Com. 574. constant in time, as for a constructive possession as
5 Com. 574. 5 Bar. 164.
5 Com. 574. Sect. 574.
5 Com. 574. against slander is sufficient to enable one to
5 Com. 574. 5 Com. 574. this action, when it is regularly true, that a general warranty deems after it a possession in law as
on the other hand a rightful possession gives a special property.
5 Com. 574. Sect. 574.
5 Com. 574. Sect. 574.
5 Com. 574. Sect. 574.
5 Com. 574. Sect. 574.
5 Com. 574. Sect. 574.
5 Com. 574. Sect. 574.
... rains wrongful profession of personal property entitles a person to this action. In the case of real property, every profession rightful or wrongful (except a mere intendment of profession without a color of title) gives a right to this action of trespass vi et armis. This rule says Judge Denne as far as it can be applied, holds as to personal property — Judge Denne says that a wrongful profession does not entitle a person professing to this action; by this he probably means, what would in real property be a mere intendment of profession.

Not only he who has the general property, but he who has the profession of goods shall maintain an action for them against a stranger — as an agis of battle.

It is laid down that profession independent of property entitles a person to this action — This is a general rule, to be held (says Judge Denne) in all cases for where a person is merely bailie to keep, that is, merely a naked bailie, he cannot maintain this action (9 N. & N. 2, Roll 2, 67).

For a bailie should not be permitted to maintain this action any more than tenant, unless he may by possibility be responsible to the bailor. And mere naked bailie cannot by possibility be liable to the bailor unless for such gross neglect as is evidence of fraud. is unwilling for fraud.
as it would be absurd to say that the circumstance of his having been guilty of fraud entitles him to an action in a case where he would, if not guilty of fraud, have no right to an action.

The general contemplated by this rule must suppose a right either absolute or condition of present possession, as in the case of a bailee to keep, otherwise the rule is contradicted by various authorities.

I special property being accompanied with

If the bailee delivers goods to a stranger, the bailee cannot maintain trespasses against the stranger for the taking, tho' in some cases he may maintain trespass. But if a stranger receives the goods from theAnswer's servant who had the charge custody of them he is liable in this action to the master, as being an unlawful taking.

If property is given to one he may maintain

No more had there been no actual delivery, for a personal gift is not sufficient to entitle a donee to trespass, unless there has been an actual de-
There may unto subject a man to this action which would not at present subject him to any action to where a mother entered an others house without leave to visit her sick day.

And it seems that any interference concerning another goods not indispensably necessary subjected to this action see Boalt's cases.

Remyns lays down a rule which would doubt left at present he deemed the correct one that when another man interferes for the purpose of preserving another man's property, trespass does not lie.

Some have questioned Remyns dig as being one good authority. But it is laid down if it was not said to be a good authority. It is likewise well laid down by other judges. The same case is of the same opinion. If has always been considered as a lead authority.
The Code has a right to the testator's personal goods immediately on the death of the testator of this right arises of it a constructive possession. When the estate of the testator is taken away before the will is proved, the Code may maintain trespasses after proving the will, for he has by creation a constructive possession from the testator's death, since his right is acquired from the will and not from the probate.

The same principle holds in favor of an action for taking the intestate's goods before letters of Administration are taken out.

In a legatee of specific goods may maintain, in the manner of a tenant for life, before delivery to bring the Code. But if the codephrased trespasses would not lie if taken before the delivery.

If there are two joint tenants or tenants in common of a chattel, both ought to join in this action against a stranger, but if one due alone no advantage can be taken by the mistake, except by plea in abatement. But if one tenant brings the falsa against the other, he may give in evidence under the general issue that he is co-tenant with the other.
null
Trouble.

In any case of felony that amounts to 600ls., the theft does not lie in Cap. by reason of merger by the books.

The Cap. authorities are contradictory as to the application of this principle. But doubtless forfeiture of the 600ls. is the true principle that governs the case.

The 600ls. are therefore where felonies are not accompanied with loss of life or property, this action should not be taken away.

Any public officer by virtue of a legal process, Cap. 326, against one, takes the goods of another by virtue of 21 & 24 & 7 & 92. he is liable to thefts. To 23 & 24 & 7 & 92. of his bailiff or under officers, for all will agree.

5th 7th 9th. The acts of his under officers, being his own acts.

A Sheriff is authorized to take the bail, suppose good bail is offered he refuses to accept it. Will thefts lie or not for his bail? It will not in Cap. 4th, it will in Com. 1st.

Perhaps in Eng. an action on the false ease lies.

In declaring in thefts, the goods must be described with convenient certainty.

The 637, terms "divers goods" in the 600ls. goods are not a sufficient description; nor is it error.

By verdict, for under such description, the recovery would not be a bar to another
action; therefore judgment may be erected. But this rule applies only where the taking of the goods is founded on the taking an injury to the goods themselves, but it is otherwise where the taking an injury is laid only by way of aggravation; in the latter case a description like the above is sufficient.

So in general, etc.

In these cases for entering of breaking the

3. 4th 292.
16. 6th 552.
2. 7th 313.
3. 2d 20.
1st 2d 211.
4th 2d 217.

a justification as to the breaking of entering will cover the whole declaration. And if

the affidavit means to insist on the expulsion as making the theft a theft per se into the
he must make a new assignment of it as a substantial theft of a person.

3. 2d 219.
3. 2d 16.
4th 207.
5th 83.
1st 238.
4th 282.
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Process.

[Handwritten text not legible]
purpose of declaring the manner in which
the trespass was committed.

It is necessary for the Offt. to state in his declaration a day

of 319, certain, as that on which the trespass was

committed. But whether the day named

in § 1541, the declaration is that on which the trespass

was actually committed, or not, is immaterial.

For he may prove a trespass com-
mitted on another day.

If then the Offt.

pleads a special plea, it must cover all

the time which the declaration covers, in

all the time within which the Offt. may prove

the trespass to have been committed. Thus

if the Offt. pleads a release, he must tra-

verse his guilt for all the time for which

his release does not answer, in all the

time between the date of the release

and the date of the suit. If he plead title

in himself acquired on a day certain, he

must traverse his guilt as to all of the time

antecedent to the day.

If a trespass be

committed by several the Offt. may sue

them jointly or severally. That is, he may

declare against one or more or all or,
against all separately. If on a judgment

Word/164 against several, one is compelled to pay

& Tem/186, the whole, he cannot oblige the others to contribute.

Tho' a trespass is committed

5B (1723) by several, yet if it appear from the decla-

ration that one is sued alone, if that oth-

er, 199, be person, as J. S. was connected on account-

eral, the declaration is still, I cannot be aus-

tered by verdict. In as to the principle on

which this rule stands, for if the same fact

appears otherwise than by the Offt.'s declara-

tion, he may still maintain his action.

But it is also laid down in the same

books, that if the other who was connected

be unknown, the declaration is good.

A special justification as in all

other cases actions for torts must be

pleaded if cannot be given in evidence

under the general issue—May 1372.

Exh.

She/610.

610.

Pleaded I cannot be given in evidence

Nov. 282.

under the general issue—May 1372.

Exh.

She/610.

610.

If one of these Offts. pleads a special priv-

ative which is found for him of which

shows that the Offt. had no cause of action

against any of them, he cannot have judg-

ment against the others, even tho' the jury go to them he found for the Offt. on the, they have
suffered a defect — that it does not appear from the justification pleaded, 
by one of the three, in the last case, that the other are necessarily innocent. Judgment may be given against them.

At law, law in all actions.

But since the Stat. 51 Geo. IV. c. 536.

Mary, it has been held that they are words of form only — De. In they seem to be still necessary to carry into effect the provisions of the Stat. one of which is, that the Act, in every action, in which a capiasure is given, shall be signed, and every judgment to pay a certain sum as a substitute for the fine due to the less Crown.

So contra fac.

But an omission of either of the above speeches is now cured by verdict by virtue of the Stat.

16 & 17 Geo. III. of shall be amended.

At law, where a pander of trespass or trespass on the case in our declaration would be ill, he
causes different judgments would be necessary.

1 Will. 3, c. 4, by that 6 & 7 Will. 1 May. Yet the general

criterion has been the difference in substance of

the judgment.

Pray for the case of misappreh-

sence of the mind to negligence of the

case may be laid in the same declaration.

1 Dem. 274. But the case of misapprehension cannot be joined; therefore the case of misapprehen-
sence cannot.

Justice Buller says that the identity or

difference of the judgments is not a universal
criterion. But he affirms that when the same

idea, that is, the same general cause is supposed,
of the judgment would be the same. The cause

of action may be universally joined.

By the same judgment is meant

the same judgment at law, law before the

Stat. 5 & 6 Will. 1 May.

Contrary of cost cannot be

joined in the same declaration; if they

are, the fault will not be cured by verdict.
Action of Trespass on the Case arising on debate

This action considered as it affects the person and property includes three classes of cases.

1st. Those not accompanied with fault, but injurious
    as violations of law, i.e., malicious prosecutions, slander, etc.

2. For consequential injuries occasioned by acts which
    are accompanied with fraud, as injuries done to a
    servant, for good remuneration.

3. Where the injury has been occasioned by the neg-
    ign, but an capable omission of any duty incumbent
    on the person to perform, as if one detain on the
    money to conduct his duty, if in consequence
    of any neglect the party suffers a loss.

This action, as well as all actions on the

case are generally considered as founded on

the Equity of the State of Westm. D 13th 8th. It

was however known in one or two instances at

the

3. Mr. Mc.

3. J. Com. Law. Previous to this time the only joined

actions founded on contract were debt, covenant

3. J. D. account. Those in tort were trespass,

129. 243. Replevin, detinue, & deceit.

The action on the

lease therefore is scarcely known at Com. Law.

It would rise however in two as three cases as in
Suspension of the Right of Appeal in Case of an Escape.

In favor of the sheriff.

In time a distinction has obtained between an action of trespass on the case and an action on the case, the latter being founded on contract but this distinction is an arbitrary one, not warranted by the law.

But between trespass on the case and trespass in cases there is a material difference. True, there is the present day strong reason assigned in Eng. why the time of distinctions between these two actions should be strictly adhered to. And although these reasons do not at present exist in law, yet Mr. G. finds it highly important that it should be strictly regarded here.

When the action of trespass on the case was lust in Eng. the party failed was compelled to pay a fine to the public, that is the king.

But when trespass on

Mode 1, the case was lust, there was no fine for the king, but merely an amendment for

For the thing, but merely an amendment for

For the thing, but merely an amendment for
of such an amendment are in fact dismissed, yet the judgment still continues the same with them. Even if the form be adhered to judgment will even be adhered annexed in Eng.

Within a few years past however a suit has been annexed admitting in a decree the distinction between judgments, when formerly there must have been a separate proceeding, as an amendment.

But however this suit may affect the form of the action, it may not be material to this question. For wherein theft actions prevent, the rules obtain. viz. that action on the false principles of equity rule as to the recovery a quantum of damages - here as in trespass vic et armis. great thickness and technical nicety are thought es. centials to be adhered to.

And again, it is necessary to keep up the distinction as amount of the great confusion which would inevitably result from their being confounded.

It is material therefore to mark the time of distinction between trespass vic et armis & trespass on the case.

All cases accompanied with false which are immediately injurious to the theft are the subject of trespass vic et armis. But others the original act producing the
Trespass on the Case.

injury was immediately accompanied with fall, that trespass on the case may be lost in many cases; the concerto of the former rule being true, viz. that when the injury produced by the possible act be merely consequential, if not the immediate effect of the force, trespass on the case will be. As if J. S. had thrown 3 col. 305. a dog into the street, if the dog while still influence 469. ed by the throw bit K. S. the action will be 2 Col. 392. trespass on amicus for the injury as the immediate 2 Decr. 23. consequence of the fence. But if after the dog was at rest in the street, J. S. should fall over it of hurt died him, if he would sue J. S. for keeping but the dog thence. He must bring trespass on case for the reasons above given. By this rule all the cases are governed. It is however extremely difficult, by its nitty almighty to draw the distinction.

The instance of a man, seeing one who beat his servant whereby the lost the use of his service is a good case to exemplify. This rule — the act was committed with force 62 135. It was certainty of immediately prejudicial to the 62 135. servant. Therefore he shall have trespass on at 63. 467. amicus, not to the master it is only consequent that he the eventual loss of service. But what
Trespass on the case.

is the meaning of the term immediately in.

jurisdiction, as if this distinction be not understood of the wrong action he last, the declaration

is bad on error in the judgment will be answer-

ed.

In the solution of this question it may be ob-
served that it is not necessary that this injury be
instantaneous effect of the force. However when
the injury is the instantaneous effect of the force,

it may be safely said that trespass vicini et amis-

is the proper action.

But this the injury be not the in-
stantaneous effect of the original force; still this may be the proper action — for if the

effect be produced by a concatenation of events

caused, in such a manner as that the origin-
al force may be said to be continued, the whole

chain may be said to constitute but one act—— as if I threw a fast ball which by

bounding and rebounding eventually breaks my

window. I shall be liable to me in trespass

vicini et amis—— for it is perhaps but the continu-
able to present operation of the original force

used in throwing the ball, without the interven-
tion of any other natural cause or agent to pro-
duce the effect — no does the original force a nu-

mated cause until the injury is produced.
Suspicion on the Case.

But if in the above example some other rational event had given the ball a new direction, or a new impulse, the red LGF in it, armes would not lie, but if any action would lie the whole on the case is the proper one.

But the person giving the first impulse is still liable to be in those armes, or if some person did give it another direction to the instrument of destruction, if the person did not do it voluntarily of the original force will be supposed still to be in operation as in the celebrated Such Cae.

When the left threw a quill of upon the stall of a meat seller in the market in this case in order to measure himself the vendor knocked it off on to another stall of the owner of that stall, and another, and on until the event it went off of itself and at the age of the left, the left who had first put the quill in motion was sure in the stalls armes, if it was held that it would lie.

Wherein therefore an instrument of mischief is put in motion the person doing it will be liable so long as its original force continues, unless some rational agent gives the instrument a new direction. In this case the agent must have acted voluntarily without being compelled by his own particular situation when therefore a
Instruction on the Case.

Quish was thrown among a crowd. Each person was acted by necessity to keep from himself; if therefore could not be considered as a voluntary agent. It may be compared to the case of the bystander of the first ball.

So also it is good law, that if one set loose a mad ox, he shall be liable in trespass vi et armis for the injuries which he may do, but it is like the

24th Report tries in motion an instrument of mischief.

Yet 638 and on this ground the case may be distinguished from that of digging a ditch whereby another land was overthrown, or that of casting a shot for in these cases trespasses on the case is the only action.

Where a man rode into Lincolns Inn fields, and his horse ran away from him. If the injury, the action of trespass on the case was lost, if a recovery had been because the act of taking the horse there was unlawful, but trespass vi et armis would not in that case lie, because the act of the horse going into the ground was not a wanton or voluntary act in the rider, but

Montgome who could not control. Yet 638.

De Gray, speaking of this case, enlarged I to be insulted vi et armis, he said it was his fault. The action lost was entirely that.
Pursuits on the case.

Pursuits on the case, as such was properly decided.

But when the person is literally the agent, it matters not in fact whether the act really concurs with his will, or not, if the act be attended with force; this being for the purpose of an action against the master.

When moreover the person is agent only by implication of law, the will must concur as in the case of a master, who expressly commands his servant or animal to do the possible act which produces the injury. Here the master ni et armis lies against the master, for his will expressly concurs with the act.

But if a servant does an act by force followed by injury, but without an express command, the master is not liable in ni et armis. But as every man is obliged to have none but disinterested servants, he shall for this act be liable in trespass on the case, as he did not expressly command his servant to do the very act.

through implication of law his servant is his agent, but this implied agency will not subject him.

When therefore a servant being in the present

And if his master business, without an express command, does a possible or unwarrantable act, when by an immediate injury results to the

Gle.
Trespass on the Case.

Trespass on the case against the servant, or trespass on the case against the master, for as Duns 1279, the master should not have employed so negligent a servant, as the same may be said if he had notice that he was used to bite people, if notwithstanding he let him run, for the thing would be done wilfully if equivalent to a command.

If A willfully steer his vessel against B's, if an injury result A is liable in trespass vis et armis.

But if A do not take proper care of driving negligently against B's carriage &c. he is liable in trespass only, for in the latter case he neither does the injury by steering with his own hand, nor voluntarily or wilfully directing it to be done, as in the case of trespass by steering his vessel against B's, but merely by a criminal negligence suffers the act to be done, if therefore shall be liable in trespass on the case. The distinction does not turn upon the acts being done wilfully or negligently, but the injury immediate or consequentual only.
of the cases in which 1'sh...s on the case will lie

As it is not meant here to enumerate all the particular cases in which actions on the case would lie, that indeed would be impossible—It is only meant to mention such classes of cases where there is an injury to the person or to the personal property which are not to be found under the titles

The action will lie in cases of a mine

| Web. 25.2 in the case of the duty imposed by law, that of one which is founded in contract merely—Thus the law imposes upon the head of goods an obligation to keep with ordinary diligence, but if he do not whereby the goods are lost or injured this action will lie,

| Com. 206.7, 293.2, 386. | damage has ensued from a criminal neglect of his duty as an officer. Thus a sheriff of liable to the officer of a sort of neglect to return a writ.

| Com. 32. | Attempts have been made to draw a distinction between the case of a Sheriff not laying a deposit of other cases. But it has been decided that Sheriffs like other principals or masters are liable to the acts of his servant the Deputy.
Propos'd on the Case.

Indeed the rule is almost universal that any one who undertakes to do business for another in the time of his profession, may render himself liable to their action.

But if the business undertaken be not of the profession of the Deft. he shall not be liable for want of skill merely unless there be an express agreement to do the work well. But for negligence the Deft. shall in all cases be liable.

In the profession of physic or surgery, a professor or practitioner, shall not be liable even for negligence provided physic or surgery (as the case may be) be not his professional business, or if he does not expressly agree that he will perform without negligence. This rule is founded rather in equity than reason.

And in general this action lies against any one by whose art or skill the health of the Deft. is injured as against a seller of bad wine. But suppose how upon principle can a seller of bad wine be liable unless he know the wine to be bad, but such is the law. Blackstone says he is liable because there is always an implied contract or warranty that provisions sold are good.

This action of warranty is treated of arising by delention but it arises as would seem to arise...
Preservation of the Case.

This rule and law, as in some other cases, is consistent. It
seems to be founded in reason, but it is not to be met
with in terms in any other law books.

But in every other case except in the implied warranty of
ownership when one sells a thing the maxim quoted
Employer applies — the exceptions which obtain
in the case of the sale ofAnimals for
in these cases a neglect cannot well be imputed to the vendor.

This action of trespass on the

case lies also where the owner, animal being ag.

intends to rent or to other injuries, the like sort

does an injury to another. But in this case there

must have been sufficient notice given to

the owner that his animal was addicted to
to such kind of injuries as that need for,

But if the owner have notice of the degree of
injury done it is sufficient

It is laid down in the

Books that a scienter, is not actionable. The
rule that Trespass is apt to mislead, it means
merely that the scienter cannot be traversed
by plea. For there can be no issue joined upon the

word "knowing." But he may plead not guilty, therefore

he may deny the fact of scienter.
This action lies for a disturbance. May this action be for a disturbance? Disturbance is meant in an alteration of the peace or a. As a judgment of one's right, it may be of a corporeal or incorporeal right. Not directing a water. The 15th of August.

This action lies against a Sheriff for the escape of a prisoner arrested on process or final process. It must at home. Law have been.

This action on the case that not called by the Stat. Westm. 2 1st. Rich. 2 gave an action of debt against the Sheriff where the prisoner was arrested on final process.

This action being from due an inmate price is not within the Stat. of limitations which speaks of debts arising by contract.

A distinction is to be

Resolved between a process which is made by one which is erroneous. For when the process is valid, this action could be against the Sheriff for an 8. 5.

But if where the process had been erroneous, the 18th, and in irregular.

This action lies against persons taken under invalid process. It is
to which精品 for the court lies in favor of the original debt in that act. Robt. 1801 days that no paper or if any may be maintained, but this is not true.

2. Let to finish process.

Here the action may be brought by the original complaint in the sheriff.

This action lies in favor of the sheriff against a prisoner escaping under one or more of such provisions.

So where an under sheriff permits an escape, he is liable to his principal in this action. But an under sheriff cannot maintain this action against the escape, even if his principal should have discovered against him, because he is not liable to his principal by law, but upon contract with him. And the under sheriff is not liable to the sheriff, unless in the case of voluntary escapes; if in this case he might maintain an action against the party escaping were it not for the rule of law, that no action can be maintained by the sheriff for an escape which was voluntarily.

In both Mr. S. suggests that an under sheriff can maintain an action for a neglect escape, for he is liable to the debt.
Freshman at the Law.

Money is liable to this action for any breach of contract or conduct tending to the injury of their clients.

2. It has never been supposed that an attorney was ever liable for any folly to his client, but is

3. ignorance as those of other professions are.

If perhaps the reason is the obvious uncertainty of the law.

Attorneys may subject themselves to an action by the adverse party, if guilty of any fraudulent or dishonest practices.

This action lies against the justices of the peace for refusing to do their duty, as refusing to sign a writ.

So it will lie against a town clerk for refusing to record a deed.

Grant copies of record, and in fact the law may be laid down, that it applies in all cases where any officer refuses to do his duty to the injury of any other person.

This action lies for breach of trust by a broker in any case where the property is injured for the want of that care which the law requires. Now the action is not considered as arising ex contractu, but ex delicto.
Restraint on the Case.

It was formerly held that when the action is brought against the owners, they should all be joined, for it is quasi ex contractu as to all; but now it is held that the action need not be brought against all.

It is clearly established that if the cause of action arises ex contractu, the suit must join all the contracting parties, but where it arises ex delicto, the suit may sue all or any of the parties, upon each of whom individually a fault attaches.

Post masters are not liable for money or letters lost through the fault of their sub. agents.

But every post master of their deputies are liable for their own fault or negligence.

In this action Inn Keepers are liable for all losses of property in their custody when the loss arises from want of care which the Law requires of them. Poth. 178.

This action lies agst. one an Inn Keeper for not receiving one who offers himself as a guest, and left he had sufficient reason for rejecting him, as that his...
3 Pet. 1:6. House is free of sickness in his family.

9:6. 87.

It also lies for deceit in the sale of pro-

27:11. rect by false affirmation of false warrant.

11:18. It is said to sell knowing the value of goods.

16:1. offers them to be different from what they re-

16:7. ally are.

But if the buyer has it in his power to in-

27:11. form himself of the value, but neglects to do it, the

11:16. action will not lie, tho' there has been a false affirm-

16:1. action or false warranty. This rule relates to a

general warranty, as to which the true rule is

16:16. "That a general warranty will not extend to de-

fects that are obviously the object of one's sense."

16:32. So this action lies for a purchaser against a sell.

27:18. 5. As for an act disguising some secret defect,

16:16. If it lies against one who sells goods discovering

them not to be his own; here it is necessary for the

16:32. Not to prove that the debtor knew the goods not

to be his own, in order to support an action on

the ground of fraud.

27:18. 5. The debtor is liable if he

16:16. has not science but not on the ground of fraud.
... Preside in the case.
... but an implied warranty, that the deft. has the
close title. 1 Sam. 10:9. 33.

So also it lies for an inju-
Ezr. 6:32 res, or by possessing by which
35. if another is defrauded, this made by one who
1 Cor. 16:9 had no interest in the fraud. Bull. 30.

So also it
Ezr. 6:32. res, or by possessing by false preten-

lies for any injuries res, or by possessing by false preten-
book 390. acting another, if by that means receiving money
of another if giving a discharge.

It is generally true
Ezr. 6:32. that civil damages must lie.

shown to an action on the case, but the rule
has many exceptions as in slander.

This action lies
Ezr. 6:32. against the presiding officer of an election, if he re-
duces to expel by a vote tenduced by a "false ballot."
3 a 17.

So also the candidate may have an action for
2014 refusing to receive the vote, for two persons.
25. two are injured. 10.14. 2. 2. 26. 1 2. 32.

So an action may be maintained by the
11. Co. 29. candidate against the returning officer, if he
Ezr. 6:32. makes a false return of the votes to the prejudice
of the candidate.

It may also lie both for making
with a false return of a writ amicus 2 Sect. 1088.
Trespass on the case.

It lies at com. law, by an owner agst. any
who publishes his works.

It is a general rule

That any person employing another as his servant,
is liable in an action of trespass on the case,
for any acts of such servant whereby another is
injurious (I would doubt the correctness of this
of the general rule).

Of an officer is presented
by a 3 person from serving legal process, an
action lies in favor of the officer, or the Off.
against such 3 person.

In a declaration in

trespass on the case, no specific form of words is
necessary, as in the case of most actions at law.

The pleadings in this action are mostly the
same as those in trespass sui et armis. Further
they differ will be noticed under "ideas of pleading."
Writ of Mandamus.

This is a prerogative writ issuing from the court of
3 Hen 3, 540, things breach in law, amounting in some degree to
Sta 42, specific relief afforded in Chancery.

It is not aimed to receive damages, but
to restore the party injured to his right.

It lies in cases only which relate to government
for the public, without which there would be a failure
of justice.

The object of it is to restore an admit a
person to some franchise which concerns the pub-
lical of which he is deprived.

It never issues against
an individual, as an individual, but against a pub-
lic office, body corporate, or some inferior court, com-
manding a performance of their corporate or offi-
cial duty.

The town and parish corporations in court
may be subject to this writ.

It is demandable of
common right by the individual when he has right
for it, if the court has not the power to impose
items as chan has.

This writ lies to compel the
president officer of a corporation to call a meeting of the
Mandamus

1. Stat. 142. corporation when they are obliged by law to do it.
2. Stat. 143. Judge, of Supreme Court. It also lies to admit or restore a
4. Stat. 145. when he had been duly elected.
5. Stat. 146. This suit will issue
6. Stat. 147. to compel persons in authority to do their duty.
7. Stat. 148. if a justice of the peace in court should refuse to render judgment, the
8. Stat. 149. party injured will issue a Mandamus.
9. Stat. 150. It will issue against a Clerk of a county
9a. Stat. 151. to command him to deliver over the books and papers
9b. Stat. 152. of the office to his successor.
10. Stat. 153. At what offices
11. Stat. 154. consider the public an administration of justice, no
12. Stat. 155. Judge rule is laid down in the books. Mr. J.
13. Stat. 156. Suppose they are such as are officers of the law
14. Stat. 157. who refuse a person having a legal right, to practice
15. Stat. 158. who refuses an attorney, commanding them to admit him to
16. Stat. 159. The office must be of a certain permanent
17. Stat. 160. nature. Therefore an officer who is appointed under
18. Stat. 161. an institution by voluntary subscription is not unconsu-
19. Stat. 162. cuted or endangered by law, is not an officer subject
20. Stat. 163. to this suit. As the breed of an enacting statute
21. Stat. 164. By the permanency of the office is not meant that
Habeas Corpus.

It should be a public franchise, but that the
officer is one who is appointed by law – as annually,
semi-annually.

In cont. The S.C. will issue
this writ to command a bountiful payment to pay
money to one who is entitled to it when the Treas.
urer refuses to do so – as in the case of a bounty
creditor. So also against the justices of the peace
in the counties commanding them to levy a tax
for the purpose of building a gaol, where it is their
duty. If they refuse. So against the selectmen of a
Town commanding them to defray the poor of a
their Town.

Where the office is of a private nature.

Sec. 48. This writ can never be issued to compel the perjury.

Sec. 49. This writ of official duty. As in Eng. it will not be
against the Sheriff of a County.

This writ will never be to compel the
performance of an act by a magisterial officer.

where it is doubtful whether he has a right to
do the act.

Neither will it issue where there is
any other specific legal remedy by which the per-
don complaining may obtain relief. Is where
an application was made for a mandamus to com-
mand a transfer of stock, the court refused it be-
cause the party had a remedy by action on the file.
Mandamus.

If they refused: No (says M. 9) will it issue, unless the party has a remedy in chancery.

If several are despairs a franchise or office, they must have different writs, as the matters of their deprivation may be different.

As to the mode of granting this Writ.

It is not usually granted on the first motion. The usual mode is for the Court to make a rule directing the party complaining to appear in Court, and state reasons why a writ of mandamus should not issue. The first motion of the party, applying must be supported by affidavit.

Under special circumstances it may be issued in the first instance, or the Court, on the first motion, as where an immediate interference is necessary, or where a motion was made on a mandamus against the justices to compel them to support their fees. The Court, if made in the first instance, lest the fees might be a matter of a rule was granted to such cause — here the Court were
satisfied by the proof.

But the suit never if

Ex. 670. since there has actually been a default in him
But 1994 against whom it issues, as it is not a pre-
ventive remedy.

This suit must be directed to

S. 4334 the person whose duty it is to perform the act-
Ex. 670 complained of; for it cannot be directed to one
person to command another to do the act.

When the act ought to be performed by some
Ex. 6715 part of an aggregate corporation, the suit must
S. 699 be directed against the whole corporation
not.

The 55th agues that particular part.

When sufficient
cause on the return of the first suit is not shown,
312.11.
the suit itself issues; this suit in the first instance
is not regularly preventory, but requiring the act
to be done, or show some reason why he ought not to
do it.

If the def. in the suit returns sufficient cause
Wat. 1911 he is excused; all the reasons
S. 403. are false in fact; for at law. Law the return of the
Ex. 682. person on the suit is not traversable. But an ac-
tion on the cause did then (and still now) lie against
the party making such false return.

But now by
Act. 9 Ann. the return may be traversed. The
MANDAMUS

If the officer makes a false return, false in fact, it may be transferred.

Since the return is false, the prosecutor may, if the officer be sued, compel the truth of the return, if the officer be sued, the prosecutor may compel the truth of the return. The only remedy at law is a suit for a false return being 

If a false return is made by several, an action will lie against all, or one, or any of them.

If any one of several justices or selectmen are sued for a false return, it is that one of them who is sued to a false return that was overruled by a majority, he will be excused.

Where the return on the rule to show cause is insufficient on the face of it, a preeminently mandamus forces of course.

If on trial of the action on the rule to show cause, it is rendered in favor of the Officer that the return is false, a preeminently mandamus forces of course. But this rule will not hold unless the action on the case, and the application for a mandamus are both in the same court.

If no return is made
Mandamus.

[Handwritten text]
Writ of Prohibition.

376.112. This is a prospective writ issuing generally from the Ct. of Things bench in Eng. to prevent inferior Courts from exceeding the limits of their jurisdiction.

10. W. 376, from any inferior Court of Westminster Hall, 1260. 5.8. This writ may however issue from any Court of Westminster Hall, 1260. 5.8. It is directed to the inferior Court of the part prosecuting commanding them to cease from the prosecution of the writ until 376.112. The writ is always founded upon a suggestion that either the cause originally, or some collateral matter arising therefrom does not belong to that jurisdiction, but to the cognizance of some other Court.

30. W. 476. Obtaining it is similar to that of obtain. Suggesting a mandamus, being a rule on the Holt 5.93. Ct. below to show cause why the writ should not issue, the motion is supported by the affidavit of the party applying, that the mattercause is not within the inferior Ct. jurisdiction. If it is a question whether the party is entitled to it as a matter of right, or...
Prohibition.

1. 1st. 65. whether it is discretionary with the Court to grant
   a refusals. The better opinion seems to be
   29th. 220. that the Court may at their discretion grant or
   refuse it.

   The object of the writ it is said, is to free
   29th. 220. the inferior Court from exceeding their jurisdiction,
   but this is not always the case. For where a Stat.
   has prescribed a particular mode of proceeding,
   if the Court does not follow the mode thus pointed
   out this writ will issue, because they attempt to take
   cognizance of a cause in a way contrary to the Stat.

   This then is want of jurisdiction. Are the only causes
   in which this writ will issue.

   If the cause be

   31st. 114. gested appears to the Court to be sufficient, the
   writ of prohibition immediately issues, com-
   manding the party not to hold talk of the treaty
   not to prosecute.

   But sometimes the sufficiency of
   the cause suggested is doubtful with the Court, in
   such case the party is to declare an prohibition.

   To declare an prohibition is for the party to prefer
   6th. 756. a civil action, by filing a declaration against the
   12th. 125. 2dly, when a description or fiction (which is not treating
   4th. 157. of the), that he has prosecuted in the claim below

   31st. 114. notwithstanding the writ of prohibition. That if upon
   the pleading in this fictitious action, the Court judge
Prohibition. The suggestion to the sufficient ground of prohibition in point of law, then judgment with nominal damages shall be given for the party complaining of the act represented in the inferior court. If also the Court shall be prohibited from any further proceedings.

But on the other hand, if the Superior Court shall adjudge the suggestion to be sufficient, then a docket shall be given against him who made the suggestion, if a with of consultation shall be awarded. So called because after deliberation of consultation, the Judges find the suggestion to be well founded. If this with of consultation returns the cause to the original jurisdiction (the inferior Ct.) to be there determined.

Sometimes there is a with of prohibition granted where there consultation granted when the with of prohibition has actually been issued. So if the ground for calling the prohibition be raised in point of law, yet of the fact that gave rise to it, he afterwards satisfied a with of consultation will be granted remanding the cause to the inferior court.

In some cases this Court itself on its own mere motion will award a with of consultation. As if they have refused a with of prohibition, if they should after further consideration be of
Prohibition.

386. 114. opinion that it ought not to have gone, they may by unit of consultation stop the prohibition. Disobedience to the unit of prohibition is a con.

486. 262. 
486. 287. 
599. 99. 
149. 111. 
149. 485.
149. 348. 
149. 58.
149. 262.
149. 366.
506. 559.
506. 403.

The commencement of a new suit for the same thing in the same court after a prohibition is issued is also a contempt which the court will punish.

The process by which the party is punished is by an attachment, as in the case of mandamus.

The State of Connecticut have a statute empowering the Chief Judge of the Superior Court in any two of the other Judges thereof to issue the

statute 347, 8. suit of jurisdiction in vacation. If it is term-time application must be made to the whole court themselves. This suit whether tried by the whole court, the Chief Justice, or any two of the others, must be sealed with the seal of the court.

Statute of the statute adopts the com. law. on hat 348.

Law as the mode of proceeding on the unit.
Of Writs of Habeas Corpus

5th 1296. This is a writ by which a person restrained of his liberty may be brought before a Superior Court for a special purpose, either at the suit of the person restrained, or at the suit of some other person who has a right to have him in court. Of this writ there are various kinds.

1st. Habead Corpus ad respondendum. This lies where one has a cause of action against one confined by the process of an inferior court, if the object of it is to remove him to change him with this new action in the court above.

2d. Habead Corpus ad satisfacendum. This lies where judgment has been rendered against one confined in prison, if the party wishes to bring him up to some inferior court to change him with process of law.

3d. Habead Corpus ad locandum et recipiendum. This lies where the party is confined by the process of an inferior court, if wishes to remove the action to a Superior Court to be there decided.

This kind of

5th 1296. Habead corpus is demandable of common right on application of the party, if it instantly suspends all proceedings in the court below. It differs from the former two, in this, that these are at the suit of
some third person, this, at the suit of the person confined, the suit is demandable of common right, yet it is said it will not be injured, when the effects of it will Müller a rightful just already commenced. This is not correct, for the Supreme Court from the suit, the: when they are informed of the suit commenced, they will remand it by a suit of proceedings. Neither of these suits are used in Connecticut.

Kebab's corpus ad testificandum. This is in life in bond as well as a cap. It is scribed out by a debtor in some bond, who wishes for the testimony of a person confined in jail; if that suit removed him to that bond to testify. As soon as he had testified he is immediately remanded back to his place of confinement.

If he refuses to testify, he may be punished for contempt, either by fine or corporal punishment.

It has been questioned whether if a prisoner gets away from the officer on this suit, it is an escape? If the officer attends him in a circuitous or careless manner if he gets away it is an escape otherwise not. There are many other suits of Kebab's corpus of little consequence. But the great of oppressive writ in all manner of illegal confinement, is
Whereas Congress

5th. That of beard beard at discretion.

This is due to a person holding another in custody, commanding him to produce the body of the prisoner, with the shape of his body, if in detention, if he do not, he may receive whatever the court or judge awarding such writ at will direct.

A person imprisoned by writ of Parliament for contempt of such house cannot have this writ, because such house of Parliament is paramount to any other Court.

It is a big bung, as the

Therefore by the common law issuing from the court of Chancery it in some cases from the common

But it never issues from the two

latter, except in favor of some person who is actually a

fiction an officer in Court of these Countes. In case of a commitment for the time these two last counts last mentioned, cannot discharge, but may take

bail on demand.

378 a 82
2 vols. 147
Is there any court issue this writ in vacation? But the last

cited was by D. Nottingham, who determines that it could not.

378 a 101
But the court of Exchequer may issue it in

vacation, for the sovereign is at all times entitled to have an account of the liberty of any of his sub.:
just is restrained unless the restraint may be inflicted.

When the writ is obeyed, if the prisoner
5 Mod 2, 4 but before the court, he is within discharged, ad.
19 Oct 380, mittet to bail or removed. Where the prisoner's
5 14b. application is to be discharged, the only question
5 May 85, 6 to be tried, then is the legality or illegality of
6 18 the imprisonment.

But if he has been legally im-
prisoned, if is not entitled to bail, he is of course rerem-

ed.

The Stat 16 Car. 1. it has left it optional with
the subject to demand this writ from the first Court
of Westminster Hall.

The great question of this writ is
that the subject need not be confined, when the Law does
not require it.

The provision of the common law having
been revived by the Stuarts gave rise to the famous
Habeas Corpus act 31 Car. 2. This has done little
more than to restore the common law. In one respect
it differs, that any of the 12 Judges may issue the writ
in vacation, if he return it returned to his chambers.

The 142. But neither under this statute or at common law, doe
19 Mod 49, 8 it lie for persons charge in Expeniton by legal process.
3 18th 9. It will lie where the party complaining shall no instance
of authority.
Seabees Corps—

It will lie in favor of a child against a parent

3 Pen 15.62

A Wife against her Husband—

A Friend of the

J.P. R. S. party as well as himself may have it an application.

Disobedience to this writ is punished as other

Pen. 631. Contempts
Of Practice in Connecticut

But first (as introductory)

Of the Jurisdiction of our Courts of Law in Civil Cases.

I. Single magistrates, as justices of the Peace, to have original jurisdiction of all civil cases, in which the title of land is not concerned, if the value in demand does not exceed 15 dollars, and of all actions on note or bond, given for money only, if recovered by two witnesses, where the demand does not exceed 25 dollars. St. 6. 26. 1 Sm. 107. Feb'y 202.

But an appeal lies to the next county court, if the sum demanded exceeds 5 dollars, except in actions on note or for money to set aside; in such cases no appeal. St. 6. 26.

1 Sm. 107. R. S. 393.

But an arbitration note for

for more than 15 dollars, if not exceeding 35 tho.

wound at expense, is not cognizable by a single

minister of justice. It is not for money and but

substantially an obligation to abide the award.

1 Sm. 108. 1 Sm. 99. 126. if for more than 7 dollars.

if for more than 7 dollars appeal must lie. 3d step.
Practice in Connecticut.

...
Raidstein Connecticut.

Whether a note be for money more than 35 dollars, but en
dored down below that sum, it being for money only of
value of at least 35 dollars, it within his jurisdiction. 2 Dec.
Decisions of practice both ways, Syr. vs Payne. Sept.
1 Sw. 108.

In analogy to appeals the rule of appeals from
1 c. 315. 316. It would seem that a note of 100
more than 15 dollars not exceeding 35, then for
money, only of value of at least 35 dollars, is not within his juris-
diction, if either parties is dead, or becomes interested
as by marrying one of the parties. 1 Sw. 108. 1 Robt. 223.
316. July 387.

Litigant proceedings, &c. by forthwith process
are appealable to Court, however small the sums deman-
danted, if of a criminal nature. 2 Robt. 566. 526. A. B.
142.

If, in actions of bill of hand before a Just. for an
injury to lands. Just. pleads title, the Just. cannot try
the cause. The Just. must become recognized within one
or more counties, in a sum not exceeding 67 dollars to
purge his plea at the next B. Ct. in the county
in which the land lies. if to satisfy all damages for
b. 425-6.

The Just. must then certify the record to
the next B. Ct. b. c. 425-6. 1 Sw. 108. B. L. 362.
2 Robt. 54. 359.
Practise in Connecticut

The action cannot in this case alter his plea in the C. C.

1 Post 34-35: 458.

The defendant must be recorded, if a true cause issues from the C. C. on his recognizance. § 426.

If he does pursue his plea fails to prove his title, a suit goes against him for double damages at costs. § 426.

2 Post 301. If he fails to prove that reason to before the court, his plea shall adiate, if an appeal of the said cause fails to
must be against him. § 426.

If the court in such case plea as the gentlemen of
returns upon his title in the cause, the justice may determine
the cause as in other cases. 1 Post 549: 410 458. Vide
2 Post 440.

In actions lost for obstructing or raising the
the water of a river the suit before a just. The defendant
a right to do the act. An appeal lies to the C. C. if there
is to the Superior Court. 1 Div. 108. St. 6 30.

Duty of 50 cents to be paid on every appeal
from a Justice (St. 147). It must be paid at the time
of taking the appeal. 2 Post 1112. Subsequent payment
is not sufficient. Hence, the record of a Justice
he contracted to have the suit (not St. 6 58). A Justice may take a confession of judgment
for a debt without a writ, but to the amount of 70 dol.
to be taken only from the debtor in person, record is made of the confession, if executions may issue. The record must of the particular debt in due and legal note book. See art. 6, 2 48. In this case costs are allowed one for the justice fee, unless there was an antecedent promise of fees must appear by the record 1 Law. 108. July 95 2: 236.

Not so if an arbitration note (See Law 107) is before the award. 1 Book 3: 28: 9. 2 Book 4: 43.

Justice may administer the oath prescribed by the Stat for poor debtors Stat 6. 2 21. 1 Law 189.

If in an action before a justice a recognizance is taken for more than 15 dollars of the original judgment exceeds that sum, a surety fairs will not thereupon it before the justice but debt before the Superior Court (Art. 3: 93) indeed no action lies upon it before the justice Art. 6: 49. and in all cases to enforce his own judgments if a pet cost is paid for said where the sum demanded exceeds 15 dollars (Art. 6. 470.

Note— a Surety fairs is a judicial writ springing regularly from a suit in which a judgment has been rendered for the purpose of enforcing the judgment into effect. Exe. 6. 49. and real bail in July 220. The if lies in some cases pend ing a suit of before Judg. Vide the Stat. of abate- ment & amendment.
Practice on Connecticut.
Practice in Connecticut

A justice having rendered judgment in any case, dies or is removed before exp. granted, or satisfied debt lies on the judgment, and if the debt as demand does not exceed $35, the action may be brought before another justice, if and no appeal if it exceeds that sum, before the C. Ct. But it must be bid within 5 years from the death or removal.

A justice cannot try a cause out of the town in which he dwells, except where there is no justice in the town in which the cause is to be tried who is qualified to determine it. 1 St. 109. 1 R. 2d. 300. 313. St. 626.

Suits in criminal cases. 2 R. 2d. 557. 6th. 142.

But the governor, bent, or assistants of judges of the supreme ct. may respectively execute the office of justice throughout the state.

But when acting as single magistrates
they have no other judicial powers than accidents.
Their jurisdiction is the same as to subject matters.

S. 247.

Appeals from justices must be entered in the docket of the C. Ct. before the second opening. Any appellate court, if appellant as fails, as in Supr. Ct., shall be the practice.
II. The several acts of Com. Pleas (a. c. Ots.) have origin
al jurisdiction of all civil causes (at law) not cognizable by a single mag. — So that all civil actions not
this cognizable are regularly commenced before the

All civil actions except an bond
or note (at least,) in which the tite of land is not in
question if the matter in demand amounts the val-
ue of $15. but does not exceed the value of $70.

If all actions on bond or note, given for money only
vouched by two witnesses, if the sum in demand exceed
$35. They have final as well as original jurisdiction
except that their first may be reviewed by writ of

But an appeal to the ch. of Miss. from their final
regularly in all cases in which the tite of land is in ques-
tion 2 North 440 are in all cases in which the value of
the matter in dispute exceeds the value of 70 dollars ex-
cept in actions on notes (at least) given for money
only and vouched by two witnesses. A. B. 28: 127: 127.
1 Rev. 95: 1 North. 178.

In an action for trespass on land de-
manding not more than $70. dollars no appeal lies un-
s. title be pleaded. 2 North 440. Evidence of title un-
der the law issue is not sufficient.
But it has been decided that the right of appeal

does not depend upon the sum demanded, as dam-
ages except where the damages are presumed, or
in case of tort. 120, 93— and where in case of tort,
the damages cannot be ascertained without introdu-
ing evidence express. 1 Root. 148, 5-18

The rule is this 1st it appears from the record
that according to the rule for ascertaining damages
judgment cannot be rendered for a greater sum than
70 dollars (the title of hand not being in question)
no appeal lies— granted it will abate, at the suit
indeed in the default in such a case may be ordered
eg. deft. in book. debt— dt. owes that deft. owes 90
dollars and demands 80— * is on a note on bond for
276, 5-18. Such a case will be determined by the C. of
offices. Root 5-25, 2 to 30, 357. Kingly 35, 2 Root.
187, 42.

So that the deft. in book. debt declares an a debt of
more than 70 dollars if demands more; yet if it appears
from his own book, or any that no more is due, the debt
by placing it on the record, or his objection in the C. of
may prevent the appeal. 1 Root 5-13, 1 Sw. 96, King 278.

In action an arbitration note for more than 70 dollars
if it appears from the record that neither the matter
in Connecticut, see the award exceeded 70 dollars no.
appeal lies / Most. 127. 238. / 1 Th. 95. 6. the if the
note is for more than 70 dollars - the case is prima
facie appealable.

In an action on a note on bond for more
than 70 dollars, given for money only, if countersigned by two wit-
nesses, if one is dead or becomes interested, an appeal
lies to the Sup. Ct. / Most. 223. 316. / Mod. 337. Conn. 1 Drew 96.
/ Most 6 66.

In an action upon a receipt a.p.t. an officer for
not executing an exp. no appeal lies otherwise the
sum demanded is $ 385. / 1 Th. 101. / Most. 13 3 / deem
if it is for not executing receiver's process, except when
action is first before a Justice s. f. for not executing an
exp. on a judge confessed before him for more than 3
dollars $ 385. / in action on a receipt by an officer a
not a receiptman of personal property taken in exp. $ 385.
/ 1 Th. 101. / deem if taken of receiptman upon attach-
ment. / Mod. 40.

As an ered cert. upon an award
of auditor. / 1 Th. 1 Drew 97.

Of a cause is not appeal-
able by the St. - no agreement of the parties in the St.
appealed to can make it so. - Reg. agreement to increase
the damages by amendment & Most. 60. 379. 8.
Practice in Connecticut.

No appeal lies from a judgment by default, unless there was a hearing in damages. The defendant is not otherwise supposed to be in Ct. 1 Sw. 96. Kilg. 17. 1 Root 566.

and in this case he can be heard in the Ct. appealed to, only as to the damages. 1 Root 566.

But an appeal upon null deed, appeal lies as the defendant is in Ct. 1 Sw. 96. 1 Root 109. and the defendant may plead and defend in the Ct. to which he appeals. 1 Root 566.

No appeal lies from the 

Ct. in a quittance for a crime. It is in form of party in effect a criminal proceeding. 1 Sw. 96. 1 Root 403. Kilg. 269.

No appeal lies to an adjourned Ct. Kilg. 366. 1 Sw. 96. The appeal must be taken to the next Super Ct. St. 28.

Appeal may be taken

on him a judgment on a plea in abatement with 

and waiting for judgment in chief. But if defendant from such judgment does not make good his plea in the Ct. appealed to. Costs shall be awarded against him on the judgment on the plea in abatement. St. 22. 2 Sw. 259. 1 Root 566. if he cannot alter the Ct. above. 1 Root 566.

The appeal must be taken during term in which judg
Practice in Connecticut.

is rendered. (1 S. 96. St 28.) It may be taken at any time during the term, but it is prudent to move for it immediately after verdict or an issue to the court after judgment. Terms, etc., may issue, and a subsequent appeal if it is tried is no supersedeas. 

Appeals to the Supreme court must be entered in the docket before the second opening of the term, or the appellant must advance the whole costs to the time of entering, and he cannot enter at all after the jury are dismissed. (1 S. 96. St 28.)

Appeal destroys the judgment appealed from unless the court appealed to wants jurisdiction, and even then I suppose the judgment is suspended till the appeal is decided above.

But if appellant does not enter before the jury are dismissed, the appellant may enter of record of have the judgment affirmed with additional costs. (1 S. 96.) or he may sue on the bond. The judgment recovered in the court above, is a distinct substantive judgment, except in case of appellees entering.

And if one dollar payable on every appeal from the court. S. 149. 1st Root 495. 2nd Root 11. Fifth 51. If not certified, the appeal is void. (1 S. 51.) It must be paid at the
Practise in Connecticut.

time of taking the appeal in the appeal will abate.

2. R. 46. 5. 18, do. bow the record of the Ct be contra-
ducted to prove the fact. Seems not. 4. 158.

I had been decided that an auditor Deed is
within the St. as to appeals 1. of course appealable
from Ct to Sup. Ct. 1. R. 46. 5. 16.

Either party may appeal, if it removes
any thing less than his whole demand—deems—where
the judge is sitting, then in one's favor—he cannot
1. R. 46. 5. 18. 2. R. 47. 37. 1. Both may appeal if it either
constitute it is sufficient.

If appeal is denied where it ought


to be allowed, even lies. 1. R. 46. 5. 18. So if allowed
if the Ct above does not quash it. 2. R. 47. 37. Or
will even lie immediately on the allowance of the
allowance of the appeal. I should think not, as ad-


vantage may be taken in the Ct appealed to.

If a cause is not appealable, if motion for an
appeal is made, objection may be made to the mo-
tion, in the Court in which the 1. R. 46. 5. 18. or the ap-
peal may be allowed in the Ct to which the party
of 2. R. 47. 302. 12. or if a verdict is given at it him
in the latter. Judge may be arrested 1. R. 46. 5. 15. or
the cause dismissed by the Ct ex officio 1. R. 46. 5. 25. or
out of error. let if Judge is as it him in the Ct above.
Practise in Connecticut.

The time allowed for pleading in abatement
of an appeal is the same as is allowed
for ordinary pleas in abatement. 1 Rev. 5-25
564.
III. The Super Ct. has no original jurisdiction in civil causes properly so called. St. 127, S. 1, Ch. 94-5.

It has indeed original jurisdiction when a suit is brought against officers for not executing a warrant returnable to it or on execution issued by itself. St. 385, 1 Sw. 97. 2 P 257. Action may be brought to the C. Ct. if this is in the usual practice. P 257-90.

This Ct. indeed issues writs of fi. fa. returnable to itself to enforce its own judgment but this is a judicial not an original writ. If it generally grows out of the appellate jurisdiction of the Ct. St. 28, 1 Sw. 97. It has appellate jurisdiction of many causes determined in the C. Ct. (explained in art. division II.) Its appellate jurisdiction of causes decided by the C. Ct. is the same as of those decided by the Ct. It does the thing and an appeal lies to this Ct. from every sentence under a decree of the Ct. of Probate. 1 Sw. 97. St. 133. For it equitable jurisdiction see powers of the Ct. It has jurisdiction of all suits of error both for the reversal of judgments rendered by b. & b. in single cases or suits of criminal or civil cases in Equity framed by b. & b. St. 131-2 1 Sw. 97. When an appeal is from the Ct. the plaintiff must do it in
Practice in Connecticut

the time in which the judgment of reversal is rendered. (Act 85.)

Jurisdiction in cases of divorce, mandamus, prohibition, habeas corpus, are
healed of under their respective titles, § 349.

Note — A party may appeal from a judgment on
a plea in abatement, when an appeal is by law allowed
without proceeding to final judgment in the 67 below.
and if a party after judgment of a respondent action,
heads to the action, instead of appealing, he cannot
upon appeal from final judgment take any advan-
tages in the 67 appealed to. If his plea in abatae-
ment — Usage —
IV. The Sup't of Errors has jurisdiction in all respects final of all suits of Error but for the reversal of any decree of the Sup't in matters of law in Court; where the error complained of is apparent on the record — but has no cognizance of Errors in Point. § 1269.

V. The Great Assemble has cognizance of petitions of sale, in which no other of law can grant relief, provided the matter in demand exceeds $25.

Of the proceeding by which civil rights are enforced in our courts

An action in suit is defined to be the lawful demand of one right. § 16116.

The first stage of a suit in Court is the suit of declaration which issue together. § 16118. § 24.

The suit consists of all that precedes the statement of the party's declaration claim, of the signature, the certificate of a duty paid, if the recognizance when there is one, the date is common to the suit and declaration. § 16118.

The facts contained in an
Partum Connecticut.

write is of two kinds - 1 by summons, 2 by attachment. At 24. 2 Dec. 188.

By procedure is meant the means of compelling the deft. to appear in Ct., or in boro. of holding him to trial. 3 Oct. 279. 2 Dec. 188.

In boro. as the declaration issues with the suit it is not necessary to entitle the deft. to except that the deft. should appear in Ct. 3 Dec. 189. From in Eng. 7 Sem. 6. By At Dec. a common appearance may be entered. That is, boro. bail filed for deft. by At.

List 126.

This process contained in the original suit is called original or main process, as contrasted with final or process of Ct. 3 26 279.

In Eng. there is a process distinct from the original suit (3 26 279, 279, 280) when the suit is a praecipe; dem. when a pi. grant to summons 3 26 279 J. depend. VII. XIII.

In Eng. a suit at K. 2. if declaration against one man is regular, in case of tort. 13 26 of Oct. 19 39.

The suit must be signed by a magistrate as a justice, assistant, etc. or by the clerk of the Ct. to which it is returnable; if not, the offence to which it is returnable, A sic. pa. on a judgment rendered by a single mag.
must be signed by him, even when returnable to
the County Ct. St. 470.

It commands the officer as
reason to whom directed to summon, i.e. to give no
notice to debtor to appear, or to attach his estate
in person, to have him to appear before the Ct.
St. 474, 219, A 2 Nov. 1597 - it is usually directed
to the sheriff of the County in which the debtor dwells, his deputy or
another constable of the town in which he St. 474, 2 Nov. 1597.

383. - Constables have in general the same powers
within respective towns as sheriff in their counties St. 384
1 Rob. 407 - A constable elected sworn in one year, &
re-elected may, since his first before he his sworn a second
time 1 Rob. 83-4, 1 Stra. 62 5.

It may be directed to the
Sherriff only or a constable only.

And a writ directed
to the sheriff may be served, by his deputy, & not
named. - Only to special deputy, Royl. 540, Bowr. 503.

Ordinarily a writ can be directed to an
other than one of the above officers. But if such officer
cannot be had, without great charge and inconvenience, it may be directed by the way to an indifferent.
PRACTICE in Connecticut.

out person. But the name of the person must be
written in the hand of the person or the reason of such direction
or the reason of such direction
must appear in the return. 
Such direction usual in what case?
when the time of serving is expiring — when short of
orders, 
the
must the reason be inserted by the
magistrate himself? So it seems from the return. 24 P.
1st Oct. 284. 1st Oct. 1885. But the constant practice is otherwise.
See the note above for this purpose.

The indifferent person need not make oath to the truth of his return. 1st Oct. 284. 1885. Law.

of a Special Deputy Sheriff. 
St 386.

That the indifferent person is handsman for
execution does not disqualify him. So as to
Sheriff and Constables. 1st Oct. 328.

The certificate of the mag. as to the necessity of
directing to an indifferent person is conclusive 1st Oct. 284.
St. 26 - 2nd Oct. 1885. I was told once by the Super.
but that a direction to the Sheriff or an indifferent person
was it, but that a direction to the Sheriff or an indifferent person
was it, but that a direction to the Sheriff or an indifferent person
would be good. 1st Oct. 285. So as to the last branch.

If the return of a writ directed to an
indifferent person is altered from one term to another, the writ will at all. The necessity,

might
Practice in Connecticut.

exist at one time or not at another. 1 Rest. 2 Rest 387. A writ agt. a town may be directed to an inhabitant of the town as an indifferent person. 2 S. 28. A writ directed to a minor as an indifferent will abate. 2 Rest. 5-19. A constable having begun service within the limits of his town (as by attaching property) may go into another to complete it as to leave a baby to Blake as claimant. 647, Service Lid. Rest. 407. A writ agt. a constable of the town of B to serve a writ on a constable of the town of A. It is service in the town of A. Rest. 497. All writs of declaration drawn by sheriff or his deputies, or constables, except in their own facts, will abate. 2 H. 387. A deputy sheriff cannot, according to 438, issue a writ for or upon the sheriff, since he acts for the sheriff and under his authority. But one deputy may, clearly I conceive, issue a writ for or upon another as the sheriff may issue for or upon his deputy. Beebe vs. Phelps Com. Pleas Dept. 1803.

Writs must be signed by a maj. as Justice hur.

That a justice can issue original process only throughout the county in which he dwells. 2 S. 2-47.
Practically in Connecticut.

As being a delinquent before himself he may issue
criminal process. Of process of 24th in civil cases through
out the State. As it may issue a summons
for witnesses in the first case through the State.

July 182.

A justice may issue a
summons in favor of the town in which he resides. In a
suit for ass't. 2 Dec. 182. P. (Post 176.

But the clerk of the sur-1. Of you sign, with the
able to their respective courts, but no other. 24, 1 Dec.

A according to usage suits of Crown must be sign
ed by a Judge of the Court to which it is returnable
2 Dec. 176. not to be issued without probable found
ation for Crown.

Formerly the clerks of the sur-

ior Court could issue process returnable to the
Clerk of any part of the State. Do, now, since
there is a Clerk in each County.

But the Clerk of both

the Superior Court, e.g., may clearly issue process
returnable to their respective County (24, 129, 131).

They may also (as I suppose) issue process criminal
returnable to their respective County,
to any part of the State, e.g., in time, time under
Formerly, Judges of the County Court, Officers of the Common Law Court, could not issue original civil process out of this respective Court. But afterwards enabled by Statute to issue such process into any part of the State, if returnable to their own Court. 4211. 499.

Now by Statute they are enabled to issue process in all civil matters to be served in any part of the State, whether returnable to their own or any other Court. 4211. 499.

The Governor, Judge of the Supreme Court, and Judges and Justices of the County Court, can in all civil cases, can issue process as well as civil final process that will run through the State. 4211. 499.

The writ describes the place in which the Deft. dwells — so that in which the Deft. dwells. These in ordinary cases are the only necessary additions at 4211. 499. But when the action is in a civil character of the Deft. or Plaint. is the defendant to the action, that must be added — e.g. Sheriffs' (Vide Headings).

On all writs in civil cases there must be paid a duty at the time of their issuing.
Prud'homme Connecticut

If returnable before a single term, 17 cents 6d
3d cents - Super. 6d, $1.00 - S. 6d of issue, 2 dollars.

On petitions of an adversary nature to the bond of sen-
2 dollars, St. 149.

Payment of the duty must be certified on the return, in words at full length, by the rector. Sign: St. 150. Otherwise, said if the case may be certified for the dataset, without a plea. Ibid. 375-376.

The writ cannot be amended, or inserting the certificate, even with the 5. 5th office, to say the duty in 6th.

And a writ one filed against one person cannot be converted into a writ against another unless there is a further certificate of the payment of a further duty. If it is the 5th may, only if it designates any tax.

Costs for Deft. St. 150.

The same duties are payable on certain prosecutions. 2d. St. 25. Not on public prosecutions (ex) by informing officers. Decided by the St. 6d, that the St. may take advantage of the want of a certificate of duty paid by most of them, after issue.

For Deft. Aug. 1866. Litchfield City.

On every writ of attachment, the C. I. must give sufficient security to cause the action to go out, if to assure all damages in
Practising Connecticut.

If he make not his plea good, S. 21. 31st 5-63.

The secrecy is to be taken to the adverse party, S. 24. as all bonds for protection are, it seems July 378.

This secrecy is called a bond for protection, and is generally by way of recognizance, acknowledged before the mag. signing the writ, and at the time of its giving, S. 24. 31st 5-63.

In our secrecy may be required of deponent 1768, not residing there - but of no other. S. 24. 31st 368. 383. 378.

This is the recognizance intended as a security for the peace attached, not for the costs, not decided. I believe it is usual with protest to be a security for costs only (fan). For costs it certainly is a security.

But has been decided that the 1765 recognizance is sufficient if he is of ability to pay costs. S. 24. 31st 378. 378. 383. 383. 383. 383.

County Aug. 98. If the com. partite is to receive his recognizance, this decision was founded on usage, S. 24. 31st 166.

If however the object of the bond is to secure costs: this recognizance is useless: for the deft. is liable for costs without it - and if the object is to punish a security for the paying attached: the provision of the Statue is defeated. The latter: is concurrence, was the object of the S. 24. 31st 166. If however the deft. is se-...
Precocious Connecticut.

In many cases, a new bond may be ordered on motion to the Ct. to which the suit is returnable. 

It has lately been decided that a bond for prosecution in a blank suit, was not good if the suit must abate. Because it could not be taken to the adverse part (left New London county.)

According to the adj. bond for prosecution must be taken on all garnishee prosecution by garnishee process, as the draft body is attached (arrested.) Hence, when a garnishee civil action is brought by process of summons—here the rule is the same, as in other cases of summons.

Bond for prosecution must be taken given by some substantial inhabitant of this State. In every case in which a suit issues in favor of one who is not an inhabitant of this State. At 25, even then the process is by summons—

If the suit is not given in the above case the suit may be abated.

A bond for prosecution is to be given by some substantial inhabitant to on the issuing of any suit. If it appears to the authority issuing, that the defendant is an inhabitant is unable to respond the costs.
Practice in Connecticut.

That may be rescued. § 24. But in the last case, I conceive, the suit cannot be abated, in the suit to which it is returnable, for want of a bond. For the signature, I suppose, is conclusive evidence of that fact. The suit for inability to pay costs does not appear to the prejudice. But in this case, the suit is on motion by defendant, of this inability, in the suit to which the suit is returnable, enforceable to give bond for prosecution with sufficient security, or to be non-juror. As if his inability accrued after the suit issued at 22. But such motion should be made in a reasonable time, if possible. Motion after the jury was impaneled to try the cause, decided to be too late. July 34.

If the security taken is apparently sufficient at the time, the man is not responsible, on its hearing insufficient; as if the bondsman fails. (Note 165.) If the rule holds even here, the suit is liable. This bond is taken, it seems.

At an event of applicant, if the security is apparently sufficient, but failure, he is not liable. Except when this bond is taken, if the suit at 24, is not essentially sufficient of ability sufficient to pay, the man is, at all events, liable. This cannot be apparently sufficient. So it takes the creditor's security away that is the property attached, I leave him as if nothing had been attached. (Note 165; 168; 56; 261. § 376.) It requires se-
Practise in Connecticut.

Every person is bound to prosecute, to satisfy and answer all damages, demands, or duties of—

In every suit of circus bond with security must be given that the party shall prosecute and answer all for & 162. The party bond not good.

Every party appealing from the court of one county to another must give bond for prosecution, with surety; appellants bond not sufficient. & 28.30.

Formerly not required an appeals from a justice. 208.

The appellant and surety are bound that the former shall prosecute his appeal to effect it. By this is not meant, that unless appellant prosecutes, that the bond is neglected, but that it is if he does not proceed in the appeal: For the appeal destroys the judg.

If appellant does prosecute his appeal and fails, the surety is liable for costs. If they are not paid by the appellant, it shall be all the costs before and at the appeal. 2 Sw. 1793. The bondsman and an appeal by the App. is liable only for the costs subsequent to the appeal. 2 Sw. 1793. But he is liable for costs only, and not for them, if collectate from appellant.
Practice in Connecticut

Is it necessary for appellee to take out ex parte
and have a non est returned as to the appellant and personal property? It is said that (footnote 315) that
non est is not necessary to subject bondsman for costs. In this case, bonds will issue, lie on the recognizance, as debt. I suppose, Potter (footnote 315) that the return of non est is not necessary to subject appetite to bondsman on an appeal?

The proceeding this is the same in the other cases of bonds to prosecute parties. If non est as to the principal personal property that the party is liable the confiscation of the principal on the appeal will not discharge the bondsman (footnote 316) indeed nothing but payment of the costs discharges him.

The giving of special bail does not exonerate the appellee bondsman on appeal — nor does the bond on appeal, when the appeal discharges the bondsman for prosecution of the original process.

Bondsman for appellant, an appeal is liable for costs, if appellant dies before the return of the appeal. (footnote 314)

As I suppose a converse, if appellant appeals and dies (at fera) when appellant —

Bonds for prosecution not within the St. of Limitations as to trial, etc.
Death of the tort. before judgment discharges the bond for prosecution Post 259.

A judgment in favor of the appellant is final as to the bondsman on the appeal, not on a new trial. Judgment is given for the opposite party Post 569. So I suppose if the first judgment is reversed by writ of Error Post 102. 567. 2

In a suit to be tried by the Superior Court the suit is to be made returnable in the city in which the tort. or Deft. dwells at 26. 2 Jan. 191.

This rule holds for offices at Com. Law. upon reciprocals for exps. Post 92. 1864. But when they are complained of under the St. the suit must be brought to the city to which the exps. is returnable. So of original writs Post 90. 1864. Tho it may be in a different county before the St. Ct. July 113.) if either party lives there.

When the title of land is concerned the suit must be returnable to some city in the city in which the land lies. St. 26. 2 Jan. 191.

A quango action
Practised in Connecticut.

may be brought in the county in which the defendant or defendants dwell, and in both civil actions. Thad. O. 401. 37. Ch. 645.

Suits before a single magistrate must be prosecuted in the town in which the defendant or defendants dwell, except when there is no mayor or either of them who can lawfully try the action — then the defendant may sue before a judge in one of the towns next adjoining his own. 7-61.

But a suit of libel, lost to the sheriffs, must be returnable in the county in which the judge complained of was residing. Most 267. As of petitions to new grants. Most 255.

In mandamus actions in Chancery, the venue may be changed, on motion for reasonable cause. Most 51. cause of action if never by. 300. 219. 218. 3 S. 1. 33. 43. 94. 8. 639. 697. 7. 7. Em. 735. 33. Ch. 295. 874.

Time of Return.

Writs returnable to the city, must be returned to the clerk's office on or before the day next preceding the first day of the term. 1065.

Writs returnable, however, allowable if consented to by the parties — so without consent.
Practitioners in Connecticut.

under extraordinary circumstances as if an accident befell the officer on his way to the office as if he is suddenly taken sick just before the session.

All writs or petition returnable to the Superior Court must be returned to the clerk before the second opening of the session. (Post 563)

Writs returnable to the city or Superior Court must be made returnable to the same must following the date if there is sufficient time intervening. (Post 315)

316. "Sure it is easier to suppose," said as in Eng. 3 Wels 331. Please I
II. of service and Service.

This is of two kinds: Summons, & Attachment.

1. When the process is a summons, service is made by serving the defendant in the hearing of the Judge, or leaving an attested copy with him at the place of his usual abode. 1. P. 274. 5. 2 Dec. 185. 1st Dec. 47.

When husb & wd & cwpk are sued one cop.

it is sufficient. 1st Dec. 47.

If the officer makes service by reading, & endorse service by reading, which is not true, the leaving & cop., which is not true, will not abate the suit. 1st Dec. 47.

An acknowledgment of service, endorsed by the attorney, not specially authorized to do so, does not conclude the debt. The may abate the suit. 1st Dec. 47. 7. 1st had it not been decided that such acknowledgment by debtor himself does not conclude him.

Decided that petitions must be served by copy & serv. 2 Dec. 471. 1st as to suits of class 12. 2 Dec. 471. It has lately been decided by the Supreme Court of that suits of class may be served by reading.

Aug. 185. 1st Dec. 47.

On petitions for new trials and suits of class, if the debtor lives out of the State, see
vice is made by leaving a copy with his attorney, 2 Dec. 187...

...a person residing out of the State...a summons served upon him by reading, a copy is sufficient to hold him to... 2 Dec. 187...

2. Attachments are regularly served by attaching the property or body of the defendant. 2 Dec. 187...

For the same law...relating to arrest of Sheriffs...

But it is well settled...that service by reading a copy is sufficient to hold the defendant to trial...not cause of attachment; then the officer may be liable to...11 R. & 54. 125. 563...2 R. & 131.

The officer has no right to take the defendant's body if he can find personal estate sufficient to answer the demand, of which he knows to belong to the defendant. 2 Dec. 187...36. At law...sums if it is not sufficient...

But the officer ought not to be liable to...an officer for omitting to take personal estate...if he is doubtful to whom it belongs...Humphrey v. Robbins. 6. At Sept. 1803.

At law, the officer in such case may summon a jury to ascertain to whom it belongs...and if he does...
Practise in Connecticut.

He has now the right to take the body, unless he tendered personal notice to the officer.

It has been decided by the Supreme Court that the officer having taken the Deft's body, is bound before commitment, to accept personal notice if tendered, if to discharge the body. 2 Decr. 1790, 34. 173. liable to Deft. in false imprisonment. So of arrests on final process. 1 Post. 120. At 31. 172. decided contrary by the Court of Errors. 1 Post. 124. But holden that the officer may do it. And he cannot hold both property and body.

He may not break the outer door of the Deft's house to make an arrest. An inner door he may break. 1: 2 Wh. 823. 5 Eliz. 22 Ser. 3 67. Thirdly 383.

The Deft's land is also liable to be taken by attachment. But the officer is not bound to take land. When he can find the body, nor, indeed, is he justified, as against the Deft, in so doing, unless he is so directed by the Court. 2 Decr. 1790.

An arrest of the body may be made by an officer in his company, not out of it, but he may lie out of sight. 34. 173.
If property, real or personal, is attached, the officer must leave with the debt or at his refusal a docket, if within this State, a true copy of the suit, with a description of the property attached.

If real estate is attached the officer must also leave a like docket at the town clerk's office, within ten days next after attaching the estate, before the time for securing the suit has expired; and if it is not served against any other creditor or bondholder, within 103 days. At 35.

But the omission of the docket will not release the suit - it is intended merely to give notice to other creditors or purchasers.

Personal property attached is not held to answer the suit. If either against the debtor or any other, unless an execution is taken out and levied upon it within 60 days after final judgment - in the lie is lost except where it is under a prior incumbrance, and then it is not held until an execution is taken out and levied within 60 days after the incumbrance is removed. At 35. 2. 189. 190. 40. So the lien on real estate is lost.
Practice in Connecticut.

unless cp: is levied upon it, if the levy and appraisal are recorded within 6 months of erect in the case of a prior incumbrance, in which case the proceedings must be completed within 3 months after the incumbrance removed.

St 35. 2 Sw. 190

It has lately been decided that the officer cannot attach real estate without enterprising upon it S. D. New Haven 6 July 1823.

If a person in custody of an officer under an arrest in one cause, delivering to the officer an attachment ct. The same person, for another cause, in a good arrest Cpr. 605. 5 6o 59.

When personal chattels are attached, the officer regularly takes the same into his custody, holds it for the purpose of levying the cp. upon it. 2 St. 17. 12 18. But he can retain the property for this purpose no longer than till 60 days after final judgment 2 Sw. 189. St 35. Within this time cp. must be levied on the lien is lost.

The officer may, however, at frequently does deliver the property to a receiver in the way of an individual who gives a receipt of promissory note, deliver it to the officer at a time certain, or an

demand. St 40. 2 Sw. 189. 190. St 3 86.
Practise in Connecticut.

But the officer takes the receipt of his own
risque, and is not obliged to do it in any cup.
Post 158. Same practice on 264-1 Post 99.
The receiptman is not bound by a monife to re-deliver the property after the expiration of 60 days if no event in both cases where the goods are under a prior incumbrance in this case the trust remains until the expiration of 60 days after the incumbrance is removed 2 Lu 790- July 40 1 Post 481.

If then the promife is to re-delive a
receipt and no demand is made within 60 days
the receiptman is bound to deliver the property
back to the Deb. If an refusal is liable to him
in those July 60-1 1 Post 481.

In an action on
such receipt it is not necessary for the officer
to aver in the declaration that the judge an
except remains unsatisfied 1 Post 99.

Visible property within the state to belong-
ing to a person out of the State may be attached
and the attachment of it will hold the owner to
trial 1 Post 447. In the last case must not the action
be brought in the county in which the property is, 1
Post 447. the action will lie even if the ship was

Practise in Connecticut.

lives out of the State — so invisible property as debts due to a debtor out of the State may be attached. St. 137. 138. 2 Rev. 187.

If visible property belonging to an absent or absconding debtor is not exposed to view, service is made by leaving a copy of the attachment with the Attorney Agent, Factor or Trustee in whose possession the property is — and this service alone is sufficient unless the absent debtor is an inhabitant of this State, or has dwelt in it, in which case a copy must also be left at his last or usual abode in this State. St. 138. Mulry 4. 1 Geoist. 387.

Same rule when invisible property as debts due the absent debtor is attached. St. 137. 1 Revst. 387.

But in all cases where the debt is out of the State, at the time of the action commenced, and does not return before the first step of the term the case must be continued to the next term, and if at the term the defendant does not appear, by himself or attorney if it appears probable that he has had no notice of the suit, the suit may continue the action to the term next following of its longer at which time if he does not appear judgment is to be rendered by default. St. 26.

But in all such cases where is stayed till the defendant with the Clerk a bond in double the amount required
Practise in Connecticut

with one or more parties, to refund to the deft what
be may have by rescinding or annulling the judg.
by suit to be first within 12 months after entering
up the first Judgment. § 21. 1 Scw 335, 6.

If no bond is lodged, the judgment is erroneou.
2 Scw 126, 1 Root 176. It was once decided that
the judge was right. The decision is since denied.
1 Scw 335, 6. 1 Root 176.

The statute provides that real
estate taken upon such req. shall not be aliened, till
after the expiration of 12 months, or after a new
trial had as a suit last within 12 months. § 21.

By a late statute, if action is lost, agst. a deft.
out of the state (not hpius) before a single req.
if there is no appearance for the deft, the action shall
be adjourned for a term not less than three months
and exceeding 9 mo. If then without special matter
alleged in the req. the action shall come to trial. § 470.

If judg. is rendered by the req. agst. the ab-
sent deft. on the Scip. agst. the garnishor is
to be signed by the req. who rendered the req.
judg. unless he is removed by death, or otherwise,
before the Scip. is sued out, in which case it
may be signed by another magistrate. § 470.

And when the demand, does not exceed, in
The S.C.A. [ sic ] of B. 15. It must be made returnable before the magistrate who rendered the original judgment. If he is dead, or removed (at justice) before another magistrate. But if the demand exceeds 15 dollars, it must be made returnable to the C.C. in the county in which the H. or D. of the Sure. or sure. dwells.

Miscellaneous Rules:

In actions on joint securities or contracts, if all the deft. are not inhabitants of this state, service upon any of them as one, is sufficient to hold them all to trial. In this case, the suit is not continued of course, but if any of the deft. are not of the state, are appeared by the defendant, they may be relieved by audit or Surety. At 25/6.

But if one of the deft. is not of the state, is an inhabitant of it, so that service upon him by leaving a copy at the place of his last usual abode is necessary. At 25/6. The cause must be continued one term at least. But under the same rule, this rule the statute does not give relief by audit or Surety. At 25/6. If not continued, judgment is erroneous. At 25/6. Unless County or court of error.

If deft. is under the care of a conservator, the latter should be cited to appear, but if he is not cited.
the suit does not abate, but time is allowed to
arrest him Whig p. 176 - 5. The officer may not break
the outer door at window of the Dft's house to arrest him
or take his property out of inner door - 1 Co if 1. 5 6 Co 93.
2 Bo m 187. Whig 383 - Dft may be discharged by the Ct.
arrested on Sunday - the arrest is void by 29 17 2.
and 29 own - to by own statute. Service of any civil
process - Code p. 50 5 - 37 0 2 - Code p. 323. But ones
house is privileged only for himself, his family, and his
own goods. If no other person or another's goods, are
in it, the outer door is may after request, be broken to
arrest him, or attach his goods 5 6 Co 93 6 Co 3. 5 46.
When towns, societies, proprietors or other commu-
nities are to be sued, service is made by leaving a
notice with the Clerk, or either of the select men or com-
mittemen 47 11 6. In Eng. a prisoner in custody
for an offense, cannot be served with civil proces-
s, without leave of the Ct. or one of the Judges 1 7.
2 Co 317. 18 Bo 129. - Serve in Con.

Time of making service -
In suits last to the S. Ct. 1 1 By 6 Co 5 the time of legal
notice in ordinary cases is 12 days the process must be
served on the Dft. 12 days inclusive before the day of the
Ct's sitting - In suits before single mag. 6 days in-
clusive at 21. 2 Co 18 8.
By fresh attachment before whatever of returnable
must be served by leaving a copy with the garnishee.
and as the case may be, at the first usual
place of abode—14 days, at least before the sitting
of the Ct. St. 138. 2 Sw. 189.

So in suits agst. officers
for not executing a writ, or for not returning
it, or for making a false return, the time of
legal service is 14 days—St. 385: 2 Sw. 189.

This rule holds I conceive only in cases
of complaints under the statute, and not in the
ordinary suits at com. law ex pr. ex officers ex
receipt of the latter are com. law suits see 1 Revt.
81: 14. 384—But whether it does not extend to
all suits at com. law. Judge Reeve informs me
that it does not have considered the provision
as extending to all suits agst. officers for not
executing writs ex pr. that they may have two days
of time to serve their own writs ex pr. in all these cases the
day on which the writ is served, is included.
in the computation of the time, if that on which
the lot sits is excluded. And if service is made
on the last day allowed for service, it must
be completed before the evening twilight is
gone, while there is light sufficient to enable
the officers to read the process.

Duties performed,

itions but to recover penalties, are not within the rules
as to length of notice, the issue of notice by
proclamation, i.e., a warrant issued on a written complaint
made to a magistrate. [Post 436]

If, however, they
are not in the form of civil actions (as in many
cases they are), the usual notice is other cases is
necessary. I conclude

A citation after the writ
returned, to the Dfts. conservators, is not within
any of the above rules. It is sufficient that rea-
sonable notice is given; and if in the opinion of
the Lt. the notice is too short, the Ct in its dis-
cretion will continue the cause, or postpone the
trial. [Post 174]

One Dft. cannot take advantage
of defective service upon his co. Dft. [Post 407]
Practic in Connecticut.
Bail is of two kinds in law. 1. To the officer & Special Bail. 2. When the body of Def. is arrested under an attachment, it is the duty of the officer to keep him safely, that he may not escape coming in court, unless he offers to the officer sufficient Bail for appearance 31st 290 - Fedd. 106. - This is bail to the officer.

If there is no bail is offered, the officer must regularly commit Def. to prison for safe custody 31st 290. - But a deft. arrested on surety process cannot be committed in Connecticut without a warrant, signed by a magistrate, i.e. a writ directed to the constable, declaring the cause of commitment of requiring him to receive and keep the the deft. ill related by due order of law. St 34 - civil officer 105-118. - Warrant is necessary because the writ does not order commitment - after commitment. By our practice the constable takes bail, if offered - (top Judge Issue) if the bail bond is not taken, assignable as in other cases.

But by st 23 6 in Eng. by our statute the officer is bound to accept sufficient Bail when offered and to discharge the deft. 31st 290 - Fedd 106. St 8. 38. - not so at Com. Law.
Practiasm Connecticut.

To bail or to admit to bail, a person arrested is to deliver him to his sureties, or their giving security for his appearance. 3 P.B. 290. If he is supposed to continue in their friendly custody instead of going to jail.

The right to arrest the body of the defendant is founded on his ultimate right to take it in effvo. This purpose is answered in contemplation of law by putting him in the custody of sufficient sureties, a sort of keepers.

The surety given is called a bail bond. The obligors are called bail 3 P.B. 290. 2 Sw. 190. The bail under our statute must consist of one or more substantial inhabitants of this State of sufficient ability to respond the judgment that may be recovered. 1 P.B. 38. 2 Sw. 190.

The bail bond is conditioned for the appearance of the defendant before the court to which the suit is returnable. 1 P.B. 38. 2 Sw. 190.

This bond being given, the defendant must be immediately liberated from arrest. 1 P.B. 39.

If the officer refuses to accept sufficient bail, when tendered of the owner to defendant, for false
Practic in Connecticut.

If the defendant be bound for appearance, if that he is responsible for is the defense. 259. vide 3 Bar 662. 566 9. 252 290. Day. 650 or 666.

Any undertaking other-
wise than by bail bond, that a defendant arrested on
writs return of him, shall appear before it is done by art 23 Nov.
613. 4. 18. 7. do. 189. 239.

In Court, if the officer
take insufficient bail, he is liable to the party on
sum of returned when the 269 in an action for
escape. 259. 18. 5 8. - Lewis in Eng. The
practise there is to rule the sheriff first to return
the writ of them to bring in the body, if he does not
in the latter will perfect bail above, an attachment
issues against him, to compel him to pay debt and
loss. 3 Bar 291. Field 167. 18. 68. 206. 4 Bar
46. 2 - 18. 239. 2 Moore 1821. 2 Bb B. 1206.

It has been decided in Court that the officer
is not liable, if he takes bail apparently suffi-
cient at the time, that they should afterwards fail.

The bail may at any time on subscription of
the principals intending to escape, take his body when
since he may be found. I surrender him to the of-
dicer. It has been held that they may take.
an act in Connecticut.

him was an act of surrender now after
wards 17th 27th 6th 28th 23rd 7th 4th 7th 8th. 18th
16th. the actual arrest on that day will be
illegal 3d 14th 8th 60th. 26th 1st 2d 16th
16th. decided contra 2d 10th 12th 13th. If this case likened to a
voluntary escape in this particular 6 Sam 2d.

But the officer is not bound to accept a
surrender before the return of the writ - it is op-
tional with him. Some of bail above they may
surrender at any time, if the officer must deal
Ex. 883. 391. 6 Sam 75. 3. 612. 8. 6 do 456.

The bail above no authority to command of-
distance, in taking their principal; but they have
a right to obtain it, if they can - that assis-
tance cannot lawfully be refused.

It has been de-

cide in Conn. that an officer having made an ar-
rest, may by an escape warrant, detaine his
principal in another State - 1doot. 107.

The bail bond is negotiable both in Conn.
and connecticut i.e. to the 1st. in the action Fed.
16 67. 3156 2901. 1. 11. 12. 27. 1st. 18th. 1doot 253.
If that the action on the bond may be lost.

after agreement in the name of the 1st. 11. 12. 27.
31 67 1. 18th. New Ady: Lyn 1739.
it is usually first in bond, in the officer's name.

If the officer accepts an assignment of the bail bond, he ipso facto discharges the officer.  

Fidd 15 6  date 29  1811 is 2 23

If the bail are sufficient, the officer in Court is bound to accept an assignment in discharge of the officer, at least he cannot recover against the officer after refusing to accept it.  But they were apparently sufficient at the time.  Poist 5 4  1839 but must seek his remedy on the bail bond.

If then the officer, having refused to accept an assignment of the bond, sues the officer for an escape.  It is a good plea for the latter that he took sufficient bail in bail sufficiently sufficient.  So if it appears he has offered to assign it.  If then the issue turns upon the question of fact whether the bail were sufficient.  Poist 5 4

Inc.  As it necessity for the officer to plead that he offered to assign it.  This is it the officer's duty to demand it.  The statute provides that if his recovery shall be had against the officer, unless he shall have taken insufficient bail, or shall refuse to let the officer have the bail bond, which seems to imply that it is the officer's duty to demand it.  Poist 3 9
The Deft cannot be twice held to bail for the same cause of action Seld 35—while a suit is pending on one arrest, Deft cannot be arrested again for the same cause. If he is the defendant will discharge him Seld 35, 6 the 1209, 1216. Formerly the Deft was not arrested in the first action—he could not afterwards arrest Deft for the same cause Seld 36. May 679. Seld 39, 1209. 2 Winb. 381.

But even more in Eng. in debt in Judgment, the Deft cannot be arrested if he was arrested in the original action Seld 37. The 782 1639. 2 Winb. 93. 2 Lem. 75 6, 75 6.

Then the condition of the bail-bond is, that if the Deft appears at the time of place, yet his non-appearance does not cause want a forfeiture of the bond; for by the Statute the bail are
Practice in Connecticut.

made liable only " in case of the principals a

onsurance, and a return of non est inventus


174. - If then Off is not surrendered in ex.

it is Off's duty, if he would subject the bail

to take the out ex. to endorse under a due del-

gence to have his body taken if the Off is

surrendered on the ex. before non est returned.

the bail are discharged saved.

If however, the

principal makes a surrenders (one is not surrendered

either in 4th or on the ex.) and non est inventus

is returned, the bail are liable. St 39. 2 Sec. 174

458. 434. Their liability extends to debt and Costs.

The return of non est inventus must be made,

conclusively, both as to the person of personal estate

and as to real estate. Suppose, - For Off. is not

obliged to accept real estate in discharge, or instead

of the body.

The suit is to be brought on the bail.

bond, whereas the debt, from the words of the

Statute it is found, that St. 39.

2 Dec. 33. 174. - Fifty 385. 28th Foot 28. 48. 87.

To Lang. the action must be kept in the 39. in which

the original action was brought. St. 39. 15. 2. 6. 36.
Indeed an actual surrender of the principal upon the surety is not necessary to forfeit the bail for it is the duty of the officer holding the surety to make diligent search for him, and if by the use of due diligence the officer cannot take him, the bail are liable. Secs. not liable. 2 Sw. 174 July 382.

384.

But if it has been determined in a case in which the principal did himself in an improper manner of by threats prevented the officer from taking him, that the bail were liable, sufficient avoidance was made. July 382. 2 Sw. 175.

The return of what is invented must be made, if the bail are not liable. July 383. If extricacious such a return to be made unnecessary, for the purpose of ejecting the bail they are discharged. 2 Sw. 174 July 383.

The act clearly is not necessary for the officer in order to forfeit the bail, to delay the return till the expiration of the 60 days, for the purpose of finding the principal— all that the law requires is that he act fairly and reasonably. July 383.

434. 2 Sw. 176.
If the principal dies before non est returned, the bail are saved. "Actus Reus" Nov 21, 1627. 1 C. 336. 4th. 27.

Bail to the Sheriff may be discharged:
1. By an actual surrender of the Deff. body to the bail or himself. 2 Dec. 176-1. 1 C. 384. 4th. 2. By a surrender of his body, or by his being in a situation by which he might be taken by the use of due diligence. 2 Dec. 176-4. 5. By his death. 4th. 27.

As well as seen hereafter by Deff. producing a tendering special bail. 2 Dec. 101.

4. 5. By Deff. accepting a plea without special bail, as the words in 4th. 2 Dec. 176-8. 6. By the principal's bankruptcy. 1 Dec. 4th. 2 Dec. 476.

A non appearance in Ct. without a surrender, if without pleading, does not discharge the bail. 2 Dec. 176. July 13. 4. 5. Does not a

debt or plea 9. 47-39.
Practice in Connecticut.

If deft is surrendered in ct, it is necessary for
the safety of the bail, that the surrender be entered
on record, for no other than record evidence is
admissible to prove the fact. 2 Rev. 176 - July
18. Nov. 218. Sec. 4, 412. 1 Sec. 24. 511
B. Winthrop 192.

On the 1st day, the deft may
move the ct, that the deft. be taken into the Sher
iff's custody - otherwise he may go at large, if the
deft. lost the benefit of the cited. Jr. Is it not
the duty of the ct. ex officio to order the deft. into
custody at 39. It is not the practice.

When the deft. whose body has been arrested
appears in ct. (and does not enter special bail)
he must plead if the deft. required it, in custody
of the ct. If he fails to enter a plea and cons-
taining their orders, the deft. is discharged.
2 Rev. 176 - July 434. 1st of may 176, bail.

Does the rule hold if he is surrendered in
safety.

The acceptance of the plea is a waiver
of the deft. right to hold the body - 2 foot. 11. 
But of the deft. having pleaded in custody, he
stands in the original action; he is not obliged on a
new trial being granted to plead in that to a.
Practicem Connecticut.

gain. Shuler vs. Comp. At of course he is not
obliged on the new trial to give special bail.
If this is given merely to prevent his being taken
into custody, the Deft has answered the law by
surrendering himself at the return of the writ, and
in obtaining judgment he was of course released ac-
cording to law.

If Deft accepts in ex parte a
Deft whose body has been arrested, attached, a plea
not containing the words "in custody" or the
no special bail being given.
Deft prevails. Deft cannot in the S.C. require
the Deft to plead in custody, or give special bail.
He has waived the right of accepting the plea.
2 Kent. 101.

Some rule I conclude, if Deft has presented
in the C.C. if the Deft has appealed, for there would
be the same evidence of waiver.

So I conclude the
Some rule would obtain in a new trial, presumed
ed by either party, if whichever prevailed on the
first trial - (a quo yera superior).

Appearance is the first act
of the Deft in S. Ibid. 122. Sold 5. In Eng. 6. 1279. 6th
Pez. 1. Deft may enter a Gen. appearance for
The defendant regularly appears either by himself or by an attorney. At common law parties could not in general appear by their own attorney, save by Act of West. They may, under the Act of March 24, 1738, corporations aggregate may appear by their attorney. The Act of 1767 have determined that an attorney may not appear for a town (though) new town or appointed by a vote of the town, or by an agent authorized by vote to retain an attorney.

Infants, bastards, and such others cannot appear by their own attorney. Act of 1767, p. 258. Infant or children of guardian or next friend. Act by guardians, under the Act of 1767, p. 139. Test to husband and wife. Guardians of wards in their principal. If the principal defendant dies after the return of non est inventus although his death be before the issue forth the same cannot be sold and fixed with the debt of cost in point of law. 2 Will. & Mar. 67, 2 Saim. & Mar. 72, 65 R. 284.
II. Of Special Bail.

When a defendant has been arrested is bailed into bail by an officer or surrendered into bail by his bail, or by his own voluntary act he may be admitted to special bail—one on which he is discharged out of custody. 38b 290.

If the bail to the sheriff are of course discharged. This is called in Engl. bail above or bail to the action 38b 290. 1 Edw. 36.

And if not surrendered, he is not allowed to plead without special bail.

7c 39. If defy requires it.

Special bail according to our statute must consist of "sufficient sureties." But it is common to accept one surety (6c 39). If the mitt does not accept the sureties of bond, the deft. decides upon their sufficiency by enquiring of sureties.

In Cor. special bail is given in open court only, by the defendant entering into a recognizance in a sufficient sum that the deft. shall abide the final judgment. 7c 39. The recognizance may be payable to the deft. thirty b, s. It has been decided that the party for whose benefit a
recognizance is taken may fix upon it, whether
he is conscious or not. $275.

In Eng. it may be
taken before a judge or commissioners out of st
31st. 29th.

If the recognizance is bastard, the special bail
are obliged to satisfy the whole judgment recoverd
against their principal.

But it is perfected no otherwise than
by the principal's assent; or a return of non est
inventor in the ex. as in cases of bail for apperance
§ 39.

In Eng. the bail are discharged by surrendering
the principal before the post return of the Lib-
Rancis against themselves. Text 147-9. 1 Betts 270-
28. 1 Bl. 573. 117. 1 Ch. 94. 2 Sam. 176. Bros. of the.
61.

In Eng. an ally of the st cannot be special
bail to prevent maintenance. Doug. §§ 450 or 466
1 Betts. 103. 1 Ch. 76. tions in cont.

In Eng. bail to the action i.e. special bail here,
have for the purpose of taking their principal, "a
right to go into his house as much as he has himself.
"I suppose a right to break his doors 2 Betts 120.
And they may break and enter the house of strangers,
Practic in Connecticut.

...in which he resides or search for him, the court shall...king on 28th Nov. 1856. Do it appear that the court do not the same rule apply to bail for appearance?

...In whether special bail recognized in one state, can take their principal, by virtue of the bail-piece in another? It has been decided that they may by the S.C. in the case of Riggs vs Wall...[after some years]... Also decided in law that an officer having made an arrest may by an escape warrant relapse his presence in another state. Post 1857.

In the nature and form of a bail-piece see 5 B. 38.

1. Affidavit at 38. It is merely an entry a memorandum of the proceeding in letting the defendant special bail.

A final judgment is rendered upon the defendant. The rule is that the principal, as well as all of involuntary agree, the special bail are bound (like bail for appearance) to satisfy the whole judgment, debt, or damages, if costs. 59.

The usual and most proper action against special bail is a Suit bond. It being founded on matter of record.

At 39. 2 ch. 175, 1817. 378. The I suppose debt may be lost.
Practise in Connecticut.

In the Superior Court, the judge rendered a judgement against the principal, is affirmed against the bail with additional costs $39.

But the sheriff or other process on the recognizance must be served on the bail within 12 months after final judg.

Suits against bail to the sheriff are subject to the same limitation A 39-2 Sec. 175.

2 Part 381.

It has been decided that the 12 mos. are calendar mos. not lunar. 2 Part 381. Gen. & rule of Gen. Law 701-2 2 Sec. 224.

The particular day on which judgment was rendered against the principal may be proved otherwise than by the record. 2 Part 381. In no case is an entry on the record is made, in our practice, of the particular day on which judgement is rendered; all judgements being entered as of the first day of the term.

If special bail is given in the bbl. on an appeal taken, the sheriff or other process must be served on the bail within 12 mos. after the judgement rendered in the Dep't.Bl. The judg't. of the Dep't in such cases is not final within the meaning of the binding clause in the Dep't. for it is destroyed by the appeal.

...
In consequence of this limitation, etc. must be taken out by the principal, if not at inventus returned within 12 months, unless it must be taken out in such season, as that the return may be fairly made, e.g., not on the day before the year expires—

But according to Swett it may be taken out at any time which will admit of due diligence to take the principal 2 Dec. 1793—

So to an bond as recognizances for prosecution are not within this limitation 1 Robt. 363, 2 Dec. 1793—

A recognizance for the prosecution of an appeal by the deft. does not exonerate the special bail—In this case both bondsmen are liable if judgment pass against deft. for costs of the special bail on the return of non est, for the debt or damages also—

Whether an at special bail and bail are to be the Sheriff, may an judgment being recovered against them, and before satisfaction, maintain an action against their principal 3 Robt. 39—

And if a bond of indemnity is given they may doubtless maintain an action against it, as soon as they die.
Practise in Connecticut.

... come liable, i.e. on the principal, assiduous, and
a return of non est inventus if before suit but.
not there wide cont. to face himself.

Note—It is no objection to bail, that they are in.
denominated by debt, or any third person. Feb. 21.

103.

If final judgment given in favor of deft, the
special bail out of court's discharged—as bail to
the Sheriff would be, if there were no special bail—
2 Dec. 175, 6.

And an erroneous judgment the re-
curso by writ of error, has the effect of a final
judgment—so rather is deemed a final judgment
within this rule—Ex. a judgment in Ch. for Def't.
and not appealed from, and revived in Ch. as
writ of error 2 Dec. 175, 6. 1 Post. 102. 469-567.
Said in Eng. Ch. 195—

So as to landowner for
prosecution or appeal for Def't. 1 Post 469—

Let a judgment in favor of deft be afterwards
set aside by granting a new trial, as final within
the rule 1 Post 469 & Dec. 176—

Some rule extends
to land for prosecution. Generally it seems—1 Post
469. &c.
Practire in Connecticut

every judgment in chief, there rendered, for off., in S.B. if every such judgment rendered in the C.B. or by a single magistrate, first appealed from, discharges the bail—bail

Special bail are also discharged, like bail for appearance, by a surrender of deft.'s body, or, of sufficient personal property on the ex., before return; in default returned, or by his being in a situation in which he might be taken by due diligence—on by his death before such return made. 2 Sav. 176-177, 216, 217. 1 Bos. 336, Part. 47.

Special bail may
be changed, on motion, if the bail have failed, or for 'other reasonable cause.' 1 Post 575-676, of command, for prosecution of actions on app.

Heads—it seems—
Of Defense and Pleading.

The defendant having appeared, if when it is necessary, having given special bail, or been taken into custody, is to make his defense, which in brief, forms the next stage of the proceedings.

The first proceeding, after bail is given, is the filing of the declaration, which may be done at any time, within one year after filing and the suit Oct. 2 92. Vol. 6.

By defense is meant a denial of the facts of the action Oct. 2 96.

But judgment may be rendered in several ways without defense, as well as after defense made.

I. If the defendant does not appear at the return of the suit, after being three times publicly called in Oct., he is said to make default of appearance and his default is rendered Oct. 2 96.

In Oct. the docket is called on the first day of the term. If the defendant does not appear then, by himself or attorney, the court, or being called (at supra) his default
PRATICE IN CONNECTICUT.

is recorded - if judgment is entered up against him. unless he appears or sues before the 20th day of court for a trial; in which case the de

fault is waived, on his paying the costs to

that time. At 25.

The rift cannot therefore

take out exp. upon a default till the 3d day

day of the term.

In the 1st of it is not usual to call

the declarant. Regularly therefore judgment is not ren
deed upon default by that Ct. till the cause comes
to its turn for trial, unless the rift moves that

the cause may be called.

By a rule of both Ct's.

however the rift may, at any time to the judgment
by default, notwithstanding an appearance for

default unless the rift will declare in open Ct.

that in his belief, there is a serious defence and

unless he does this the Ct. will order a default
to be entered. This is to delay a avoid a delay

of justice when there is no defence.

After default made, rift is considered

in Ct. for many purposes 2 & 6. 1.

The 216

Dth 7th 6. July 17. Ex. pr. for the purpose of mo
tion to be heard in damages on which mo
tion
Practic in Connecticut.

A hearing is to be had as to the amount of damages only - 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 32nd 33rd 34th 35th 36th 37th 38th 39th 40th 41st 42nd 43rd 44th 45th 46th 47th 48th 49th 50th 51st 52nd 53rd 54th.

But after a default, the default is not in ch. for the purpose of moving an appeal, unless there has been a hearing on damages - 19th 15th 14th 13th 12th 11th 10th 9th 8th 7th 6th 5th 4th 3rd 2nd 1st.

An appeal - by default as upon demurrer damages are disjoined by the ch. 11th 12th. In ripud of a jury of sugars for Doug. 30th. A default may always have a hearing on damages before the ch.

But of late a jury has been dispensed with in certain cases in ch. - as in actions on bills of sch. 8 Form 326 395 410 116 52 528 541 7 Form 473 42 275 1338 p 369 Doug. 30th.

In ch. a default regularly admits nothing more than that 1st it is entitled to recover summing.

3 Form 302 Doug. 302 Bull. 278 Field 404. 3 Med. 155.

In default suffered where the damages are disjed, where the 1st had not been made, and no hearing on damages is moved by the def. Judgment goes ass't him in bent for the whole sum demanded. under these circumstances the def. by suffering a default admits that he is generally liable to the sum demanded.
Practie in Connecticut.

But if a hearing on damages is moved, the
default admits. I conceive nothing more than that
it has cause of action if it must prove to that
amount he had sustained damages 3 Term 302
Doug. 302. So that the default you se, admits
nothing more than Off. it likes, to recover some-
thing, as in Eng. Thus if no motion is made for a
hearing on damages, Judge? goes for the whole
demand put together.

When the damages are specified by a written obligation, for money, the de-
fault admits a liability, not to the amount of the
demand, but for the face of the obligation, except
so far as it is diminished by indorsements, where no
motion is made for a hearing on damages - here the ot-
several the damages by including the obligation of
subtracting the indorsements of any.

Same rule
when damages are ascertainable by reference to a
known standard, as in actions on obligations for
collateral articles - here the ot. enquire of by stand-
dard as to the value of the articles, thus no mo-
tion put on such - and subtract the indorsements of
any. —

And if such motion is made after default
Practice in Connecticut

The deft. may, in court, prove damages, not in
dicted, and denied by deft. - Sued in Jury
3 Sam. 362, 3.

In理想, that being no motion for a
hearing on damages, but a Jury of inquiry, the rules
which regulate the amount of damages, are, by
presumption on a defect, are somewhat different
from ours. - True if the damages are presumption
a defect admits only a cause of action, but on
an obligation to money, it admits that the deft. is
liable to the whole amount, deducting the evidence
ments as in Cont. 3 Sam. 362.

2. If the deft., at the return of the writ, is guilty of
any delay, or defect, as to the rules of Law, in
of the deft., he is adjudged not to redeem his
action, and becomes, nonsuit. 3 Nid. 375. 6 Ex.
If the plaintiff is, in case of prosecution
when ordered by the deft. to give, ayor, when order
of his deed, thus: -

The deft. may also voluntarily suffer
a nonsuit, before or after defense made, by consenting
himself to be three times publicly called if not answer-
ing. But this must be done before the Verdict is
delivered to the Clerk. 1 Rob. 6-71. July 27: in case
of retrial. But if the jury is returned to a second
in said consideration, he may become non-suit before the 2, or 3 verdict delivered to the Clerk. Post 5.4.

In these cases, if the defendant, by motion, has proved to the Judge, whether he has made defense or not, without a motion - Motion must be made in the court, in which the non-suit is suffered. Vide, Title 269, as to retrial.

In such it is for the Judge to order the defendant to be non-suit, while the case is an trial; if his declaration does not state, in his case, does not prove, a cause of action.

But if the defendant is not obliged to submit to the order - on being called he may appear, then the cause must be tried by the Jury, and the case must be heard in the Court of New York. If the defendant puts in a motion, after the non-suit and deeds it, without any evidence.

After a non-suit, suffered under an order of Court, it is deemed to be in Court, for the purpose of moving to set it aside, as being a part of law 256. 356.

For suits are never ordered in Connecticut.

The non-suit of Court, may be
Practic in Connecticut.

again, for same cause 31st 296.

3 Retract - May must may be understood to
the 31st upon a retract order before or after defence
made 31st 296.

A retract an withdrawn of the
suit, is an offer of voluntary renunciation of it
in Oct. 31st 296.

After a retract of A does not
in Eng, commence a new suit for the same
cause (31st 396) Seems in Somi.

The A may with-
draw in any stage of the suit in which he may be
in a new suit (last have) - not after and it shall
have been in (first see) 31st 252 371 - nor after a
return of arbitrators, or auditors 31st 297 - nor after
the A has expressed the substance of a decree in
Chancery, the no bill in form had passed - it seems

A retract the A must move to have
judgment for both, as he waives the right of the mo-
tor must be made in the same term, in which
the retract is entered 31st 297 - So, of course

If both parties fail to appear at the return of
the suit, or being three times to which called,
the entry made in our practice, is "no appearance."
After which the cause is out of A - no judge - in
Practice in Connecticut

rendered, if the suit cannot be received, without consent of both parties. July 661. If it is a bill of exceptions may be filed of judgment entered.

If both parties having once appeared, bail afterwards to appear on being 5 times publicly called, a discontinuance is entered, if the cause is out of Ct. 1 Bost. 439.

_defense is made by the lefts. 31 B 390. the to 
defence 
17 kinds of pleads. the "pleas / pleadings." of the time of making defense or pleading.

By & in Bost. all pleas in abatement in Ct. are to be "made, heard, or determined" before the jury are impanelled. 360. of the cause in every case joined before that time.

This provision has been found impracticable of the rule of the Ct. now is, that they shall be made of tendered only, before the rising of the Ct in the afternoon of the 2nd day, "Read pleadings."

In Ct. all original pleas in abatement must be made of tendered, or demanded to be heard by the opening of the Ct in the afternoon of the 2nd day. Bost. 564.
Practice in Connecticut.

Please abatement which go to the former, as in facts in chancery, not within the court—nor pleas in abatement of writs of Error truly 289.

Abatement to the action, in 1.61 to be made, according to the old rule by the opening of the 6th in the morning of the 3rd day, where the term is but one week, 2 of the 4th day where the term is longer—(Reed 5-61).

This rule has never been strictly regarded in practice—since the new organization of the Court, a rule is made in every term, as to those causes which are continued for pleading in vacation.

If changing of attaining pleas

Under and it whenever the Court shall find that he has missed his plea, he shall have liberty to alter it—in which case the 6th in its discretion may oblige him to pay costs. If the Court is to have a reasonable time allowed for making answer to it—St 342. If the 6th reserves a discretion to a certain extent, in allowing the alteration. (Reed 42-5).

But after a plea has pleaded to issue of Justit., has been rendered upon it in any Ct, he cannot demur to the declaration. Cases, Gen. Appeals, in the Ct., and an appeal to the Ct. Deft. cannot
But it is a general rule that
the defendant, in the bt appealed to, change
his plea made in the bt below of cause and without
title- general usage- Def. changing leads, it is
the form in this case-

He cannot, however, go back in the
order of pleading, from a plea to the action, to a disla-
tory plea: for the latter are waived by the pleading to
the action. "Blus of pleadings"

He can he change a plea

"title, in his plea an appeal".

The rule however has been
in the bt, as to changing, in the bt appealed to, the plea
made below, that it must be done, by the opening of the
bt in the morning of the 3 day, the term being one week,
1 of the 7th day is longer. Book. 567

This rule is never
strictly observed, I now dispensed with of course in
the bt, as to causes continued by the rule to plead
in vacation-

The general rule supra as to changing in the
bt appealed to, the plea made below depends an
usage- if the Def. chooses to say, in the court appealed
Practice in Connecticut

To, in the plea made below, there is no need of pleading it be more in the CT above.

As to the alteration of the plea, under the CT in the CT in which it was originally made, it has been decided that the deft may alter even after the trial has begun. Mort. 195. 404. 2, 297. 2, 406. It saves a new trial former pleading of the CT says, "Whenever she"

A replication made in 6th to a plea in abatement may be entered in 26th of 501.

But the CT will not allow the Defd. to alter in any case by making a new plea, which is inapplicable to the action. Mort. 725.

The Defd. has been allowed to alter, by pleading to issue, after a demurrer amended, the record delivered to the CT for issue. Mort. 727. 2, 297.

Decided by the CT that pleas in abatement may be allowed. 2, 297.
Practice in Connecticut.

Issue and Trial.

The issue being pleaded the cause comes to trial. Preceding matters of law are to be determined by the Ct. All matters of fact by the jury. Art. 267.

Questions of Law are however if not involved in issue in fact, especially in the general issue in an action. Art. 342.

On the other hand, issues in fact may be agreement if both parties be willing to. If they be not, not without such agreement. Art. 297.

Jurisdiction is always determined by the Ct. Art. 267.

After a trial begun to the jury, the Ct will not stop the hearing of continue the cause without the consent of both parties. Art. 267, 45.

The Ct. do not or giving the charge to the jury, direct them how to find, nor give any opinion upon the fact or law. But if dissatisfied with the verdict, they may in civil cases return the jury to a 2nd day's consideration, not to a 3rd. Art. 257. July 1779. 116.

This may also be done in equity. But it is not usual; as the judge directs the jury in these instances. Art. 1183.
After the cause is committed to the jury no further argument or evidence can be heard. 

The party who takes the affirmative of an issue in fact, first exhibits his evidence, if his counsel open to close the argument. 1 East 571.

After the def. has entered when his defence, the def. having closed his evidence, it is discretionary in the judge sitting to let the def. exhibit evidence on a collateral point not before in controversy, to turn the evidence against the merits of the principal question as not. 1 East 604.

In common law, the counsel for the party taking the exception opens of closes the argument.

On motion of incidental questions only one counsel can be heard on each side, without leave of the C.

By St. only one counsel is allowed to argue a cause even on the merits, unless the demand is above $34 in the title of land concerned. St. 36. The rule not regarded much in practice.

If a person is arbitrarily made def. to prevent his testifying, there are two modes, in which that purpose may be defeated at the trial. 1 if no evidence appears against him, the C will on motion refuse his name. 2 if some slight against him, he may on motion, his tied filet, for an expert.
As to open Bills of exceptions, Damners to evidence for the "the pleadings"
For challenges to prove see Notes of Judgment.

Verdict.

The verdict is the finding of the jury of the issue
To be done to them 3 86 377.

Regularly every issue should

found affirmatively, or negatively, in the terms of it
it is not sufficient for the jury to say, they find for the

All 72 that they find all the material facts stated
P oor 73. Yet if they find in terms, the substance of
the issue, the verdict in good — see arrest of Issue.

The it may alter the verdict to make it formal
when the substance of the issue is found 4 26 28.

The last table who waits upon the jury may not be for
sent while the jury are deliberating upon the cause (Post
5 73) In what judgment be arrested for this cause 2
To different kinds of judgments of their effects — see place
of readings. Mists of Issue.

If the jury give more damages than
are demanded, Party may rend the excess of latter
judgment for the rest 4 8 8 3 8. 4 Post 25 6 1 Post 66.
Interest where receivable. See Alimony.
Practicin Connecticut.

As to recovery damages, where there are several defts., see "actions of trespass," of assault & battery; act 37, 1820. Courts may run and recover such costs as limits, injured in property, act 283.

Costs.

In common law, costs were allowed to either party, but the deft. when unsuccessful was amended, if the party of deft. when sued, refused to pay him for the unjust detention of deft.'s right. Mar. 611. 1 Stark. 283.

Now in Eng. costs are allowed to the prevailing party in most cases by several statutes, the 1st of William is the 3d of Charles. 6 Edw. 11 (Mar. 611).

Costs are regularly allowed, in favor to the prevailing party, in all civil actions, I believe, except in four cases, 2 Scor. 268.

1. They are never taxed for deft. in favor, on the suit in favor. See statutes of Ranor. s. 161.

2. When action is arrested on the insufficiency of the Declaration. Post. 76 192. 2 Scor. 268.

3. If the deft. in book debt fails to exhibit his book account in order to be offset against the deft. & afterwards brings an action for the book debt, which he might have extinguished in the way.
Practice in Connecticut.

An action of trespass, he can have no costs unless
he shows to the court that he had no knowledge
of the former suit or was excusably hindered from
appearing of exhibiting his account. § 136.

If in appeal from Probate a partial or judgment
is disallowed, so mistook the judge, no costs are
allowed. Like units of Cases. Post. 157. Sec. 61.
if the mistake is occasioned by fraud or negligence in
appellee.

Tux. 154. provides that no action of trespass
shall be sent to a jury of trespass on the ease but the
defense. 269. 6. the damages found don't
amount to 7 dollars. 7th. Shall recover no more
than his damages unless the title or inheritance or
interest of Lands or Freehold Estates in the principal

160. To unless the 7th. Shall have appealed to
the 8th. or Superior Ct., in which case the 7th. if he
reovers judgment shall have full cost § 29.

So prevent tills of vexatious suits. Rest of
the matter necessary to the allowance of costs.
2 Post. 88. 160.

But this § 26. I believe, has not been
considered to extend to actions on the ease founded
on contract. 2. S. 268. 9.
Practice in Connecticut

Proving for $41, delivered to 71. of court.

Damages 12/ if full costs allowed. [ Prob: 136]

2 Dec. 269

Whenever a debt, arising from a suit, is on a plea in statement, if does not support the plea in the bill, appealed to, costs shall be taxed against him, up to the judge. On a plea in statement, if, the costs shall issue for that however the cause may finally issue.

S. 12 2 Dec. 269 To discourage frivolous exceptions.

After a suit has been abandoned or amended if the suit is abandoned in judgment, the recoverer is entitled to which accrued before the amendment, except for costs. [ Prob: 268]

Dec. 269

from Probate to 71. by a minor, the decree being affirmed, costs were taxed against the minor. [Prob: 325]

2. Should not the costs have been taxed against the guardian "Parent of the child".

In motion in one of suit, if a rehearing is awarded, full costs are taxed in the final suit. [Prob: 373]

Several suits: one defendant, if the fact prevails, if the other, the former is entitled to costs.
Practico in Connecticut.

That he can have only one. They are taxed, and his

proportion of the st. and any fees 1 Post 456.

If his deft. are joined in a suit, in which they can
not be joined, if prevail, costs are taxed for each,
but supra) Post 550. Seems if the joiners were

another, then there could be but one bill of costs, taxed for

both, if travel of attendance for one only.

And if two or more deft. recover in suit, only one bill

of costs is taxed. If travel of attendance for one only.

The Petition for a Final, if the respondent is cited
to appear at the term, to which the petition is returned
if the petition itself is addressed to the st. at another

term, the respondent is entitled to costs. The is in
st. under the citation, the petition is not regular
ly before it 2 Post 31.

In qui tam proceedings, the deft. is required acquitted, he is entitled to cost, as
in civil actions 2 Post 136.

On demand, by confession, the
magistrate can tax costs only for his own fee, unless
there was an extraneous service, if so, these costs must appear on the record, to justify the taxation
of any additional costs. Whig 236. 152. 1 Ser 168.

Costs are regularly taxed in Court by the judge, and if it is said, they may be taxed out of st. Ch 251.
Practise in Connecticut.

On motion upon plea in abatement costs are taxed in C. at only up to the second day of the term. Because the St. provides that such pleas shall be heard at its sessions.

The party of the prevailing party has a lien upon the costs, if any, to recover the officer in holding the property of the adverse party, not to pay them to his client. C. S. 647. F. 226. 2. 126. B. 828. 2. 126. B. 440. 580.

But the lien is subject to any equitable claim of the adverse party, as to a tenant. C. S. 626. 128. 217. 657.

The party prevailing is to pay costs, at the discretion of the Ct. C. 223. 849.

In the mode of setting aside judgments, see Writs of Error in Practice.

Courts may amend or suppress mistakes in proceedings. C. S. 656. 4. 668.

Amendments.

Assemble at Court law. amendment that allowed before the order was made up, were regularly not commenced afterwards, except in the term in which the order was made up. record took place. C. S. 607. 411. 1. 59. 2. 61. 156. 67. 4. 156. 256.

And according to the practice which commenced
Practise in Connecticut.

About the 13th day of February, at a long time, not even the slightest of plainest mistakes could regularity be rectified after the record was enrolled if the time passed 3 B 6 410. 4 B 6 25 69.

At present amendment are more allowed in Comp. at Com. Law. And when justice requires it, they are permitted at any time while the suit is pending, or before final judgment, if not afterwards 3 B 4 407.

But now in Comp. all formal mistakes are in general aided by the statute of frauds which are numerous, the earliest of which is the A of Edw. 3 - B 6 409-8. - 1 B 6 90 5 96 6. 2 B 6 1098.

First mention Comp. all formal mistakes are over in practice. These Comp. statutes extend in general to formal of formal mistakes, not substantial defects in mistakes. 1 B 91 27 101. 2 B 6 118. Edw. 4. 8 C 6 15. 15 92. - Examples of formal: false later - false using - false signature - false name of substantial - giving copy in the debt - want of a proper signature. -

We have two statutes on this subject. The first provides that no suit, pleading, suit or proceeding shall be set aside, suspended, or reversed, for any kind of substantial errors, mistakes, or defects of the person
Practic in Connecticut.

The case may be rightly understood by the Court. 

This provision, however, is too general, if vague to admit of any effectual application in practice. 

Piles in abatement. If special damages for formal defects are probably not frequent, it is impossible, and no such statute existed. 

Our old act also provides, that when an issue is abated, judgment is rendered in favor of the defendant. The defendant shall have liberty to amend his petition on payment of costs to the time of the amendment. 

The act extends to formal defects only. 

It has been decided that a motion to amend under this act was unnecessary. 

By an actpractice in 1994 the several acts of law of equity may at any time permit the parties to amend any defect, mistake, or inaccuracy in the suit, declaration, in pleadings, or other parts of the record in civil causes, upon payment of costs, at the discretion of the Court. 

This act differs from the old in several particulars. 

1. Under this act, motion to amend is necessary. 
2. Under the old statute, the suit may be amended. 
3. Under the new any part of the record may be amended.
Practic in Connecticut.

After judgment against the plaintiff on the plea in abatement.

Under the new amendments may be made at any time after the plea made, by either party at any time afterwards. 1 Peal 565. 2 Peal 574 179.

4. On amendments under the old Act, the plaintiff was obliged absolutely to pay the legal costs.

Under the new, the allowance, as well as the amount of costs, is held to be discretionary with the court. 1 Peal 565.

The old Act however, allow the taxable costs against the party amending, almost universally. The case. Olm vs. Coffin in Montford County, very seldom allow any.

5. Under the old Act, the main defects only were amendable.

Under the new, every variety of defect may be amended.

1. When the pleading can be made more precise or otherwise.

2. When the amendment proposed would change the nature of the action. 1 Peal 565. 2 Peal 178. 3 Peal 412.

3. When the cause is not strictly real, the amendment proposed would not.

4. Insufficient evidence. 2 Peal 215.

The Act has been allowed to raise the damages demanded. Eliza Black vs. H. L. Clark, Jan. 1800. 4 Peal 180.

5th. Aug. 1813, the Supreme Court held it to be a decision to be amended, after the judgment, upon demurrer that it
Practising Connecticut.

was insufficient. 1st. 19th. 79. 50. 7 Jan 132. 1 Dec 37.

20th. 300. 25th. 20th. 316. 488. Deposition a
notified. 2d. 18th. 20th. 464. 64. 8. 6 376.

Do find! Solicitor has changed to Special Counsel
March. 1st. 19th. 7 Jan 132.

One of two Sit. permitted
to amend by using the name of his 60, 7th. 1 Dec 86.

A suit of error misdescribing the count below, is unamendable before plea. 1st. 11th. 193. 3 531

Writs of Error are
regularly not amendable in Eng. 1st. 11th. 193. 3 531

31st. 5 90. 1 3rd 209. 2 90.

After an amendment of the suit
the Def. may file in abatement de novo, if so as often
as amendment are made, by from the time of amendment
it is considered as a new suit thirty 536. - Blakes
But when a party has leave to amend, he may amend
at once, all amendable defects.

The record of a justice not amendable on suit of
error, must so he has some written minutes of when
he make the amendment. 1st. 11th. 193.

So site. the remainder of the 688. 53
So in 1st. 11th. 6 6 8 the mistake of the Clerk cannot be amended
after the time is past, unless there are written amend
at any time. 1st. 11th. 6 32. - Ameon during the time.
Practise in Connecticut

Securities in chancery: no minima, as at law 11 Moth 12th.

The Statute of amendment does not extend to criminal prosecutions — nor to

convictions by neglect 2 Sin. 1699.

1 Sin. 95. 42 Tace 51. 6 Moth 1744. 4 Tace 413. 7 Tace. 557.

A few laws there is no difference as to amendments between issue of criminal causes 4 Sin. 5 67. 2 Sine.

If the statement of an extinct act will make the

suit good, it may be amended. Danda in Court. Thus

when the defect in the suit is extinct, it may be a-

mended by a statement of the truth will make it good.

Ex. mismeasure, misdescription etc.

But if such statement

will not aid, the suit it is impossibly to amend. Ex insuf-

ficient service in fact. No the endorsement imports good

service. Here no amendments will be allowed 2 Sin. 205.

As of the remedy if a former suit for the same cause

on the

If the return of service is not sufficient upon the

face of its yet is sufficient in fact, the suit may be

amended by stating the truth 2 Sin. 205.

But when the suit is vain, it is impossible in the
Practise in Connecticut

nature of the thing, to make it good by any allegation.

- no signature of a magistrate - no certificate of duty paid - no direction to an officer for.

In some instances a verdict may be amended by the Court, & if an order or declaration containing good of bad conduct, no evidence is given on the bond of the jury held a general verdict of guilty it may be amended by the Court its minutes, if entered on these counts only to which the evidence applicable

1 Bany 107 p. 329. Lewis if any evidence was given on the two counts - do. 3:62. 2 Barnes 478.

There a writine be move must issue

and especially

in such cases as amended. In a mistake by the clerk in entering a verdict may be amended - if in the mistake found to Abt. 1197. 1 Bany 101. 2 Bany 112. 677. 2 Bany. 365. Abt. 6:1. Abt. 6. 53 -

And in special verdict may be amended, as where a circumstance deemed by the Court material, if lead is committed Abt. 5:13. 1 Bery 13. 1 Bany 16. Abt. 47. 48. 4 to 52. 2 Bery 6. 144.

But in a civil case a verdict whether general or special is said not to be amendable Abt. 53
