Revis and Gould's Lectures

Notes of lectures taken at the Litchfield Law School by Timothy Follett of Vermont.
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[Signature]
Of the Rights of Persons.

By Mr. Coxe.

The subject matter of Municipal Law is divided into two general kinds, Rights and Wrongs. Its object is to guard and enforce the former, to prevent and redress the latter. 136. 122. 3 36. 1.

It is necessary that Rights be first understood, as Wrongs are but privations or violations of right. 3. 36. 2.

Rights are of Two kinds: 1. of Persons 2. of Things.

Wrongs are of Two kinds: Private and Public. 136. 122.

Persons as contemplated by Municipal Law are of Two kinds: Natural, Artificial.

1st. Natural are human beings considered in their natural capacities, i.e. as formed by God of Nature.

2d. Artificial are such as are created by law, i.e. called Corporations, a Societas Politica, as Cities, corporate towns, a societies, other incorporants companies. 136. 123. 467.

These derive their existence from the act or charter of Incorporation. They are created to maintain a perpetual succession for the purpose of
of the rights of Persons considered in their Natural Capacity. These are of Two kinds —

**Absolute** and **Relative**.

1. Absolute, are such as belong to individuals considered as individuals — such as belong to them even in a state of nature. These constitute what is called **natural liberty**. So far as their enjoyment is consistent with the preservation of the public welfare of civil society, they are enforced by the **municipal laws**. 

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

   The absolute rights of Persons comprehends the right of personal, security, personal liberty, and private property. 

   The absolute rights of persons are the principles of law, which relate to them, being for the most part, shall treat of them very briefly, giving only an outline of the law of the subject, I refer to Blackstone to the head of wrongs, you a more particular discussion of it. 

   1. The right of personal security consists in the right of enjoying our life, limbs, body, health, and reputation. 

   2. Personal liberty as here used consists in the
power of loco motion, i.e. of removing one person from place to place, without restraint except by due course of law. The right of personal liberty consists then in the right of loco motion. (136.104).

3° The right of private property, is the right of using, enjoying and disposing of one's acquisitions, without control, except by the laws of the land. (138.138).

The right of private property is founded on natural law; its modifications as to tenure by which it is held, the method of preserving & transferring it, are derived from society. (138.2 138.3).

II. The Relative rights of persons are those which grow out of the relations of civil society, as such as belong to individuals considered as members of civil society. (138.123.146).

The civil relations from which relative rights result are either public or private. (138.146).

1st. As to those relative rights which arise out of public relations as Governor & Governor-Magis.

2nd. That of Master & Servant.


4th. That of Husband & Wife.
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By Mr. Gould.

Law in its most general and extensive sense, is a rule of action or conduct. It is applied to all kinds of action. Must be prescribed by some superior. 1 Bl. 589.

Law of nature is the unrevealed law of God, or the will of God as discovered by reason. 1 Bl. 39.

Law of Nations is in general, the law of nature applied to nations or foreign States. 1 Bl. 43. 44. 54. 56.

Municipal Law is a rule of civil conduct prescribed by the supreme power of a State, commanding what is right and prohibiting what is wrong. 1 Bl. 94.

In point of fact indeed, this law may not command what is right nor prohibit what is wrong. But every judge must enforce the law as right. The rule is to be understood only in reference to the contemplation of the law itself, not those who enforce it. "It is said to be "permanent, uniform and universal." It must be permanent not that every law must be perpetual, only that it must not be suspended in its obligation for duration during the time for which itappointment is to be enforced; nor above may be made for only two years. 1 Bl. 46.
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It must be "uniform and universal," i.e., as far as it extends. In other words, it must be general, not personal, within its own limits; whatever those limits are: In Eng., are particular local customs and usages. Now these are laws as far as they relate, as to a City or not to the whole kingdom.

Municipal law differing from a compact in this respect, the latter is a promise proceeding from us, the former is a command directed to us. 1587, 45.

Distinguishing natural law as the latter is a rule of moral conduct, municipal of civil conduct.

It is "prescribed," i.e., the rule is to be promulgated and made known to those who are to be governed by it before they are to be affected by its operation. Hence no law ought to have a retroactive operation. It is palpably unjust to make unlawful tomorrow an act committed today, when it is lawful. Difference between retroactive and ex post facto law in this. The former has either a penal or remedial operation on acts or things past - an ex post facto is only a penal retroactive law. A retroactive law is not necessarily an ex post facto, as it may be remedial, but every ex post facto law is retroactive. An ex post facto law is a genus, while an ex post facto is a species. 136 45, 1 Dallas 386, 391, State v. Caldon, Sept. 6th, U.S.

The constitution of the U.S. prohibits all ex post facto laws, but not all retroactive ones.

Must be prescribed by the "supreme power."
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which is the Legislature. 160446.c.46.

Rules for the Interpretation of Laws are only

prescribed in 160446.57.

1st. The words of the law are generally to be understood

according to their most known, usual and popular signifi-

cation. Terms of art and technical words (as those in 160446.57.

according to their acceptances among the learned in the art.

Or in other words by reference to the art or science to which

they belong. 170446.57.86.140.4 Bac. 647

2nd. If the words of the law are dubious it is well to

consult the context. Thus their meaning may be es-

tablished by their connexion. And the preamble, to

the part of the law is often useful to determine the

meaning of such words. For the same purpose we may

refer to other laws in past materia. When different

laws are made on one of the same subject, they are

always to be construed by comparing them together.

160446.140.4 Bac. 455. 35 W. 355. 140.160.4 Bac. 645. 140.260.

S. Ray. 1023.

3rd. If a word or phrase is ambiguous, it is always to

be understood with reference to the subject matter, e.g.

purchasing provisions at Rome is thus found to apply

to beneficia by the Paps. 160446.60.

4th. Where any law may admit of different construc-

tions, regard must be had to the effects & consequences. E.g.

Draining blood in the streets of Sologna. 180446.4 Bac. 683.

140.240.134.

5th. But the great Cardinal's rule in all cases is that
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The reason & spirit of the law, must be consulted. 
E.g. Law of Necessity for 
Bar. 67.

"The reasons of the Law" says Sir Bache, "is the Law 
itself." Every law is founded on some reason; but the 
true reason can be come at, no uncertainty arises in 
the applicant of. Hence arises the Equity of the Law de 
vised by geometric to be, the correction of that wherein the 
Law by reason of its universality is deficient. I think be 
the Equity of the Law is meant such a construction al 
as is agreeable to the reason & spirit of the, i.e. its true & 
rational construction. Now all the other rules are 
merely auxiliary to this, t are of no use, but as they 
shun what is the reason & spirit of a Law. 1560 in. 514. 524 
Co. S. 24. & 1 36. 62. 3 36. 431.

Municipal Law is divided into 

Sex non scripta and Sex scripta

1. Sex non scripta including. 1st Common law 
properly so called or general customs. 2. Particular 
Customs. 3. Particular laws founded on custom 
which are observed only in certain jurisdictions, and 
called customary laws. 366. 62. 67.

But why is the C. S. called unwritten, since it is con 
tained in Books? Because its original institution is 
not set down in writing. The writing in which it is 
given does not constitute the law itself, whereas the 
Book of Parts to is itself the law, it needs no usage to 
support it. 1 36. 64. 67.
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This unwritten law derives its force and authority from immemorial usage, it having been received and adopted into law immemorially. 1031. 64. 67.

1st. COMMON LAW: This is a general custom, it is called "common" either to distinguish it from other laws, as the Statute, Civil & Canon, or because it is common to the whole realm. It is mentioned by Edward the Confessor, after the abolition of provincial customs by Statute 13 Edw. 62. 63. 64. 67. 74.

Common law like other branches of the unwritten law depends for its support on immemorial usage. An usage to be immemorial must extend back beyond the time of legal memory. That date from the accession of Richard I. to the throne. The rule here given may be true in theory, but is incorrect in practice. For part of the Statute 2 Edw. the it has altogether arisen since the time of Richard I. 1031. 68. 27. 63. 67. 231. 9. 27. 269. 87. 21.

Where is the Common or any other branch of the unwritten law to be found? In the records of courts of justice, in Books of Reports, in Judicial decisions, in Treatises of learned lawyers. 1031. 62. 4.

By whom is the Common law to be expounded or ascertained? By judges of the courts of justice, the popes' and of the law. 1031. 69.

The records of acts, Reports of Judicial decisions, are only evidence of what the C.S. is. The law itself, these decisions are often uncertain and declared not to be law.
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which can't ever be if the decision of a judge was itself a law. 1 Bl. 637, 1.

Precedent is a former judicial decision on point in question, therefore only prima facie evidence of what the law is. I take it a precedent is always to be followed unless flatly absurd or unjust. 1 Bl. 697.

Precedents are not to be overruled merely because the reasons on which they stand are not discover. Thus Proband, why it should not be continued lies upon him who objects to the precedent. Precedents are the very life of customary law & "case decisions" is the most important margin in the Eng. Law. Bull. 1 East 495.

But whence did the L. S. originate, how came it into existence? It was built up (in fact) by the justice from the necessity of the case. Otherwise there wouldn't have been any customary law, of course failure of justice. For it is impossible for a most perfect Stat. law to give relief to every slightest injury.

It may be objected that this law wants the requisite sovereign power. I answer that it is sanctioned by the acquiescence of the sovereign power by universal usage.

But how can it be said to be in memoriam? Entire branches have been made since the time of Thuc. 1. Simply modern decisions are only to be taken as evidence of what the L. S. was and always
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has been. The principles of this modern law existed as much before the time of St. Paul, as they do since.

2. Particular Customs, i.e. Local usages.

These are probably the remains of those provincial customs, out of which the C. S. was first collected by Act 15 Eliz. I. 2 B. & C. 26.

Now in enforcing these particular customs the mode is very different from that used in enforcing the general law. In general, these must be specially pleaded. The court will not avail itself of one must first prove it to exist and then show that his case comes within it. In general, customs the judges are bound to take notice and apply, application of them to the cases, but particular Customs must be pleaded as well as pleaded. 1 St. 3 Eliz. 26; 6 Geo. 1, 3 Eliz. 26.

The jury try their existence as a matter of fact unless before tried, determined & recorded in the same act, in which the case arises. 4 Eliz. 1; Doug. 360.

There is an exception to this general rule, in the cases of great kind through English customs. These cannot be denied because the law takes notice of their existence. It is not necessary to plead them specially, but only to prove that the thing in question is within the one or the other. 4 Eliz. 1.

Saw Merchant is called a particular custom, but I think improperly. It is not a local usage. As governs is confined to particular transactions.
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throughout the realm, but is not confined to local
limits. 1 Bl. 75; comb. 65. 152; 3 Bl. 436; 2 Bl. 487; 461. 462. 612.
175. Chit. 13. 2 Dutw. 1815 2 Bent. 295. 316.

It need not be specially pleaded like a partic-
ular Custom. Salt 125.

Custom is not like a particular custom to
be tried by a jury, nor proved by witnesses. 2 Bl. 436.
1218. 1222. 1 Bl. 295. 1 Bl. 207. 2 Chit. 197.

It is said there is an exception to this rule in
new cases arise in which the Custom is doubtful.

But I apprehend there is no more necessity of this
here than in certain cases of the C. S. Books with
the testimony of learned and experienced men may be
resorted to in both cases. First however that a
Judge would not at this day call in a Custom
to testify what the principle of Law is but only
to prove facts or the meaning of particular
words, just as he would satisfy himself from
3. 653.

Legality of Customs.

Every custom to be good, must have certain
precepts: 1st. It must have been immemorial;
2nd. Continued a uninterrupted; any interruption
of its exercise does not destroy it, but the shortest
interruption of the right does. 3rd. Peaceable, is
acquired in, or common consent (otherwise, even
plotted from immemorial usage) is want. With
others
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be reasonable or rather not unreasonable, e.g. custom of putting beasts into common is good, unless sufficient reason can be assigned against it. 5th. Certain, as descent to the most worthy of one's blood or be too loose or vague for practical application. of course has 6th. Compulsory, since these custom as far as they extend from rules of conduct, but rules are always compulsory. A custom to contribute at one's pleasure is therefore bad 7th. Consistent with each other, for two contradictory destroy each other. As if, in an action of nuisance claims a right to have his windows undisturbed, it pleads that he has a right to obstruct them at pleasure, this see 78. 156, 76, 160. 20, 112, 4. 3rd. 62, 1. 87, 2. 212. 131, 77, 1, 22, 7c. 187. 180, 58. 10. 86. 132, 23, 9. 258.

Customs in derogation of the law are to be strict. construed i.e. they are not to be extended beyond their letter, by what is called the equity of the beam. Thus by custom of gavelkind (it is no other way or cus- toms) an infant may be set of itself to convey in few simples, but he may not in any other way as by any other conveyance. He may not convey. 131, 73, 9.

All special customs must submit to the king's prerogatives, as if the king purchasis lands of the nature of gavelkind, upon his demise, his eldest son alone shall succeed to the inheritance.
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2. Certain particular laws, adopted by custom, usage, or in particular courts. Such are the civic, canon, or ecclesiastical laws of the Roman Empire. These are used only in cities, ecclesiastical, military, maritime, or the Universities. They are local in their administration, not in their operation as particular customs. 1 Bl. 67. to 83.

These laws are binding in Eng. by adoption, not on account of any intrinsic authority possessed by them in that kingdom. 1 Bl. 79. 80.

This adoption may be either by immemorial usage or by jus primigenium, when they become a part of the unwritten law, or by act of Parliam. when they become a part of the written law. 1 Bl. 79. 80.

Common State laws of Eng. (so far as they are binding in Conn.) derive their authority from a semi-

law sanction, i.e., adoption. They were not originally binding here at all. But our laws ought not now to reject the c. s. of Eng. except so far as it clearly appeals absurd, unjust, or inapplicable to the circumstances of our country. A prima facie binds here in all cases; for in general it has been adopted statutes upon as our law by usage and common consent. Our citizens consider it as the rule of their civil conduct. They conduct their civil concerns with reference to it. It is in effect the c. s. of the U. S. — 1 Bl. 411. 429.

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Much sophistry has been used to prove that this country cannot have a law of its own, but

Firstly. So far as that of Eng. is inapplicable to our situation we must have a customary law of
our own. It is indisputably necessary to prevent failures of justice. That law is incapable of affording
a single complete remedy without the aid of such a
S... e.g. suppose our legislature should discard
C.S. I make a Stat. prohibiting battery, & giving
the person beaten a right of action for damages.
But what is an action? The Stat. does not tell... And
what action? "Case" or "in et armis"? This the Stat
must tell which we take a volume. How is the
action to be brought? By writ. What is a writ... Is
it plead? What is pleading? Is the case to be proved?
What are witnesses? Thus you might proceed with this act & raise difficulties without end.
Then you might take ten thousand other cases &
proceed in the same way.

Secondly. So far as the C.S. of Eng. is absurd
or unjust, we may have one of our own, are not
bound to adopt their rules unless we ought not.
What then is to be done? Shall we have nothing in such cases?

The main objection to both the above proposi-
tions is that we are too young - our customs
cannot extend back to Time. If the date of legal
memory, that our judicial decisions are not
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supported by immemorial usage. I answer, that this rule is really arbitrary, and emphatically inapplicable to our country. The date of legal memory was established only 50 years after the accession of Rich. I. Thus a Custom 60 years old was good. Why may we not adopt the rule here as it originally was with them, if we adopt it at all? 2 W. 3 Co.

But further, general consent, long acquiescence, the not immemorial in the above arbitrary sense is sufficient to make a Custom good, this as I before said from the necessity of the case. It has been so settled.

Besides the above objection is itself illogical. It assigns no reason to the affirmative of the question, but merely answers it in the negative. The question is, can we have a C.S. of our own to supply the defects of the Eng. C.S.? No, because in doing it we shall contravene a rule of the C.S., if we cannot because we cannot. This is "petitio principii."

No rational, uniform system of jurisprudence could exist, unless each sovereign State should have a customary law of its own.
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II. Sex Scripta i.e. Statute Law.

The existing law constitutes the law per se. It is no more evidence of it as is the C.S. Some parts of the C.S. were perhaps derived from old Stat. not now extant. R.B. 83. 8b. 260. 20.

The oldest Eng. Stat. now extant is the famous Magna Charta, as confirmed in Easton. This is somewhat different from that of King John 1295. Nov. 13. 32. 85. 2 Hume. Hist. Eng. 146.

Ancient Eng. Stat. are said to be binding in as far as the C.S. of Eng. is i.e. they are prior to the first Stat. of the land. No person contends that they are binding absolutely, but so far as they are applicable, their situation. The reason assigned in the Eng. Books, why any of the Eng. Stat. are obligatory upon us, is that our ancestors, or their emigration hither, dealt with them so much of the law of the parent Country as was then extant, as a birthright. The Eng. Books all agree that their Stat. were laws of the Colonies, and our Eng. Stat. have been adopted by our C.S. of Justice. So that what in Eng. is called written law may here be a measure of custom, or customary. R.B. 6. 176. 17. 127. 371. 380. 4. Salk. 411. 666. Pow. 159. 25. 265. 1067. 1068. 1069.
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Winds of Statutes.

1st. All Statutes are either Public or Private - in general or special. 186. 86.

Public Stat. one which regards the whole community. Private regards particular persons or private concerns. Is a sort of exception to the general law. 186. 856.

I think this definition defective, but a better one is not easily given. The application of this distinction is not always obvious. Most public Stat. decided literally & immediately regard the whole community. Such as the Stat. of Frauds, usury, limitations of land, etc. Stat. enacting that no person shall do this or that whoever do thus shall be guilty to concern the community, the it operates on, on certain persons.

But in many cases Stat. relating immediately in terms to a particular class of men only are public. This rule then gives an important distinction. That of the class of persons to whom a Stat. immediately relates amounts to a genus as is divisible into subordinate classes, the Stat. is public, if a species only or to individuals it is private, e.g. a Stat. relating to all mechanics is public, to all bakers a Shoemakers etc. is private. A Stat. respecting all officers qualified to serve a legal process is public, respecting all Constables is private. So a Stat. respecting a T. S. is clearly private. Ex. gr. 155.
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"All Sheriff's to other officers" public, 449. 11th S. 3d. 259.

"Sheriff of the County of A." private, 1196. 8th. 446. 589.

In Eng. every Stat. which concerns the King is public. So if it respects the head of the body politic, as the Governor of a State, but are relating to persons is private. 1 Bac. 640. 4 Coop. 166. 28. 138. 206. 227. 12. 229.

Hence a Stat. giving a forfeiture to the Kings (here to the State) is public, tho' it concerns only a species of persons. As a Stat. forbidding shoemakers to work at a certain part of their trade, and a penalty. 1 Bac. 640. 4 Coop. 229.

A Stat. which concerns the public revenue or treasury is also public. 4 Bac. 640. 12. 206. 219. 603.

A Stat. may be often is partly public & partly private. 4 Bac. 640.

The 2d. Division. — All Stats are either Declaratory of the Law or remedial of some defect exist.

This division is coordinate with, & not subordinate to this one above. A remedial Stat. e.g. may be public or private. 1196. 8th.

Declaratory Stats. declare what the Law is at all times has been, e.g. our Stat. defining the tenure of lands in fee simple. 1196. 8th. 6 Co. 250.

Stats. remedial of defects do introduce new laws by supplying the deficiencies or abridging the public.
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Cities of the U.S. as that of limitations, frauds. Most Stat. are remedial. 186, 346.

111°. All Stat. are also penal or remedial (a beneficial). As Sec. 102, more properly, called it, being opposed to delict. 260. 4°

Penal States are those inflicting any penalty or punishment, (words in their extensive sense, synonymous) 4 B.r. 450. 6 bro. 414. 8. So in strictness all Stat. giving higher remedies than the rules of natural justice require are penal; for they certainly operate penalty though not so considered in the Eng. Books. E.g. those giving double damages. Salk. 212. bro. 414. 8 106 125. Conv. dist. Act. 40 Stat. 41.

Benevolent (or beneficial) States are those not penal or not inflicting a penalty or punishment of any kind.

4 B.r. 450. 6 bro. 108 126. 7 55 529.

States giving costs have always been held in Eng. to be penal. For costs were entirely unknown at b.c.


But an action brought by an individual in his own right, to become a penalty is a civil action, the law and in which it is last is penal. E.g. An action of debt or inj. Stat. 45 Libby 511. The suit is between if it is not on a public or criminal prosecution, for then the action will be penal. Comp. 38 284. 127. 125. 457 7 350 7 568. 257 1 39 1.
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11th. All State are Affirmative or Negative.

They are distinguished by their phraseology from being prefixed in affirmative or negative terms. This distinction is of little consequence. 4 Bac. 641. 2 Inst. 201. 135, 59.

From what time States have effect.

In Engl. every Stat. commences its operation on the first day of that session of Parliament, in which it is enacted, unless some other time is fixed, as is frequently the case. The whole part is considered as one day. Hence it is manifest that acts of Parliament will in many instances have a retrospective operation. 4 Bac. 636. 7606. 111. 399. 222. 6 Reg. 37. 19 Vic. 405. 1 Inst. 310.

On this general ground that there is no fraction of a part of a session, it has been held that if two States are enacted in the same session on the same subject (no time being fixed for their operation to commence) neither has priority, but therefore if opposed they destroy each other. 1 Pug. 25. 4 Bac. 636.

It is also held that if two laws enact an exaction, the latter only shall have effect. This latter seems the better opinion. 4 Bac. 631. 6709. 237. 19 Vic. 520.

This rule of Eng.'s law has never been adopted in Cors. no definite rule is here established. But all must have the means of knowing the law before their rights are effect. Ex. If there be no Stat. takes effect till the close of that session of the Legislature in which it was enacted, nor till the representatives have had time to return home and inform their constituents.
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Of the Construction of Statutes.

What the construction of Stats. is see 1 Bow. 6. 376.

The rules to be observed in the construction of Stats. are intended to aid the mind in discovering what a Law is or, in other words, the will or intention of the legislature.

In the construction of Stats. (especially remedial) three points are to be considered: the old Law, the mischief, and the remedy. i.e., what the law was at a time of making the act, what the mischief or evil for which the old law did not provide, what remedy the Stat. has provided. The construction should then be such as to suppress the mischief it advanced the remedy. 1 Bl. 173. 362. 6.

The first two are principally important. For the object of the rule seems to be to discover whether what the remedy is—e.g., Leases by Bishops for more than 21 years are declared void—but adjudged to begin during the Bishop's continuance or his decease.

The rules before laid down (p. 3.) will respect to the interpretation of laws in general and to be observed under this head; viz. that words of art are to be understood generally according to their most known usual popular signification. Terms of art.

Penal Stats. are to be construed strictly according to their letter. e.g., Stealing horses deprives one of Clergy by Stat. 1 Edw. VI. Stealing a horse was kept not within it. The rule is not well exprest, but its true meaning is that penal Stats. are to be construed
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Strictly, the subject is equitable for him, i.e. a person shall not be adjudged within a penal Stat. unless he is within the letter of it, the clearly within the spirit or reason. Hence the construction is strict. 1 B. 389, 9 B. 651, 360.78. 2 B. 172. 8 M. 265. P. 27. 1 B. 73. 70. 205.

On the other hand, the within the letter, he shall not be adjudged within the Stat. unless he is also within the spirit or reason of it. 1 B. 29. 316.

The spirit, then, of a penal Stat. may be consulted to take one out of it, not to bring him within it, nor must be within both letter & spirit to be punishable under it. E.g. a Stat. declares that "whosoever certain act shall be guilty of felony." Now a Judge will interpose his power in that case by a literal construction. Thus penal laws always lean to the interest of the prisoner. 1 B. 329. 335.

And in general, any universality of expression in penal laws includes not, unless named, those who by reason of legal incapacity are exempted from those provisions. E.g. Infants in case of corporal punishment. 1 B. 207. 285. 196. 210.

The intention of the legislature is not however to be disregarded in construing penal Sts. to the subject. The intention of apparent ought to be the criterion in construing all Sts., if not the Law is invalid, because the will of the legislator is the Law. 1 B. 15. 326. 327. 1 B. 285. 8 M. 65. P. 296. 2 B. 333.

Another case illustrates the leniency of the law.
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If the repetition of an offence incurs an increased punishment, the offender is not subject to it until judgment has been given to him for a former offence of the same kind. May he must have been convicted of the first before the second was committed. I think this is giving too liberal a construction. 4 Bac. 651. (Haw. 168. 1 Hale 324. 570. 585. By. 323. 2 Bulst. 389. 2 Root 42. 100.

The rule of strict construction (as to the subject) has not been uniformly observed. E.g. By Stat. 25 Dec. 8, a servant who kills his master is guilty of petit treason. This was construed to apply to the killing a master's wife. 2 Stat. 123. 2 Hale 769. He made the departure of a soldier from his captain, without license, felony. Departure from a conductor was held to be within this. 4 Bac. 651. (Haw. 36. 2 Root 79.

Some laws of one country cannot be noticed in another, so as to affect the rights of citizens in the latter, for they are strictly local. On this principle an offence committed in one county cannot be prosecuted in another. (E.g. a civil offence.) July 29, 80.

There has been a practice here to which I have not assented. If a house be stolen in N.Y. and a stolen article brought into a State, the offence must be prosecuted here. (May not, now or then, but may in 1838.) For the law of theft steals goods in one county, it carries them into another, he may be there prosecuted. The cases are different. In the latter case the theft is still breaking the same State law. In the former case he is in another sovereignty.
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Suppose the punishment to be different in different States - is N. Y. fine or confinement hanging - what be the case when a man has done an act subjecting him to fine, be hanged for, or other punishment? Whether of the practice - he might be punished for the same offence in every State in the Union. For no one State is bound to take notice of a conviction & punishment in another. In this point, Judge Holmes differs from Mr. Curtis. He says the theft is only a committance of the act of theft by helping the house. If he helps him or this State he commits theft under our laws & may be punished by our laws. Who shall decide when doctors disagree? P. 795; vincent.

But the the penal laws of one country are local & affect not the citizens of another state they extend to aliens, while in the realm. 166. 36. 123. 35. 45. 733. July 33. Kilgore v. Judge B. Baldwin. Sup. Ct. Aug. 1801.

It has been determined here, that where a penalty is repeatedly incurred by the continuance of an offence, as in the case of nuisance, the penalty only can be sued for at a time. Aliter in Eng. 80, 32. 27. 287. 287. 759.

Remedial (or beneficial) States are construed literally or equitably. The latter may be enlarged, &c. to be effectuate the intent of the Legislature, eases not within the latter are adjudged within the latter, a not according to the spirit & reason of the law. Thus by a liberality of construction, the Stat. of Edw. 3, giving a remedy to Executors was held to extend to Admin. of Spain.
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By Stat. 32. Tit. 17, all persons were authorized to devise; yet by construction it was held not to include insane convicts, infants, idiots. - 313. 480. 1. 4 Bac. 649. 80. 32. 650. 38. 2. 360. 7. 160. 123. 1160. 71. Plow. 365. 48. 5. Cow. 26. 1401. 8. Law. 487. D. 354. 6. 1225. 300.

A Stat. taking away a c. s. remedy ill be construed strictly, or not extended beyond its letter. Suppose, because it abridges the rights of the subject, thus the Stat. of Limitations abridges their rights by taking away the c. s. remedy. 4 Bac. 650. 10. 1052. 352.

Again, the words of an explanatory Stat. (i.e., explaining a former Stat.), are not to be extended by construction beyond the letter, but must be taken in their strict sense: otherwise there would be an end of constructions, as such construction itself might be construed literally 1650 ad infinitum. 4 Bac. 650. 3. 394. 3. 354.

It frequently happens that Stats. are partly penal & partly remedial. The construction is strict as to the former, liberal as to the latter. Thus Stats. of fraud are construed strictly as to the offender, liberally as to the offense, i.e., to sit aside the fraudulent transaction. 4 Bac. 650. 2. Plow. 36. 87. 57. Ch. 6. 2. 2. 175. 116. 88. 360. 32.

And it is a very material rule that the different parts of the Stat. must be so construed that the whole may stand, if possible, "ut regio magisvalidat quam便民." A construction destroying a part is from that circumstance
Municipal Law.

a bad one, yet this is sometimes the case. But a saving
totally repugnant to the body of the act is void, e.g. if the
right in the king the lands of A. saving the right of B. 1896.
69. 160. 47.

When two Stats. are repugnant to each other
the latter in point of date repeals the former. Say if
the 6th & 7th Stat. differ the former gives place to the latter.
4 Bace. 632. 641. 2 Com. 226.

So if the latter part of a Stat. is repugnant to the
former part, so that they cannot be reconciled, the for-
mer part is repealed so far as it is repugnant. This is dif-
f'rent from the case of saving supra because this may
proceed from mistake, the other cannot be accounts for
from inadvertence. 4 Com. 381. 19 vin. 811. to 6. Ml. 287. 60. 8. 111.
115. 113. 89. 116. 60. 4 Bace. 638.

Every Stat. is in its nature repealable. Therefore a
clause in a Stat. that it shall not be repealed is void.
Such clause is in derogation of the power of subse-
llegislatures, because if a legislature cannot repeal a
law, they are not the sovereign power this requir-
ing as much power as the making of laws. 4 Bace. 638.
4 Inst. 49.

Indeed it is a general rule that all acts in der-
rogation of subsequent legislatures are void. 186. 96.
4 Bace 638. 4 Inst. 49.

But the law does not favor a repeal of Stats. by
implication; the repugnancy of Stats. clear to certain to have effect.
Yet there often is a repeal by implication. 4 Bace 639. 116. 10. 116. 8. 116. 12.
Municipal Law.

It is said that affirmative Stats. do not abrogate the C. S. I think this is incorrect. They do if they simply a negative of the C. S. i.e., are inconsistent with it. E.g., If by C. S. six days notice to a Def. is good to a Stat. requires 12 days. In reality it makes no difference whether the Stat. be couched in affirmative or negative terms. I suspect the C. S. has as often been repealed by the former as the latter. 4 Bac. 141. Co. Litt. 16, 169, 21st 200. 1133, 39. Com. action Stat. & deed 252. Elow 2077.

If a Stat. inflicts a higher or lower punishment for a given offence than is inflicted by an elder Stat. the elder is repealed. Sects. 252. Bac. 2226. 4 Bac. 954. 10.

So if a penal Stat. inflicts a lower punishment than that prescribed by the C. S. the latter is abrogates, & of the Stat. inflicts a higher punishment, it appears to be the rule, that the C. S. remains in force. 10 Mod. 337. 4 Bac. 656. 12. 4 Busw. 2226. 2 Elow 97.

In many cases affirmative or negative Stats. do not abrogate the C. S. in relation to the same subject. There are then two concurrent remedies & the party may resort to either. In such cases the Stat. remedy is called cumulative, as if a Stat. gives double damages for certain trespasses, it is cumulative. 2 Busw. 303, 305.

It is said that one affirmative Stat. does not repeal another affirmative Stat. The rule was confined to cases where there was an antecedent C. S. remedy. It is curious to observe the explanation of the rule in Showers C. R. 62, 30, page 74 an affirmative Stat.
Municipal Law.

Concerning any thing that was not at b. d. implies a negative of all other things. I consider the rule to be arbitrary and meaningless. The affirmative of it, always precludes another if it implies a negative of the other, i.e. if it is repugnant to it. The only question there is, is it repugnant or inconsistent, if so the former is repealed, altering now. 4B. 89.

This discovers the intention of the legislature, which is ultimately the criterion in all cases. 4B. 89. 4Bac. 647. 8. Plow. 232. 11B. 76.

The above frivolous distinctions, in the books, between affirmative & negative States, are not intended to apply to States containing express clauses of repeal. Whenever a State repealing a previous one is itself repealed, the former State is still void.

For the first was repealed only by virtue of the repealing Stat. 4B. 90. 4Hist. 325. 4Bac. 638.

But if one Stat. is repealed by three different States, two of which are afterwards themselves repealed, the remaining one still stands & continues the repeal of the original one. 4Bac. 638. 4Hist. 48.

And on the other hand if a Stat. which has been repealed is revived, then the repealing Stat. from the nature of the case becomes void, & itself repealed. 2Hist. 638. 4Bac. 638.

It is a rule that when a Stat. is repealed, all acts done under it during its continuance are void, &c. I find a rule in fisheries (233) to one part of which
Municipal Law

I cannot give my assent. It is also said in Bacon that when a Stat. is declared null ab initio by a subsequent legislature, all acts done under it during its continuance are void. This is contrary to the first principles of jurisprudence. Indeed I think it is too late to contend that one legislature may null void the acts of a former one, though they may interfere with their acts. It is not the province of the legislature but of the judges to decide on the constitutionality of laws.

4 Bac 638.

When one Stat. is expressly repealed by another which makes different provisions on the same subject to continue for a limited time, the former does not revive on the expiration of the latter unless the intention of the legislature to that effect is expressly stated.

3 East 265.

As a general rule, no law can have (thirty sometimes to have) a retro-active operation. Hence if a Stat. after being violated & before judgment the offender is repealed, in a new one made, he is not punishable under either. The old law no longer exists & the offence was not committed under the new law. The offender may however in certain cases be punished at C. D. before he may be punished under the first Stat. if as is now common, the repealing Stat. contains a provision or clause declaring the old Stat. in force as to all acts committed under it. This doctrine
Municipal Law.

was recognized in the Circuit Ct. of the U. S. 8, 90.

was in April 1808. 4 Bac. 636. 2 McV. 138. 40. 156.

and 984, 17 Martin. 169. Root 59. 5 Bac. 636.

But if a covenant to do an act lawful at p. time
is made unlawful by a subsequent Stat. the covenant
is annulled, e. g. 65. the covenant to export goods to For-
egnorn, is before he performs his contract war is de-
clared to that foreign State a expectation is prohib-
it. A law made by Congress impairing the obliga-

vid. Salt. 178. 1 Bou C. 446. b. 36. 2. 27. 2. 27. 1 Rob. 451. 1 Story 341

32. 1352. 8 McV. 31. 376. 5 Bac C. 269. 2. 8. 185. 1 Monb. 2. 885. 27.

Real 66. 267.

As on the other hand if one covenant not to do
an act which is afterwards made his duty by Stat. a
covenant is annulled. e. g. an apprentice covenant to
not to leave his master's service. By a Stat (Subsequent)
he is compelled to enter an army. Here the annul-
ing or suspension of the covenant is not the object
of the law but the mere consequence of a rule while
the legislature has a right to make. Salt. 99. 348

I conceive that neither of these cases are incon-
istent with the above clause of the Const. of the U. S. as
I suppose the true distinction on this point to be, that
whence a contract is violated by an indirect conse-
g of a Stat. the contract must give way. But no Legisla-
ture can make laws for the supreme purpose of impair-
ing a class of contracts, which by their very terms do impair them.
Municipal Law.

But if two covenants not to do an unlawful act after wards make it lawful, the covenant is not void.

In the two former cases the covenant is void to this extent, in the latter case not. Sal. 19th.

If a contract declares illegal by Stat. is made while the Stat. is in force, a subsequent repeal of the Stat. does not make the contract good. It cannot make good what is at instant bad. E.g. A note given on nontransferable paper during the continuance of the stamp act. 1768, 16 Geo.

A full performance of an agreement is made illegal by a subsequent Stat., still of it can be partly executed consistently with the Stat., that part may be enforced even in Cr. of law, the other is usually enforced in Equity.

E.g. An agreement by a decree to Chapter to lease so paying may be enforced for 40. It is enforced by pres. i.e. so far as is consistent with. How 282, 2 H. 24, 351, 163, 17 Th. 209, 211, 3 Bro. 359, 2 T. 254. 2 Cow. 31. 10 Cr. 443, 450.

The rule is the same where a complete literal performance is prevented by an act of God, or an insurmountable accident. Thus if A. covenants to convey to B. two houses one be destroyed by lightning, still he shall be bound to convey the remaining one. The doctrine of cy pres, in Norman French is the rule by which a contract is thus enforced as far as may be. 1 How C. 465, 20 How 284, 138, Ca. ab. 18, 24, 503.

Stat. requiring what is impossible are of no validity. "Lex non cogit ad impossibile," is an important maxim in the Eng. C. B. 1136, 91.
Municipal Law.

It is laid down by J. Hobart that acts contrary to reason or the law of God are void. So says Blackstone, in one place contradicts it in another. Now this principle, if exerted upon would destroy the administration of any regular government. Opinions are different among men as to what the law of God is. I think that where the Legislature clearly intended to make an unreasonable or wicked law, it must be enforced. But the rule laid down in this case in their collateral consequences unreasonable or wickedly enforced. The judges may expound them by equity.

The municipal law of the land must govern. Judges have no power to alterate or annul them by cause unreasonable or religious. A judge is "just because men are dased."

Whether acts opposed to a written constitution are valid is a totally different question. It is clearly settled in the U. S. that they are not. The Constitution is part of the civil law, and of paramount authority to any other law or Stat. The object of the Constitution is to restrain legislative exuberances. Hence, if the Legislature have a right to infringe on its principles, it is a nullity. The judges must determine the constitutionality of laws. It settled in every State of the U. S. - Federalist 23, p. 293. - Discuss in Grant's Index.

A general rule that when a Stat. enables a Ct. to do a matter of justice to a party, the Ct. is bound to do it in cases falling within the Stat. "Necy" is construed as
Municipal Law.

"Shall" in such cases is used in most cases, e.g. Stat. 487. 1st. 4th edition. Many authorizing Stat. 16, 12 to avoid costs to itself in certain cases or information. 4936. 644. 2d. Thaw 363. 374. 5th. 111. 5th. 106. 526.

If a Stat. makes a new law concerning an offence, it points to particular judges to execute it, the jurisdiction of the Ct. of R. B. is not thereby included. It is a rule that Ct. cannot be created by implication. So if it provide that all crimes of a certain denomination shall be tried by certain judge es. 1 Thaw. 84. 114. 9 Co. 118. 324. 6th. 452. 13th. 1892.

But if the Stat. creates a new offence & directs that it be tried in an inferior Ct. & the cause may be removed into Ct. of R. B. by certiorari, so. 6th. 624.

So if the Stat. creates a new offence, & establishes a new jurisdiction for the trial of it, I question this. It appears to me the better opinion that in this case, the jurisdiction of R. B. ordinary Ct. is wholly excluded. 1 Thaw. 4. 1st. 196. 2d. 364. 6th. 643. 2d. 6th. 524. 3rd. 302. note.

If the Stat. gives special authority is given to certain persons, affecting the property of individuals, it must exist within it, if pursued, it must appear to upon the face of the proceedings, otherwise it is not valid to that act, 6th. 196.

If a Stat. enables a body of men to do certain acts by vote of a majority it constitutes a certain number a quorum. It is a question whether a majority of the quorum, unless it be also a majority of the whole, can act for the whole.
Municipal Law.

By the better opinion they cannot. Such bodies are the creatures of the Stat. have no other powers than are expressly given or necessarily incident to them. But such power is not necessary to their existence. 4 Bac 692. 3 B. & 13. 11 Pet. 513. 10 Cr. 39. 11 id. 61. 3 S. T. R. 594. 4 Ves. 814. 821.

If an authority of a private nature is conferred by Stat. upon two or more persons, it is joint if not several unless otherwise expressed. And if one die, it does not survive to the rest. Root 67. Tit. 158.

But if the power is of a public nature, it supposed it is personal as well as joint, that it will survive. Tit. 117. 4 Bac 403, p. 492. 6 Co. Lit. 131. Tit. 154.

If a power of a public nature is given to several the act of the majority in the execution of it (all being present) is the act of all. Thus the Judges of a Ct. need not all concur to make the judgment valid. Because perhaps, if the necessity that this business sh. to done, sometimes it never could be done unless unanimity required. The preceding rules do not apply to Corporations. 10 B. & P. 229. 6 Co. Lit. 181. 13 B. & P. 107. 1620. 3 S. T. R. 892.

In case of Corporations (all being summoned) the majority of those present, may bind the whole. A corporation is a legal entity. A no notice is taken of the individuals who compose it. 2 All. 212. 1620. 2357.

Thus have been great mistakes as to the word "void" in Stat. The rule of construction is to be this. If when a contract is declared "void" it can be construed consistently with the object of the Stat. to be voidable.
Municipal Law.

It is the proper construction, 182 U.S. 266, 22 L. Ed. 46, 260 U.S. 59. But if this were to defeat the object of the Stat. it must be, taken strictly, the contract is utterly void. This may be illustrated by the former cases of leases below a Dean & Chapter. Had the words void been there taken literally & strictly any lease for more than 90 years not have been good for any time, but void at once. But it was taken to be only voidable at good during the life of the Dean. So of our Stat. to-grandchildren. Conveyances, which are void as to immediate creditors. 2 Starv. 225, 266, 7 Starv. 310, Stat. 62. 355.

It has been said that "void" when used alone might be construed "voidable," but that it would be otherwise if the words to all intents be were added. But this is not the criterion—for "void to all intents & purposes," has been construed voidable. 2 Starv. 606, 608, 141, 3 Coth. 66, 10 Co. 89.

A void Stat. is one which has no effect; it never can become good or have a binding force. Anyone who has an interest in so doing, may avoid it. Avoidance the act binds all persons till it is avoided, 2 no others than one of the parties or their privies can avoid it. Several States relating to the same subject are all to be considered in construing the one. Supra. 4 Dec. 676, 676, 205, 272, 323.

The rules of construction are the same in Equity as at Law, the object of both being the same, i.e. to discover the intent of the Legislature. But the remedy or relief (i.e., the mode of enforcing the Law) is in many cases dif-
Municipal Law.

different. As to constructing contracts vid. Wal. 2 Doug. 282.
all contracts except "purse bonds" and "mortgaged construe as

Of Placing Stat. the mode of proceeding upon them.

Placing a Stat. requires nothing more than a state
more of the facts which bring the case within it. Thus in
pleading in an action of assumpsit, the deft avails "an
assumpsit upon six annos," without any express reference to
the Stat. Of Limitations. It would be unnecessary, however,
ful to state that such a Stat. had been made at such
a time of. Again it is sufficient to state that a cer-
tain contract is not in writing without observing:
that if proofs there were made a 29 bar. It required
such contracts to be in writing. 5 B. Mon. 112.

Counting upon a Stat. consists in an ex parte refer-
re to it, as by the words "against the form of the Stat.

Reciting a Stat. is quoting its contents. It is dis-
tinct from both the preceding, the frequently Stat. are plea-
ded by reciting them. It is uncouth, unusable, for the most
part wholly unnecessary. The distinction between pleading,
counting upon & reciting a Stat. is clear, but no subject
is more confused by writers. Bacon cannot be understood

It is a general rule that judges are bound to offer
to take notice of public Stat. i.e. without their being act
Municipal Suits.

Out, (except in post p.) But it is necessary at law that a private suit by specially pleading it, show in order to take advantage of it. Public suits are the laws of the land, but private suits are the mere evidence of private right. The judges are as much bound to know these than the contents of a private deed. 132, 19, 4 Co. 70, 3 Co. 236. 19, 20, 98.

In cases, however, under the Stat. of pleading a private as well as a public suit, the evidence by way of defence (i.e., by the court) under the general issues without pleading it, this is a local usage. But a private suit must be read when given in evidence, a public suit not.

What Swift says, that the Stat. of limitations must be pleaded to actions of assumpsit, is doubtless. 2 Deo 218.

In cases as well as in eq. if an action is laid as a private suit, it must be set out like a specially. The C. S. rule privately in this case...

A public suit, when required to be pleaded and not be recited, judges take notice of its provisions especially. If filed as a private suit. Public suits must in some instances be counted upon, but need not ever then be recited, post p. 3 Bac 38, 4 Bac. 655, 4 Co. 70, 10 65, 67.

But it is said that if one does recite a public suit, even the unnecessary, a misrecital is a material point of error, even after verdict. 4 Bac. 658, 3 Co. 246, 236, 19, 29, 505 Doug. 70. Courp. 474. Esq. 134, 5. 8 T. Aug. 382, 3 Co. 237, 3 Mod. 98. Not so (says Hobart.) if a misrecital is in an immaterial part. 3 Co. 376, 135. 622, 4 Bac. 659.
Municipal Law.

I think not the rule is correct that generally a misrecitation of a public Stat., in a material or immaterial part is not fatal unless the party pleading the same himself sets forth the Stat., as recited, by the words contra formas statutis. Consequently, generally judges take judicial notice of the true Stat. Misrecitation I suppose is surplusage.

18th May 382. Chances 34. Gros. 23d. Freem. 231.

This seems to be the rule the the misrecitation is in a point of material. Doug. 90. 2 Mc. 3516.

Misrecitation of a private Stat. is not fatal after misrecitation or on demurrer. In both cases the Stat. is taken to be as pleaded. For the judges are not supposed to know the Stat. thus be denied by recit. till recit. or the variance specially shown by pleading or the adverse party may pray upon the demurrer. It is just like the misrecitation of a deed or bond which the Ct. regards not till pleaded. Hence advantage cannot be taken of such misrecitation by motion or arrest of judge because the Ct. do not know what the Stat. is. 4 Bac. 688. 2 Mc. 3517. 25th May 382. 2 Mc. 291. 1 Mc. 356.

Exception to the rule that a public Stat. must be pleaded. In Eng. even a public Stat. must be specially pleaded, when to be improved to defeat a specially. Because the law too much regards special pleading having the defeating without good reason. E.g. upon an action of trespass for want to avail himself of an easement or a gaming cannot he must specially pleading the Stat. or using a gaming. This cannot plead nor set facts to give usage in evidences.
Municipal Law.

Support it. The true reason for the last rule is that plussing the Stat. contradicts the general issue for it admits the making of the bond. 5 Bac. 499. 8 B. 359. 149. 3 Wall. 391. 127. 7 Ind. 72.

The rule is different in Conn. In declaring a private Stat., it is necessary to recite it substantially the not verbatim. 4 Cop. 229. 1 Ind. 266. 2 Ind. 37.

If a Stat. is part public part private, there is no need of reciting the public part. 56 Ind. 260. 276.

It is now necessary to recite the title of a preamble of any Stat. as they compose no part of the Stat. It is usually done in Conn. but it is foolish for a lawyer unnecessarily to hazard a misrecital it commit the records. 1 Conn. 230. 360. 334. 4 B. 435. 438.

As the recital is unnecessary, it was once held, the misrecital of the title of a public act was not fatal or erroneous, it being mere paraphrase. But it is since decided otherwise, for by the recital one ties himself to it as recited. 2 Ray. 27. 132. 32. 45. 4 B. 565. 665.

In Eng. the recital of a Stat. whose recital is necessary must contain its date if the place where enacted, otherwise it is ill on general demurrer. 1 Conn. 231. 4. 

A mistake of the date place is also fatal.

To declarations to a private Stat. not tit recorded may be pleaded by the adverse party. 4 Cop. 229. 267.

But this cannot be pleaded to a public Stat. for it is not a de. of fact. The Ct. determine whether there is such a Stat. 4 Bac. 585. 8 Ind. 28. 240. 357.
Municipal Laws.

A general rule, in declaring upon a public
Stat. it is not necessary, for the party to court upon the act.
He need only plead it, which we have already seen is no
thing more than to state the facts which bring the case with

Three exceptions to this rule.

1st. If there is a remedy at C.B. or by Stat. it is said
to be necessary; otherwise it is not known what remedy is
pursued; or rather I apprehend the C.B. or be presumed
to be presumed. There are many cases of this kind. Bac
e in bis title of pleadings, in casualy lays down a rule con
trary to this here given. He uses "recites" where he should
use "count upon." 1 Coen 280. Select 384. 4 18 Bac 18.

2nd. In actions upon penal State, the Stat. the public
must be counted upon. i.e. in all cases in which penalties
are inflicted at actions or prosecutions not to recover or
enforce them. (The mast conclude "contra formam sta-
tute," a plea the party must be so specifically stated that
they will clearly come within the Stat. refer to. Plos.
260. 18 Bac. 38. 19 Vic. 303. 70. 501. 521. Tab. 38. 2 East. 303. 1 East 103.
6 East. 128. 2 How. 95. 35 74. 725. 332. 132. 335 116.

3rd. If a public Stat. gives a new action, i.e. one un-
known at C.B. it is necessary to count upon it. This is
the same as recite it, but recite it is not necessary
the formerly thought to. E.g. When an action is lost
on the Stat. to recover a false estate, there being no founds
action at C.B. adapts to this cases. 4 13 Vic. 636. 19 Vic. 504, East
Municipal Law.

But where the S. extends an old remedy to a new case the general rule holds, that new must not control the Stat. E.g. Stat. 4 Edw. 3. (called Stat. "de Concis asportatis," i.e. sometimes, de arboribus etc.) giving an action of trespass to try for goods of the tenant carried away in his lifetime. Here (trespass being a C.D. action) no new form of pleading is necessary. 4 Bac. 635. 19 vines 503. 4. 1 Co. 232. 4 Dy. 826. 35. 4 2 Bac. 439. 455.

A general rule, that counting is not necessary or public. Stat. remedial (i.e. beneficial) when no new action is given. As if a Stat. creates a right, or enjoins a duty & giving many damages for its violation every list. So where it does not expressly give any remedy but leaves the C.D. to enforce its provisions. The C.D. furnishing the action. 362 76. Surprise 382. Sack 212.

If one Stat. prohibits the act of another infliction the penalty, both must be counts upon, even the pub. Lic. 2 East. 333. 1. 15. 1. 206. 19 R. 505. 4 Bac. 636.

An offense may be laid in one indictment to be against C.D. I the Stat. law (when the remedy is cumulative) but this is done by different counts. If one then fails, the other may stand. Bache 335.

If a temporary penal Stat. having expired is continued by a subsequent one & counting upon the law is necessary, it is sufficient to count upon former only, for that is the law. 4 Bac. 635. 638. 2 Sack 1068.

The words "contra formam statutum" may be rejected as
Municipal Law

as surplusage, is an indictment to; if the offence is at 6 A.M.

Exceptions to the excluding clause of a Stat. must be
negatived, in a declaration or complaint upon the Stat. or
the omission to do it is not cured by verdict, but those
in a separate substantiue clause need not be negatived.
(Th. Def. may take advantage of such clause if he
come within it, by copy of defence.) [case] 113, 153, 53.
[case] 141, 63, 63, 8, 68, 47, 80, 342, 4, [case] 387, 387, [case] 145, 1,

The reason of the distinction is that in the former
case the exception enters into the description of right
or offence; in the latter not, but is mere matter of
defence for the Deft., &c. in the former, We have a
Stat. prohibiting the doing of any peculiar business
on the Sabbath: works of necessity it excepts. But
in an action on this Stat. the party must aver that the
Deft. works was not of necessity. But he need not
prove that the work had not begun. The time for a

When there are two subsisting remedies, one
at 6 A.M. one by Stat., either may be pursued. The
Stat. remedy is accumulative. 2 [case] 302, note Lead. 235

And if the Deft. in this case pursues the Stat.
remedy he cannot support his case on the Stat. he
may
Municipal Law.

may in the same suit resort to the C.S. remedy recover of the case is supportable at C.S. M. p. 750. 2 Bl. L. 700.

The same rule holds in public prosecutions. 1 Kiev. 211.
1 Kiev. 362. 356. 2 Feb. 138. Salt. 212. 2 Hale 191. Formerly it
that it did not. 221 2 Al. 397. 6 Co. 99. Hale 170. 12 Mc.
1425. 2 T. R. 169. 5 Buck. 419. 1 Feb. 321.

If that which was as offense at C.S. is made illegal by Stat. on a particular mode of prosecuting for it (in a particular remedy) is pointed out in the Stat. that mode only, it is said can be pursued, all other modes are
excluded. Exam. The Stat. providing for prosecution by
information. Still indictment will not lie. 4 Bac. 641.081.
420. 544. Salt. 65. 6 Co. 36. 4 Burr. 2322. 2 Burr. 833. 5834. 1125.86

This rule is to be taken with qualifications. Indeed it holds only in two classes of cases. 1st When
the particular mode of prosecuting is prescribed in the prohibition or enacting clause. 2nd When there is
no prohibition clause, as if the Stat. enacted that whoever shall do such an act shall be punished thus;
this. In these two cases the particular mode must
be pursued. 1 Burr. 544. 54 T. R. 205. 2 Kiev. 302.

In the first class the mode of prosecution is incorpor
ated into the description of the offense. But in
other hand of the particular mode is prescribed in
a separate substantive clause the rule does not lie.
Then any proper C.S. proceeding may be pursued
4 T. R. 205. 2 Kiev. 322.

So if that which was prohibited by Stat. was
Municipal Law.

before punishable by a C. I. proceeding, the C. I. remedy and
mode of proceeding may be pursued, the the Stat. prescribes
another particular mode, the latter may also be pursued.

The Stat. sanction is cumulative. 2 Burr. 303, 305, 314.
4 T. B. 202, 2 Kent. 302.

If a Stat. creates a right or prohibits an offense, gives
remedy or punishes, the C. I. will lend its aid to enforce
the one, to punish the other, as a mistimes rev. In such
case a civil remedy is to be sought, it is by action in the
Stat. The right to be enforced is given by the Stat., the
remedy is furnished by the C. I. If the offense is a crime.
To be punished, the offender is prosecuted as for a mis-
demeanor, in violating the wholesome regulations of
the Stat. 2 Inst. 187, 257, 3 Law. 292, Doug. 425, 1922, 1812, 518
120 E. 655, 4 Buc 630, 12 L. 75, 1 M. 24, 1 Comm. 229, 230, 1 B. 544.

So to sustain the execution of powers granted by
Stat. is an offense at C. I. if the indictment need not
ought not to conclude "contra jurosnulli Statutti." Sup-
pose a Stat. gives to person a power to lay out roads,
and they are opposed in the execution of the power,
an indictment must lie &c. such opposers, but not for
a breach of the Stat.

Who may prosecute on penal Statutes.

It is a general principle of C. I. that a public offense
is not to be prosecuted by an individual in his own
private right or capacity. The public is the party in
juris, & therefore entitled to the remedy. or in Eng. the
Municipal Laws.

In Eng. indeed private persons do prosecute offenses for the King & in the King's name, even where as part of the penalty goes to them - it comes by indenture - in cases it stands in most cases. They are termed called prosecutor or informers. 2 T. R. 87, 195, 198, 205. 3 B. R. 242.

Any individual does it even in cases of felony. The practice is never allowed here. 3 B. R. 242, 257, 260, 231, 229, 223, 198, 192, 240. 3 B. R. 848.

Observe I gave the C. S. Custom - But State may enable individuals to prosecute according to prescribed forms enacted by the Legislature.

There is however a minor species of prosecution entirely sui generis - partly public & partly private, called _qui tam_ from the words of the process, "qui tam pro domino legis." 3 B. C. 162.

_A qui tam_ prosecution is one half public at the suit of the King - partly, at the suit of the individual prosecuting, for both 2 Haw. 286, 3 B. 307, 132, 3.

These are by action or information.

_Qui tam_ actions are carried on by Civil, _qui tam_ informations by a criminal process. The forms then determining to which it belongs. 3 B. C. 161, 2, 4, 15, 307.

_Cui tyam_ complaints accompanied with a suit with process are properly _qui tam_ informations.

_An action brought by an individual in his own right on a penal debt, is a civil suit._ B. C. 262, 3 B. C. 786, 788, 100, 125. 3 T. B. 448, 4 T. B. 237. 3 B. 279, 3 pp. 1500.

_Qui tam_ actions are generally hot on penal debts.
Municipal Law

To recover a penalty or forfeiture of some kind. Indeed, as understood at present they are treated as considered creatures of penal statutes. 4 B.C. 307. 1 B.C. 37. Touch S. 346.

They are not known at C.S. the actions can from, domino reque quae secundum were known at be considered certain cases at 6 B. 2. Bank. 375. 18 B. 1. pl. 1. 18 B. 7. 5. 19.

2 B. 317. 6 B. 380. 1. 332. 3.

A popular action is one given to any person, will due for a penalty, incurred by the violation of a penalty statute. Called a popular action because given to the people generally. 2 B. 162. 2 B. 433. Jac. 5.

B. 2 B. 229.

Sometimes in a popular action the whole penalty is given to the prosecutor, sometimes a part. 2 B. 265. fol. 3 B. 161.

A qui tam and popular actions are not specifically the same. A popular may be not qui tam, for the whole penalty be may be given to the prosecutor. But a qui tam may be not a popular for the right of suing "qui tam" has no HUD to the party grievous by the offense. 1 B. 229. fol. 2 B. 265. 1 B. 37 say it is in this case a qui tam.

A qui tam must be brought in the name of the king. A popular may not be. If when the whole penalty is given to the prosecutor, it is not necessary to join the king or the public.

If an individual is civilly injured by an offense, prohibited by Stat. he may have his private
Municipal Law.


And whenever a Stat. prohibits or commands setting for the advantage of an individual, he has an action on the Stat. for an injury occasioned to him by its violation. The Stat. is penal, no remedy or penalty given to him. He may have a qui tam action in these two cases. E.g. suppose a Stat. prohibiting private nuisance, &c. page 4 Bac. 683, 16 Com. 229, 230, 6 Mo. 267.

(When a Stat. inflicts a penalty on any one for dispossessing another of his right or interest without appropriating it; he who is injured by the violation of the Stat. (not the public or King) shall have the penalty & a suit at law to recover it. E.g. where for not setting out vines the Stat. gave a forfeiture of half their value. 4 Bac. 683 & Su. 292, Co. L 180.

O When qui tam prosecutions will lie.

If for an offense injurious to public only, a Stat. gives a penalty, a part of as penalty to the individual who shall prosecute for the offense any person may have a qui tam action in such case. Stat. 48. 2 Inst. 683. 2 Inst. 393. 1 Com. 227. 2 Com. 518. 4 Co. L 18. 2 De G. & J. 3 Com. 317. 2 Com. 393. 2 Stat. H. 1.
Municipal Law

So if a sum certain is given to the prosecutor as a fine to the King or public, a qui tam will lie. Likewise but unless such penalty be given, (as in last rule) no individual can sue for such offense. The reason of this distinction is manifest; in the last case the individual has no interest or right, in the other he has. 10 Bac. 374. 2 Faw. 234. 2 H. 377, ibid.

But if a Stat. prohibit an offence immediately injurious to an individual as well as to the public, it expressly gives the individual injured either a fund of damages, or may, it is said, ought to bring a qui tam action. E.g. Stat. v. scandalous magnate. So of Stat. prohibit private nuisances. The rule is said to hold the no penalty or it given to him. Especially if the King or public is entitled to a fine, but seems the no fine is given to the King, but the public only. This rule grows out of a former one (page 228.) that the Stat. implicitly gives a remedy. e.g. (Bar. 374, Com. 4 Co. 12, 12 Co. 134, 5 Co. 129, 6 Co. 134.

If a Stat. expressly affix a penalty to the party injured by the offense, he may sue for it without joining the public. 1 Com. 224. 1 H. 78 on Stat. 5.

In Com. qui tam actions are tried on the statute. Leggery, theft, breach of peace &c. 2 Bow. 183.

Generally when a fine is given to the public or King, a civil remedy to the party injured by and for the fine is infallible. Of course, a conviction of a civil suit, to the individual suit in his sole right only.
Municipal Law.

As the Capias a fines at 6 S. in tresspasses or mis. More the Judges inflict a fine on the deft. and hold him till he pays it. This is taken away by Stat. 5 Edw. 4. 4 Bac. 113. 51 Stc. 191. 2 Bac. 559. 5 Stc. 536. 1 Cart. 79.

According to our practice "fine" is not inflicted in such cases unless the deft. is in the civil suit now for it. As in our Stat. v. Defamation breach of peace. In re, I believe the rule is of late about to fall into disuse. Stat. 113. 336. 342.

If no form of action is prescribed for the recovery of the Stat. penalties, debt is a proper to the most usual action. 4 Bac. 532. Poth. 175.

I am not sure that such a suit is proper the 30 decided in 13 London Co. Conv. in an action on the Stat. v. usury. 8 P. 7. 2 Law. 259. 5 Cart. 79.

If a penalty is given by Stat. partly to the king partly to the prosecutor, the king may prosecute for it. The then has the whole. It is the same in this country. Metcalf v. Dunbar. 3 T. C. 102. 2 T. 184. 57 S. 275. 361. 124. 11 Geo. 68. 68 21. 17. 5 Geo. 526.

A bona fide conviction & acquittal on a qui tam prosecution, by either a informations is a bar to any other (even a public) prosecution for the same offence. But it must be a bona fide not a sham prosecution (as by a friend) to screen the offender. Add to overcome a conviction of or a public prosecution is a bar to a qui tam prosecution. The same person may be tried twice for the same offence. 3 T. C. 282. 2 T. 184. 57 S. 275. 361. 124. 11 Geo. 68. 68 21. 17. 5 Geo. 526.
Municipal Suits.

So the pendency of a quiet title action to may be pleaded, it is said, in bar of a subsequent prosecution to, (let us say,) I think it may not be pleaded in bar, as Bacon says, but may be in abatement. Though the whole term is in law but one day, yet if one pleads that another action has been commenced the same term, he must state on what day. *1 Bac. 41. 62 Eliz. 261. 66 Eliz. 209. 12 Eliz. 49. 123. 2
Test. 275. 391. 2 Darm. 1423.

A person claiming a penalty or sum of money under a penal Stat. giving it to any person as will sue for it, has no right attached to him under the Stat. till the action is brought. But by commencing an action he acquires an indicative right not (consummate the
judgment.) The penalty in this case is like property un-occupied in a state of nature. 1 Bac. 37. 2 Test. 275
391. 3 Inst. 144. 276 Eliz. 310. 2 Edw. 141. 3 Inst. 169. 3 Darm. 1423.
2 Inst. 43.

As to remedial Suits, the rule is otherwise. Here the party has an indicative right of action from the time the injury was committed. 276. 35 Eliz. 311.

Hence when a popular action is given by a penal Stat. the king may have the prosecution by releasing the whole penalty, or by a person before the action is brought. 276 Eliz. 2 Test. 392. 3 Inst. 144.

But after the action is brought the king can release only his part of the penalty. 2 Inst. 43. 2 Cas. 133. 1160.

65. Leof. 82. 1 Com. 229. 3 Inst. 144.

Nor can he throw in any way discharge o
Municipal Law.

Suspect the suit as to the other part. 12 Hare. 275, 276, 282, 342, 343.

The Parli. it is said, can release the whole even in this case. But I think it has no more right to do so, than to deprive a man of his property. It may indeed repeal the law. 2 B., 682.

But it seems that the king cannot even before the action is tried, bar the suit of the party griev'd by the offense where the penalty is part of it is given to him, for as to him the Stat. is at least to a certain degree remedial. This right commences with the offense and is antecedent to the action. 2 Taunt. 276, 277, 342, 343. 3 B., 100.

Above 58, 2 B., 84, 311.

The prosecutor in a popular action it seems might at c. § release his part of the penalty, after conviction, before the conviction he had only an indebted right. 2 Taunt. 276, 342, 372, 373. 2 B., 76, 84.

The consequence of this rule was that offenders too often escaped the punishment of the law. For some time to prosecute it after conviction gave a release. Hence by Stat. 4 to that Stat. VII it was enacted that no recovery in a popular action, shall be a bar to a subsequent action to be tried by another individual. And no release pending the action, shall be of any avail in such cases. This Stat. is operative in this country. 2 Taunt. 276, 342, 343. 2 B., 162.

I think a corious recovery, a release would be void at C. § as fraudulent. 1 B., 295, 305, 306, 307, 346. 2 B., 162.

And by Stat. 18 Ed. the Jeff may not compound.
Municipal Law.

the prosecution at all till after an answer made in Eq. nor
then without leave ot the Eq. or pain of the jilting to

And even at E. Q. a bona fide release would not bar
the King's right to prosecute; this it would any individu-
als if given after conviction. (at supra) 2 Themus 275. fs.
11 Cos. 65. 66.

Suppose the prosecution pursued to defeat
public prosecution as by delay that the State of lim-
itations may lose it, then with withdraw would he not
be punished for a misdemeanor?

If the Pltf. in a popular action to die, release with
draw, or suffer a nonsuit, the public may proceed in
it to commence a new prosecution. The rule is the
same when the action is given to the party griev'd.
2 Themus. 275. vs. 373. fs. 11 Cos. 65. 66. 56. 67. 1. CB. 168.

If several joint offenders are convicted in a popu-
lar action, only one penalty is inflicted on the whole. If
otherwise if several are convicted in a public prosecution
upon a penal State. The difference is said to arise becaus
in the former the penalty is a satisfaction in the latter
a punishment. Take it to be because the former
action is founded on debt & there may not be joint delin-
Dec. 653. Pat. 80. 137. Comp. 66. 4. Bars. 20. 2d.

One act may constitute several offenses. Several
acts may constitute but one offence. In the latter case
Municipal Law.

only one penalty can be recovered. E.g. In Eng. a thief spoils bread several times on a Sabbath, it was held that the whole constitutes but one breach. Co.1246.

One act may constitute different offences, a punishment for the breach is then no bar to a prosecution for the lighter.

Distinction in common acceptation between felony & forfeiture or fine - 1st to an individual 2d to Public. (June) 4. Dec. 6554.

In popular actions, the plaintiff in Eng. is entitled to no costs, unless they are expressly given by the Stat. for instance. The Stat. of Rochester gives costs only where the plaintiff recovers his damages. But in a popular action, the plaintiff has suffered no particular damage.


Bullock (9 2001) 19 201.
Of Husband & Wife.

Of the Rights & Duties generally.

Marriage, which is the institution of a relation between Husband and wife, is regarded by the Law as an own as a civil contract, of the requisites are the same as for making any other contract, i.e.,

1. That the parties be legally capable of making it,
2. That they be willing to contract or marry,
3. That they actually do contract. And when a contract is thus executed, the relation commences. 1136, 433; 422, 1986, 677.

For many purposes in law, the husband and wife are considered but as one person. 1136, 422.

Of the consequences of Marriage; as it respects the Husband's right to the Wife's Estate.

The general principle by which the law as to this branch of the subject is regulated is founded on 9. Husband's duty to maintain and protect the wife. There is, therefore, for only his, as it enables him to discharge this leading duty. The duty is the same. He acquires no property with her. His right to her property differs according to the nature of the property.

As to his Wife's personal chattels in possession? This in general becomes absolutely vested in the husband.
Husband v. Wife.

by marriage. (Paraphrase.a 13th point.) He may dispose of it at pleasure, may bequeath it. If this is intestate, before the wife, it goes to his executors. 2 B26. s. 55. 1 B29. 2s. 335. 1 B26. s. 555.

The has no right to any personal property which his wife has in active duty. 1 B26. s. 555.

The is entitled to the personal chattels of the wife, acquired by her during coverture. If therefore a legacy is given the wife during coverture, the same without authority from the husband, should pay the same to the wife, if she should squander it away, the husband could compel the wife to pay it to him. 1 B26. s. 555. 1 B29. 2s. 115.

The is entitled to the value of her labor. 1 B29. 2s. 114.

11° of wife's personal property in action or choses in action.

If this property the husband may dispose of, during their joint lives, as above stated. 2 B26. s. 555. 1 B29. 2s. 335. 6 B26. 2s. 110. 6 B26. 2s. 335. 3 B26. 3s. 50.

But reducing it into possession a form of ownership is necessary during their joint lives to give the husband title; otherwise it survives to her on his death. 1 B26. 2s. 509.

And it is laid down by Bacon that unless a property during their joint lives, his choses in action would go to her representatives or heirs, such title for the sake 2s. 335. 1 B26. 2s. 335. 1 B26. 2s. 335. 1 B26. 2s. 335. 1 B26. 2s. 335. 1 B26. 2s. 335.
Husband & Wife.

Now does all right in this case as Trust; 2 Bl. 379. 3.

But by Stat. 31. Edw. III. P. 29. case II. he may take it as


By Stat. 31. Edw. in case of intestacy, in general, ad-

min. was given to the next friend, who (in case of

the wife's dying) was considered to be the heir. 13 Eliz.

By Stat. 29. Car. II. the heir as idem is not liable
to account to her Apo. which in fact gives the pro-

erty to the heir. 2 Bl. 515. 1 Bac. 289.

In Con. we have no such Stat. in such case.

hires adn. is created goes to the court of uses in a first

instance. 1 Stat. C. 165. There is no special provision

for the intestacy of a wife; here, now it there any

at C. Ed. 3 formerly belonged to the ordinary to ad

minister. Therefore, here, the heir is supposed to have

no such right. If he has our Stat. does not excuse

him from accounting. But I think (opposite Bac.

corn) that the principles of C. Ed. excuse him. Our

Stat. compels distribution without any execlu-

sion in his favor. 2 Bl. 515.

Though the heir is allowed by law to dispose

of the wife choses in action during coverture, yet

he cannot devise or bequeath them; for a contract

of devise is not completed till after the death of

the heir. It instantly on his death the choses in

diroye to her, that right is considered superior to

that of the Executors. 2 Ed. 357. 1 Bac. 285. D.

Though the heir as Adm in England is not
Husband and Wife.

Abiding to account to the husband for her choosing a husband or after marriage, whether contracted before or after marriage, if of contracted before marriage, after her decease, if her husband is alive, and her son or his wife, and bound to pay them, but if the husband survives his wife, the debts survive; to her other self? Co. S. 381.

And even if another or the husband and wife is appointed a administrator, this husband is entitled to his personal property in land, after payment of her debts, as being considered a right of wife. 3. Persh. 82a. Gildall 168.

And this right is transmissible to his heir, so that if he dies before taking an heir, his heir will take it (which contradicts Bacon's rule) before.

It has been said, that a settled estate by his wife, or the wife is an absolute purchase of her husband's estate, so that they belong to him or wife before the issue of price to price as much as his property or fee. Whether he not only has her of he survives, but if he dies first they go to his wife? 3. Perch. 832. 412. 2. El. 119.

But it has been determined (by Chancery decree) only) that, this rule does not hold, unless there is an express or implied agreement to this effect. 2. Dan. 67. 40. Per Ch. 209. Am. 262.

If the settler is made after marriage, it must be adequate, either it is not a purchase at least not of the land, 2. Perch. 255. 2. 2nd. 463.
Husband and Wife.

If oblige of the wife be sued, the husband and wife are joint tenants of the fund: 1 C. R. 179. 3 Ed. 184. 13 Bac. 245. Renn. 346. Com. 350. 7 S. 576. 4 T. 337.

If either dies their before collection or execution of such judgment in Eng. just ascertainment would take place, but not in Co. for it has not been adopted here. It is however an unsettled case in which the first to die is the wife, judge Reeve is of opinion that the whole goes to the wife whether she died first or not. He gives the reason because the interest of the husband goes out of the relation, the whole is in the right of his wife; and therefore his interest ceases when the relation ceases. But it is unsettled whether it shall go to the wife or her right, or one moiety to the right of the husband, if he die first, or in other words to his or other joint income.

But even in Co. the right of collection is in the husband subject to accounting, if he survives, as in common cases of partnership right.

A husband may assign his wife's choses in action for a valuable consideration, not without one.

1. T. 6. 44. 2 Atk. 208. 420. 1 Tex. 208. 3 Pa. 149. 10 C. 17 Ed. 7 Co. 235 Cal. 244.

But a voluntary assignment, the void as to assignor, has been held to change the property, by vesting it in the husband. But this is not law. 10 C. 17 Ed. 7 Co. 235 Cal. 244.

And he may not assign without, yet he may release his wife's choses in action, without any consideration.
Husband and Wife.

It is said a legal right to be exempted from the demands, but the assignee has only an equitable property in the thing assigned. To receive a husband's name then he must be in equity. But Equitable
not suffice the wife's right to be defeated, reasoning it greater than that of the assignee. 20 St. 308. 115 Eq. 308.

Even if the husband assigns them for value, the assignee is liable in equity to the same obligations as the husband, to make provision for the wife. 2 P. & E. 271. 1 R. & S. 382. 251, 458. 3 D. & H. 506, 515. 4 P. & E. 326.

The wife's choice in action cannot be taken to pay the husband's debts after his death, but the survivor to her without his incumbrances. 1 B. & A. 289.

Neither can they be taken on evidence for his debts during their joint lives.

It is held that the goods of a joint sole is for another by bailment or finding with absolutely the husband by marriage, if the may pass alone for this. 1 B. & A. 289. 322. 92. Mo. 25. 1741. 256.

The rule is otherwise of there is a commission or other injury to the goods by the bailee before marriage. 3 D. & H. 331. I think the rule is good on principle; for in the first case, the wife at time of marriage has a right to possess the goods, bought to possess is hostile by law a host. They then come under the rule, of choses in poss. In the latter case a convertors becomes them from his possessions. We must bring an action jointly to recover as for other choses in action.
Husband and Wife.

It is held that in the first case, where the wife's goods are converted after marriage, the husband cannot sue alone in an action of trover. *Ped. 772. 1 B.C. 631.*

But that he may sue alone in case of detinue. (Sec. 773.) Because the way in the first instance, the goods are goods in action but not in construction, person converting them, of course, denies that they ever were in possession of the wife (I think this rule can not be considered law). But if goods are tortiously taken & converted before marriage, it is clear that they must join in the action to recover, for in this case the goods are in action but not in poss. for the wrong done holds by a right adverse to that of wife.

Voluntary conveyances by the wife before marriage are sometimes adjudged fraudulent, as to the husband. e.g. a woman on the point of marrying makes a voluntary conveyance to a male stranger. 268. 269.

Not so if the conveyance was made to provide for her children by a prior marriage. 1 Toth, 285. 1 Ch. 407. 2 C.C. 338. 1 Bath 265. 1 Con. 395. 1 Bae. 292. 2 280. Rob. T.C. 331. butt. 356. &c. Also in *Fed. Fraud. Convey.*

Coquis & al. &. action are not liable, damages, &c. 1* 1 See 382. 3.*

III. Of Wife's Chattels Real.

This is such personal property as favours of the royalty, such as leases for years in this country. These are limited in duration; real property is perpetual. Both are however immovable. 2 B.C. 381.

Over the wife's Chattel Real, the husband has
Husband and Wife.

more extensive right than over her choses in action.

Their chattels are both liable during their joint lives for the payment of his debts, it may lie taken in execution by his creditors; not so as to his wife. L.R. 5, 263, 341, 295, 6 Th. 634.

The husband is left for only in his subjects right
the interest continues in her until he disposes of it, if she survives him. If she survives the whole interest rescues to her. 1 Rob. 342, 40, 4th, 245, 306, 2 Mc. 429, 5. 2 Mc. 493, 3 P.R. 147, 1 Co. 854.

The husband has a right to dispose of them absolutely during their joint lives. But on the death of either in Eng. they go to the survivor for bonum.

In case of a joint debtor, either to the wife then
Re. 418, 2 Rob. 424, 60 S. 46, 4th, 2 Mac. 402. 9th, Aug. 1824, 5 Mc. 317.

In Eng. neither can devise the wife chattel real
for the right of the survivor is considered as part of the legitime. But he dies as any other executors during their joint lives, the husband may dispose of them
re. 418, 2 Rob. 270, 2 Rob. 424, 60 S. 46, 4th, 17th, 16th 335, 1 Co. 335.

There is right of future enjoyment passed
insteadi, 60 S. 437, 1 Rob. 344.

Not so by a devisee, for this rest as right till the deceiving death.

No property can be taken to pay the debts of a married person, that would not go to his legal wife.
Husband and Wife.

therefore, the Chattels real of the wife cannot be taken to pay the debts of the husband, after his death, nor in any case, to pay the wife's debts, if she dies first, as the jus accessorii prevents. (Note: 344. 1 Cow. 525).

If a former sole who is a joint tenant of a chattel real marries and dies, the whole goes to the other tenant by survivorship, not to his hurl. For co-tenant had a contingent right to that estate previous to marriage. But if the co-tenant died first, then she \( \text{he} \) her hurl as the joint tenants of a whole.

The hurl may assign Chattels real, even in eff. Without a consideration. (Note: 299, 301. 12 V. 18, 19, 20. Co. 366. 3 B. 39. 2 V. 3, 275.

IV of the Wife's Real estate of inheritance. Of the real estate of the wife, the hurl \( \text{he} \) has the sole undisturbed enjoyment during coverture. But he cannot at C. D. alien them alone; it must be necessary to give effect to the governing principle. (Note: 358. 360. 1811. 297, 2 H. 510. 16 Co. 54). How can the hurl \( \text{he} \) or wife by their joint act alien her inheritance, except by judicial proceedings as fine & recovery. (Note: 351, 2 H. 515. 1801. 449, 1115, 449. 449).

But in how, she can convey her real estate by joining the hurl \( \text{he} \) in any other mode of conveyance. (Note: 265.)

By Stat. 32, she & the hurl \( \text{he} \) or wife are enabled to make leases of her fee simple, or fee tail, for 3Lives or 21 years. (Note: 309, 10. 22, 22, 237, 5 Co. 9).
Husband and Wife.

If the husband grants a larger estate than for his wife in his wife's life, there is no forfeiture as there is in other cases of particular tenants. It will therefore be a grant for his life at most, possibly for life, as the wife may die and he not be entitled to custum. Letter 8415, 2 B.C. 179, 179, 18140, 1603. 684. 623. 326.

On the death of the husband, the wife's real estate revert to her in the wife. On his death, the free estate in her hand whether the husband survives or not. But in case of a child born alive, capable of inheriting, has an estate for life in the whole of what the wife did survive, by the custum of England. 2 B.C. 126. Letter 8353, 183, 689, 623, 326.

In Gavel-kind tenures, the husband may be tenant in custum without having issue. 2 B.C. 128, 623. 326.

Our tenure of lands by charter of Earl II was according to gavel-kind. But this kind of custum was never adopted here.

Since the reversion was declared allodial (Hist. 253), he is not entitled to custum in a reversion.

The issue of the wife must be actual during the marriage, except in case of some incorporeal hereditaments. For from the nature of these she cannot have actual poss. 2 B.C. 127, 623, 29, 130, 130.

The marriage must be legal to entitle the husband to custum, so the issue must be born during the life of the mother. If then the issue is taken from
Husband and Wife.

the wife by the Canarian operation, the estate which go absolutely to the infant, for it rests in him in ventre se mere, and not remains in allegiance. 160135 1669 11116. 1922 183 2100 1127 2136 283 30. 2136 29 30 2136 28 30.

The husband is tenant by the curtesy, initiated from the birth of the child, but his title is consummated by the wife's death. 2136 28 30.

About 28 or 30 years ago it was decided in Court that the husband might be tenant by curtesy only during the minority of the child. But in case the wife died before, the collateral relations of the wife would control the estate. But usage & later decisions have confirmed the case that the husband may hold by curtesy during life.

At C.D. arrears of rent due to the wife, while sole is not peculiar to the husband but go to his heirs on her death, unless he has previously enjoined them to possession. 440 1625 10 0 2140 0 130 115 135 0 2136 29 30.

But by Stat. 32. Now. 8. such arrears are given to the husband. If rent in him on her wife's death, if the latter before he has enjoined them to possess they go to his exec. 14 2105 0 30 11.

Rent accruing out of the wife's property during coverture, at C.D. goes to the survivor absolutely unconditionally to possess during coverture. 438 1625 0 30 115 1625 1820 52 0 2115 0 130 135 0 2136 29 30.

At C.D. the wife can have no property separate from the husband. 1625 0 30.
Husband and Wife.

But now a gift to her holds to separate use, is protected in Ch. 1 to property which exists in the wife. The husband has no right by curtesy or otherwise.

Over such property she may exercise as also may her power as if a free sole. Except that she cannot devise it of real by Stat. 20. Nov. 35, 44. 108. 113. 70. 18. 102. 3. 3. 60. 230. 49. 1. 275. 3. 50. 337. 3. 4th 37. 5. 275. 125. 307.

6. 310. 1. 156. 2. 275. 74. 2. 191. 662.

It is settled in Bow that the wife may devise her real estate by C.S. whether to her sole or separate use or not, but cannot thereby defeat the husband's right, as tenancy in common.

The husband cannot by his separate defeat a gift to the sole or separate use of the wife; the he may defeat her common purchase. Co. S. 386. 10. 303. 16. 556. 5.

Since the regulation of the C.S. the husband has been allowed to hold separate property, it has been thought unnecessary that trustees should provide for use. But now it is settled that property can persons may be given to her directly before marriage or after by the husband or any other person. 1 Fore. 94. 10. 125. 20. 1. 74. 16. 18. 275. 5. T. 34. 30. T. 615. 2. 18. 565. 16. S. 1. 444. 19. 94. 5.

The it has been held that if a free sole property of a trust for a term to her separate use, married, her interest in it vests on the husband, jure matrila.

1 Fore. 94. 10. 79. 18. 2. 1. 275. 2. 18. 92. 13. 5. 34. 4. 10. 4. 29.

Co. S. 386. 1. 156. 4. 20.
Husband as Wife

Of the Right of the Wife to the Husband's Estate

In Eng. V Conn. (under the Stat. of Distribution, 22 Car. 11. Stat. 222.6) if the husband die intestate, after his debts are paid, one third of his personal property absolutely in the wife of his left issue, one half if he left no issue. 2 B.C. 513. 2 B.C. 427.

Also at C.E. for a dower, the wife is entitled to her husband's estate in one third of all the husband's inheritable estate, and retains all the husband's personal estate, of which she may use during coverture, and which she might have had, could have inherited. 2 B.C. 558. 2 B.C. 129. 136.

The husband cannot by alienation bar her from this right. To bar herself in Eng. she must join in a judicial conveyance. 2 B.C. 561. if she do in Mass. 2 B.C. 139. 140. 2 B.C. 139. 160. 169. 2 B.C. 415. 2 B.C. 32.

But the wife cannot have a dower of any of the husband's property which any issue she might have had, could not inherit. As e.g. if he was a donee in special trust. 2 B.C. 53. 12 B. 101.

To entitle the wife to a dower, she must have been the actual wife at the time of his death. At C.E. divorce ab abilio takes away the right. Divorce a mensa et thoro does not, for the title continues to be his wife. 2 B.C. 135. 70. 70. 56. 98. 167. 681. 2 B.C. 32. 33. 6. Nov. 102. 2 B.C. 468. 96. 96. 19. 39. Bos. 147.

If the husband die before the age of consent, the wife is still to be entitled. But she must be above
Husband and Wife.

The age of 19 at his husband's death, I had been married de facto. Such a marriage is valid because at the age of consent either may avoid it, but they may also make it void if not not marry over again. 3 Bow. 128. Co. 33. 31 400. 2 Bl. 106. Pitt. 8. 36. 3 Bow. 128.

The wife has her dowry, the above 100 years do at the time of marriage. 3 Bow. 128. Co. 30. 110. 675.

A wife is not barred of her dowry because she is physically unable to have issue. 10 Bow. 2. 136. 130. 3 Bow. 127.

It was formerly held that the wife of an idiot might be "induced", but the husband of an idiot could not be "induced" by *custody*. But the rule could not be found in principle as now exploded. 9 Bow. 2. 136. 130. 3 Bow. 127.

The wife's right of dowry is paramount to the claims of devises, creditors, or even mortgages when made during coverture. If prior to marriage it was seen a specific sum on the land that the marriage will not defeat it. Yet the debt for which the mortgage was given existed antecedent to marriage, still the wife's right shall be preferred. Her right to personal property is not so great. 2 Bow. 129 in Eng. 1 Bow. 129, Bow. 102. 2 Bl. 192. Co. 31. 135. 2 Baco. 144. 4 Co. 64. 66. 10 62. 49.

Your title has relation to the marriage to her hus- band's devise. Device to law is sufficient to entitle the wife to a dowry. The reason seems to be that it is not on her power to reduce the devise in law.
Husbands and Wife.

to actual possession during coverture, she might be defeated in her title, in fact necessary, 2 Brol. 186.
Thos. 12 Brol. 326, 328, 12th S. 31.

But possession in law is not sufficient to entitle her to the estate and to curtesy, for it is in her power to have actual possession.

In Can. the wife is entitled to a life estate in one third of the inheritable property of which the husband died possessed, on that only. Our Stat.
pays, "If what he died possessed?" But here possessory dominion or possession are often synonymous. Therefore what is possession or a possession is not necessary under the Stat.
Post 30, Stat. 2146.

In Eng. she is entitled to one third of what he owned at his death, except where free land is not allotted. Corp. 971.

Husband may defeat her right in Can. by alienation (not however if made in contemplation of death), as a provision for his family, for this is considered but a testamentary disposition which does not bar her right. She is here endowed even to the land which was disposed.

In Eng. the wife is not entitled to a dower in an equity of redemption of a mortgage or fee. She is for a mortgage for a term. In Can., for both. Cow M. 327, 328, 526, 527, (extra 291) 700, 719, 728.
Husband and Wife.

Husband and Wife may be Buried.

Right of dower is barred by the wife's illegitimacy or by her alienation of her dower. 1 St. 150, 2 Eliz. 2 Banc. 192, Bell. 680. 3 Eliz. 176. 1 Boil. 138. 127.

So too by alienage, i.e., by being born an alien, except in case of the Queen Consort. But in this case the right is rather preserved than bar'd, as alien cannot be land. 2 Eliz. 138. 126. 1 Boil. 138. 127.

In Eng. the Treason of the Husband bars the wife's right of dower. In Cov. we have no such law; the husband here does not forfeit his estate for treason. 2 Bac. 143. 9 Bea. 17. 12. 8 Cov. 75. 2 Boil. 138. 127.

In Eng. so long as the wife withdraws the title from the land, his right of dower is barred. I think it will be otherwise as Cov., as our deeds are kept on record, and not to be produced as evidence of title as in England.

By Stat. of Gloucester, 6 Edw. 1, an attempt to alienate a greater estate than she owned on the premises was a forfeiture of the wife's dower, I think on C. L. principles that a tenant shall forfeit his right for so doing. 2 Boil. 275. 138. 126. 2 Bov. 251. 126. 23. 138. 23. 126. 32. 39.

By accepting a jointure, before marriage, the wife bars her right of dower. This must be expressly to be in lieu of a dowry, must take effect on the death of the husband, if not before, when she marries, or by will, she may accept it or not, if she wishes.
Husband and Wife.

If no dowry, as she may take it, & claim her dower. 2 Bib. 137, 8. 2 Bib. 140, By 588. 1 Bulst. 170.

Can a jointure be of personal property in both? Judge Reeve thinke, he cannot. Sol. 672. Fairh. by 1810.

But an executory agreement by the wife before marriage to accept personal property or money in lieu of dower, may be enforced in equity. Pau. C 53. Rec. 155. Sol. 136. 106. 201.

So in Eng. (at ante) by conveying a free or sufficient security with her hand of the land during coverture, the wife has her right of dower. 2 Bac. 187. 140. 166. 149.

In law, a divorce a vinculo does not work a forfeiture of dower, if the wife is not the guilty party, but the Ct. on application will order her a sufficient maintenance during the life of the husband, out of his estate. It is doubtful, how it would be in case of a divorce for a fraudulent contract (see postia), see Title Divorce. Stat. C 147.

Paraphernalia & property given to her sole & separate use are sometimes distinguished with difficulty. As to property held by her sole & separate use, the husband is supposed to be a stranger. She holds to the utter exclusion of any right in him, not so as to her paraphernalia, except by the idem. (thereafter.)

Property to rest exclusively in a free court must be given to her sole & separate use. But no form of words is necessary. It is suff. if the intention is apparent. Sol. 570.
Husband and Wife.

In some cases the intention is to be inferred not from any words of conveyance of it, but from the nature of property, or the circumstances under which it was given, e.g., Bequest, gift, to give by the husband's father to the wife on her marriage day, or a similar present by a stranger. Gifts given by the husband himself in his life time are also in some cases exclusively the wife's separate property, not liable for his debts. It depends as I said, on the intent, whether a gift.

Property devised by the husband is not considered as to her sole separate use, so as to her creditors, but as his property with a subsequent husband. She takes as devisee, which presupposes that the property was the husband's.

Property given by husband to the wife in his lifetime for the express purpose of being a conveyance of her separate property, is not her separate property as against creditors, in the above sense, but liable under certain qualifications for his debts.

Of Paraphernalia.

This is its Greek etymology means something over it above down, i.e., of two kinds.

1. Nuptial apparel and bedding.
2. Ornaments, as jewelry, Treasures in general.

Col. 311. 1 Cor. 358. Rom 213, 216. 2 Thess. 440, 435. 6.
Husband and Wife.

The first kind cannot be taken by creditors, nor can the husband sell them or certainly not all of them, but his apparel, necessary for his comfort & decency, he may dispose of. What is necessary cannot be taken by his creditors after his death. 21 Bac. 498. Pld. 58. 301. 2136. 436.

During his life the paraphernalia of the wife are at the husband's disposal, but according to modern authorities he cannot devise them. 1 Com. 355. 358. 620. 250. 343. Roll. 911. v. D. 2 Ath. 77. 217. 2 Esp. 87 b. 3 Ath. 388. 345. 2136. 436. 1 Roll. 911. P. W. 730.

They are化且 in the hands of the heir or executor, or devise to pay his debts after the other personal property is exhausted or not before. 1 Com. 355. 2 Ath. 104. 384. 369. 18 W. 730.

As to these, the wife is preferred not only to his wife, but even to legatees. 3 Ath. 395. P. W. 730.

Land in Eng. is liable in the hands of the heir for specially debts. If there specially, creditors take paraphernalia of the 2. class, or only the wife is as a creditor to the heir for so much as these creditors have taken of her paraphernalia. 2 Ath. 109. 18 W. 730. 3 Ath. 369. 2 18. 77.

If there is no trust or the real estate for payment of debts, these paraphernalia are taken by creditors, the widow cannot at all events come upon the real estate; i.e. probably she cannot in all cases, as if simple contract creditors take property. 2 Ath. 109.5.
Husband and Wife.

But if the husband creates a trust estate in lands for the payment of debts, these by simple contract may take it, personal property however is first liable. If then paraphers 3 of the 7th, claps are taken for even simple contract debts, the wife, in equity will be considered as a creditor to the heir. 1瞬. 498. 2 Th. 105.

1瞬. 658.

She has also the same right to the division of lands, as the heir, for her claim is prior alike to that of legatees or devisors. 3瞬. 398. 1瞬. 730.

Jewel, which the husband kept in his own possession, but permitted the wife to wear as ornaments are paraph of the 2d. clap. 1瞬. 731. 1瞬. 658.

A settlement or jointure on the wife before marriage is bar of all demands on the husband's estate, or in pursuance of articles made before marriage stipulating that the settlement should be a bar takes away his right of paraphernalia. 2瞬. 49. 83. 1瞬. 659. 2 Th. 642.

If the heir pledges the wife's paraph, the wife on the Exe. after his death has the right of redemption. And if there is a surplus of personal property after payment of debts, the wife is entitled to it, to receive with, even in exclusion of legatees. 1瞬. 659. 2 Th. 395.

So if in the case supposed the personal fund has been exhausted by specially crediting the has the same right, I suppose, to the heir. So I suppose.
Husband and Wife.

If the husband's lands were charged with the debt and the personal fund has been exhausted even by single contract creditors, for in both cases the wife (after payment of debt) to stand in the place of the respectiue creditor.

The wife's right to property as personal is personal but not transmissible. E.g. If the husband dies, paragraph of the 2d kind to the wife for life, remains to another. The wife holds during life as owner the estate, not claiming them as paragraphs. On her death they go to the residuary man not to his exec. or admin. For as she made no claim to them as paragraphs her admin. cannot. But suppose she had done nothing amounting to a waiver, or real claim as paragraph after her husband's death, I think her right is thus transmissible, to her wife.

22 Viz. 1467, 1 Cow. 359.

In convey real, as well as personal property is liable for all debts. If the exec. Shi. takes it paragraph for payment of debts, when other personal assets were sufficient, he would be immediately liable to reimburse the widow. It is a law whether he can take them at all in such cases, unless the personal and real funds are exhausted. If he can then the widow will be a creditor to the amount of them, as all the estate of the deceased, real & personal.

By Stat. of Conn. 1764, even if the husband estate is insolvent, necessary household goods are allotted to wife by the Judge of Probate.
Husband and Wife.

Of the Husband's liability on his wife's account.

I. For the husband's debts.
II. For her debts.
III. For her crimes; in some cases.

I. They are jointly liable, during coverture, for debts contracted white pole. But his liability ceases her death, unless paid before, or it seems unless paid.

So if the husband die first, he is liable. Suppose first his debt to her. If he dies first, he is liable. If she afterwards marries, she is liable again.

The principle on which the husband is liable is that, as the wife by marriage loses control of her property, it is thus deprived of the means of securing herself from arrest and confinement, she ought not to be personally liable without the husband. Besides he has the repute of her labours.

She cannot, therefore, in any manner, prove in any civil action her husband alone, for debt or breach. She must in this case be discharged on common bail, which is nearly a woman of fiction to keep the suit alive.

1 B. & B. 265, 1 Eliz. 2 W. 156, 1 Rot. 352.
Husband and Wife.

If however an action is brought against the wife, alone, pending which she marries, she need not be discharged for judgment or execution; collection must proceed to the same person of the same name that the issue proceedings was. She is therefore to be taken alone on the issue. [Sec. 323, D. 90. 3 Bl. 414. Co.C. 610.]

As the issue when taken alone on issue proceedings is discharged, so if both are taken on issue proceedings, she is discharged if he remains in custody till he puts in special bail for both, for no other person is supposed to become bail for his wife, who has no property at command. [Sec. 44. 1 Bl. 646. 2 Sa. 174. Cons. 1 Bent. 49. 1 Ser. 51. 216. 57. 327.]

She will not however be discharged in summary way, the arrested alone, as female sole, unless coverture is notorious. The life of she has imposed or the steel by pretending to be a female sole. The debt in such cases must plead coverture. [2 Bl. 403. 720.]

Now is she discharged in a summary way if her hus. is an alien. [Sec. 738. 3 Bl. 646. 2 Br. 8. 200. 720. 235.]

On final process a person is not allowed bail.

If therefore the wife is taken alone or final process is both, she is not to be discharged unless there is a confession between steel and wife. to keep her in prison. [Sec. 115. 1237. 2 Bl. 40. 720. 3 Wir. 129. 149. 82. 327.]

II. The hus. is liable jointly with the wife, during coverture, for her torts committed while sole. The law is the same, if she alone it without the direction, approval.
Husband and Wife.

But of the tort was committed by his command, or by his in his company, during coverture, he alone is liable. But would he be, if the presumption of his coercion could be rebutted? 1604. 678. 692. 358. 187. 341. 432. 498. 1566. 348.

Where the husb. and wife are jointly liable for his tort, the continuance in after his death. 1669. 613. 620. 365. 184. 413. 434. 1566. 348.

But the husb. is liable for his wives acts, during coverture only, as I suppose, whereas they are jointly liable during coverture. 620. 637.

So if the commit the tort in his absence, but by his direction, he alone is liable, for she is supposed to act in this case by coercion 1604. 481. 46. 34. 46. 38. 38.

III. Husband alone is in some cases liable for the crimes of the wife, e.g. the cases of trespass or armed theft committed by her thro his coercion or in his presence, he is liable alone. There the act is consid. as his. The same exception extends to burglary committed by her in his presence, it according to some opinions it extends to robbery under his coercion. 1604. 4, 5. 23. 7. 66. 1. 1604. 4, 5. 23. 7. 66. 1. 1604. 4, 5. 23. 7. 66. 1.

The wife is liable as if sole, if she commit theft voluntarily, or in his hus. absence at his bare command. Such command, it seems, falls short of coercion.

1604. 4, 5. 23. 7. 66. 1. 1604. 4, 5. 23. 7. 66. 1.

For higher crimes as treason yf committed by both,
Husband and Wife.

Both are liable, tho' the husband conceive, and if by his alone, she alone is liable. Nisbe. 1 K. 65. 1 Kings. 11. 22. 2 K. 25. 9, 17.

If the wife incurs the penalty of a penal statute, the husband is bound to pay it, the she commit the act alone, without his privity. She is liable. With her, it may be made a party to an action or information. 1 Cor. 5. 2. 32. 33. 25.

If it be company, with his approbation, he is liable alone. I suppose. 1 Tim. 2. 4. 15. Faults there extant.

The wife is not accessory in felony, for receiving her husband assisting him the a felon, I can know it, and she does it with an intent that he may elude public justice, nor in case of treason does she become principal; but is extended. 1 Hen. 4. 11. 31. 106. 1. 107. 4. 41. 33. 5. 2. 194. 195.

The wife is excused from the commission of small offenses, not for higher, because in higher crimes the command of the law is tantamount to that of the husband.

In all cases to which the above exceptions do not extend, the wife is liable as of soli. 1 Tim. 4. 2. 5. 37. 11. 66. 17. 67. 68. 69. 74. 31. 34. 34. 4. 35. 98.

Of the Wifes power to bind the Husband.

Her power to bind the husband during coverture by her consent, it is said to be founded on her absolute power or implicit. 1 Dec. 2. 97. Salk. 118. 6. Mod. 229. 1. 1. Rut. 1. 6. 3. 57. 11. 83. 4. Dec. 42. 1. Salk. 31. 28. 2. 46.

This principle is however too narrow in many cases. (1 Tim. 34. 67.) For the husband is often bound when he refuses to be bound. E.g. he must provide her with necessaries, if he refuses she can bind him. So for
Husband and Wife.

any thing, but on necessities she cannot, as wife, bind her by her own contract. 186. 447. 186. 140. 166. 560. 37. 122. 107. 368. 7. p. 70. 186. 113.

The true principle then, in which he is bound by his contract for necessaries, seems to be, his obligation as husband to provide his wife with necessaries is ministerial, and not personal, and is to be supplied, as his rank, 186. 1324. 152. 154. 162.

It may be said that from his duty, the law implies his agent; that the implication is not rebuttable. In any case, when the husband is bound without actual agent, it is on the ground of implied agent or duty as husband.

186. 168. 162. 239.

The heirs, the son-in-law, is bound for his wife's necessities, for as the law allows him to contract in marriage, it lays him under all the duties of a husband.

186. 168. 152. 67.

If having power to discharge himself by defect, where he would otherwise be bound, he does not, he may be considered as bound by his implied agent. If not having power to discharge himself, he does not attempt it, he is bound by an implied agent. But if not having this power, he attempts to discharge himself, i.e., prohibits the contract, the husband seems to be bound in the sense of marital duty. 67. 395. 166. 118.

That heir cannot be bound except by his consent express or implied, vid. 2 Barr. 297. 107. 357. 250. 79.
Husband and Wife.

Cases in which the wife may bind the hus. clearly on the ground of consent.

1. Where the hus. gives his express consent before the contract. 1680. 629. 1680. 494.

2. Where the hus.'s consent is expressly given after the contract. 1680. 567. 1680. 355. 1680. 128.

3. Where the wife usually provides necessaries for the family & the hus. pays for them. There is an implied consent for hus. to contract. 1680. 533. 1680. 128. 1680. 494.

4. Where necessaries are provided by the wife, come to the husband's use or the family. There is his implied consent subsequent. But he must be supposed to know they were used by the family. 1680. 567. 1680. 128. 1680. 333.

In these cases the wife acts as a servant. The contract is contract of the husband. So perhaps in some other cases, which will be mentioned, he is clearly bound on the principle of agent. 1680. 430. 1680. 128. 1680. 107. 1680. 355. 1680. 118. 2 B. int. 155. Prob. 1219.

A general credit given to the wife (at judge) cannot be determined by any private proposition, so as to defeat the claims of those who after warrs trust her on the husband's account. So in the case of servants. The prohibition of credit must be as expensive as the credit she then has. 1680. 950. 1680. 950. 1680. 640.

If the wife, not having a general credit, purchased chattels & paid them without having worn them, the husband is not liable.
Husband and Wife.

because they never came to his use. Otherwise, if she had worn them or pawned them, Sal. 118, 28.
Reg. 1000, Cap. 123, 18 Bac. 300.

If the wife pawn her clothes before or after wearing them, and borrow money to redeem them, her husband is not liable for the money. This kind action is distinct from that of recovering novelty reg. 2 Shaw, 233, Cap. 123, 18 W. 183, 156, 356.

If the husband turns away his wife, he is liable at all events for her necessities while she commits adultery. So, in support of her husband using her clothes, 3 T. R. 666, 4 Barn. 2052, 2 Blakely 180, 505, 1113, 170, 348, 12 Eliz. 269.

No prohibition, general or special, will in this case avail here. This action is implied according to Sal., i.e. he gives her a general credit. Sal. 118, Sta. 1214, Est. 129.

If a man cohabits with a woman, without her as assumed his name, he is liable for her necessities, as for his wife; the not married, therefore, in an action for the debt of the wife, never married, is a bad title on general grounds. But a good is good in an action for divorce & an appeal. 107 Lord's 510, 2 Bl. 643, Co. L. 1185.

But if husband part by agreement and the husband allows her a separate maintenance, he is not bound for her necessities (in wife) after the separation is generally known in the place in which he lives. Whether
Husband & wife.

known or not to the person trusting or in the place where
trust is given is immaterial. The presumption is of
the wife was trusted or her own credit. 12 Taur. 944.
1006. Salt. 116. Esp. 126. 12 Mod. 244. 6 Tit. 147. 10 Bac. 360.

For things entrusted to her before the separation
was thus generally known, & hus. is liable.

If the wife, living separate, has no separate main-
tenance, the hus. is not discharged from his necessities
Esp. 126. 6 Busn. 2075. 6 Tit. 607.

If the wife sleeps & lives with an adulterer, the
hus. is clearly not liable after the elopement is notori-
ous; according to the current of authorities he is not
liable at all, but "discharged for ever." 1506. 6 Mod.
12 Mod. 244. 6 Tit. 603. 10 Ray. 444. 176. 1 Ch. 348.

By some decisions it makes no difference whether
the elopement was adulterous or not. 2 Stra. 875. Salt.
118. Esp. 125. 10 Lew. 2. 1 Lew. 5.

When the elopement is not adulterous, I think the
hus. should be liable for his necessities, like it is no-
torious. But he is not. nor is she liable, for she is still
to all intents his wife. She has no property separate
solo. He is marital rights remain entire. 2036. 6 Tit.
1029. 603. 816. 547. Esp. 125. 10 Bac. 247. Stra. 875. 4. 1 Ch. 196.

A wife living in Adultery is bound by her own
Contracts. 1 Bac. 933.

If the hus. leaves her at his own house, with his
children, having made no provision for them. 12 Taur.

The doctrine relative to the liability of the wife for its is not contracting without the man, when the
maintenance of necessity is in now overruled. 12 Man. v. Nutter 874. 35. 7 East 352
2 Esp. 253. 1708. 1708.
Husband and Wife.

living in a state of adultery, he is liable for her necessaries, if the wife did not know of the adultery. 123 0. 3. 85.
Sav. 0. 3. 4. 0. 3. 10. 6. 8. 503.

Where the husband & wife live separate, the husband is liable for necessaries furnished her, the articles shall be charged generally as furnished to him; but the special matter should be shown. If not the cause of action would not be identified, so as to be a bar to subsequent actions. Query. Sav. 1. 27.

If the husband provides necessaries for his wife at home, he has a right to prohibit the public as well as any individuals from trusting her, & may thus discharge himself. 125 0. 14 85. 4.

You may thus terminate any credit, which he has given her with the public or individuals. 123 0. 3. 0. 7. 4. 0. 8. 506.

But he cannot thus deprive her of the right of procuring necessaries. 122 0. 3. 0. 4. 4. 63. 0. 8. 113. 8. 0. 8. 3. 0. 8. 100.

If a wife elopes, not with an adventuress, but after offers to return, if the husband refuses to admit her, he must support her; it is bound for her necessaries afterwards. 125 160. 8. 56. 0. 8. 8. 18. 2. 0. 8. 299. 0. 0. 8. 8. 8. 8. 3. 0. 8. 3. 0. 8. 8. 76. 0. 8. 3. 0. 8. 3. 0. 8. 119.

In this case, a general prohibition by the husband against trusting the wife is not good; a special prohibition is good, or the wife might make him liable to his greatest enemy. 124 0. 8. 10. 0. 8. 4. 0. 8. 2. 177. 0. 8. 3. 2. 96. 0. 8. 3. 0. 8. 129.

Suppose the other sent adulterous, he is not thus bound, because the wife is guilty of the first wrong. Sav. 0. 8. 8. 8. 506.
Husband and Wife.

If the hus. living his away (i.e. probably if driven from his house by very ill treatment) he is bound for her necessaries against a general, or even a special prohibition. Here the hus. is guilty of the first wrong. 2 Sam. 12:14. 12 Mod. 244. Salk. 118. 9.

For money lent to the wife, the hus. is not liable unless actually expended in purchasing necessaries then he is liable only in Chancery. Because as there is danger of misapplication the law will not favor the lender. For the contract is good or bad at the time of lending & is not affected by matter of post facto. In Chancery the lender stands in the place of vendor & recovers the amount of the necessaries. Every. If the lender himself lay out the money in necessaries Salk. 279. 387. 1 P. Wm. 383. Bum. Ch. 302.

It has been held that a private settlement by a woman before marriage of property to her separate use was fraudulent as to her husband. 1 Tom. 259. 23 Arn. 17. 2 P. W. 535.

So that if a woman persisted in a trust term in an estate in lands in trust for her to her sole separate use, marriages, the interest will not in the hus. juris maritii. The reason seems to be that the hus. not knowing that it was to be to her sole separate use, supposed he should be joint tenant with his. 1 Tom. 258. 1 Carn. 18. 2 K. 270. 2 Alb. 921. Contra 2 Tom. Ch. 345.

A contract by which one is bound to the hus. to pay money to the wife is not subject to his control.
Husband and Wife.

She may receive the money as it becomes due, but cannot discharge it. 3 East 331.

If the husband or wife separates by deed, the husband stipulating an allowance for her maintenance, the allowance is suitably paid, he is liable on his contract for necessaries. 2 Beav. 108.

Of the Wife's power to bind herself by her own Contracts.

A general rule of L.D. that a Wife cannot make herself liable by contracts, because married to her husband for want of discretion. 10 L. Q. 411, 3 Pet. 547, 10 Bl. 342.

Regardful, at L.D. her contracts are void and not merely voidable. 2 Bl. 290. 1 Bowd. 327. 3 Bowd. 144. Stack.

But a redelivery of her goods, after her husband's death, or what is equivalent to it, will bind her good 201. 4 Cr. 89. 20.

Their leases are only voidable, on motions of policy for the advancement of agriculture. 120 L. 203. Bowd. 137. 10 Pet. 159. 10 Bl. 499. Contract 3 Dec. 344.

She may convey lands in performance of a condition, when land is vested in her on condition of conveying to another. 4 Cr. 89. 1 Bowd. 392. 3.

The true principles of the law is that the wife may not bind herself by her contracts deemed to be. 1st. The law has either deprived her of property, or disabled her to dispose of it, and the law will not deprive her means and then enforce performance. 2dnd. As the husband has a right to his property, she has no right in the violation. 10 Bl. 389. 13 Bl. 334. Bowd. 137. 205. 17 Bow. 104.
Husband and Wife.


3. If liable for her own contracts, her person might be taken, which would violate the superior right of her husband.

But as Chancery has allowed her to hold separate property, she may now bind herself to the extent of such property, to no farther. This does not violate the husband's right, as he had no right to such property.

[Footnote: 90 C. 102. 1 Bro. PC. 135.]

But she is not bound in this case at law, for her person might be taken, which would destroy the governing principle, that the husband's right may not be violated. 2 Pet. 1092. 3 Kal. 379. 1658. C. 14. 176. R. 334. 2 Pet. 149.

If there are Trusts of such property for the wife, she may dispose of it without their intervention, unless their joining is made necessary by the instrument under which she holds. 100 N. 182. 716. 176. 182. 334.

If the husband is banished or has abandoned the realm or is transported, or is an alien enemy, he is civiliter mortuary, if the wife is considered as a foreigner. She may contract at C. 6. is liable to be sued wherever, and may sue alone. 100. 402. 176. 446. 2 Esp. 2854. 1096. 785. 6 Moore 251. 176. 127. Jenkly. 176. 284. 400. 100. 304. 176. 289. 10. 286. 106. 176. 152. 176. 337. 176. 534. 176. 346.

If the wife is a Foreigner, it has remained a broad field years without any change, it is liable, during the realm, or deserting it. 2 Esp. 285. 581. 176. 345. 357. 176. 535. 283. 176. 233.
In case of a Divorce, a man can, at whose wife
may contract as a person sole, though allen 666.

So if the hus. lives abroad and the trade as usual
married. 1576, 4 St. 7, 1557, 31, 1590, 13, 1639, 3, 1639, 9, 1639, 9, 1639, 9.

If the hus. & wife are separ. under articled,
agreement the wife has no separ. mainten. in
she is liable, even at 6. to the extent of his contracts.

1 St. B. 8, 116; 11 B. 639, 639, 639, 639, 639, 639, 639, 639, 639, 639, 639.

This is now overruled. The is not liable. Nor is the prop.
essential separ. in Equity except by virtue of an express
agreement or her part. 2 St. Co. 162, 162, 162, 162.

Now is her hus. liable, even for her necessities.
if he pays the stipulated maintenance on allow.

If he does not he is liable for her necessities, the
duty of separation notwithstanding. 2 Co. 170, 170, 170.

Equity is the proper forum. as the case can act
upon the subject matter. So as to the remedy in Equity
unless this had made an express agreement at supra.
(Per. 143.)

In an action at law, Farrall v. Brooks, the wife
alone was not liable, the hus. was within the
realm, but was not liable for her necessities, the
being a separation. This overrules the liberty
of Co. 170, 170, 170, 170, 170, 170, 170, 170, 170, 170, 170.

Lady Dunbrough's Case. 2 Co. 162, 162, 162, 162, 162, 162, 162.

A forms Court living separ. without separ.

1171414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142414241424142
Husband and Wife.

... 

... On the 2, th. case, if the husband has other, was neither separate property, or an agreement to live separate. 4 T.R. 548. 6 T.R. 604. 8 T.R. 683.

Wife, living separate, from her, in adultery, is liable for her contracts herself. 12 B. & C. 233.

If a house leased, living with her husband, also lives in a fine, or suffers a recovery, he may defeat it during her life (or after her death, if the tenant by curtesy) by entry, the she cannot. 2 B. & C. 356. 16 B. & C. 322. 1 B. & C. 341. 8 B. & C. 340. 1 B. & C. 321. 16 B. & C. 323. 1 B. & C. 325. 28 Co. Litt. 380. 1 B. & C. 380.

And as in Eng. a free hold cannot be created to common in future, as the lease, has the sole use of the whole real estate, and the sole disposal of his personal property; she can in no instance dispose of her property by act executed, except of that which is to her sole separate use, she may devise those in whole.

If the wife having separate estate, permit the husband to receive or use the rents or profits, if it be real, or the interest, if it is personal, she is considered in Eng. as having abandoned the rents to, to him, she cannot afterwards recover them.

The presumption may however be rebutted by proper proof, that he was to enjoy but for a certain time, or a particular purpose, i.e. 1 B. & C. 323. 2 B. & C. 325.

I observed before, that the husband cannot defeat gifts to the wife solely separate, uses, nor can he...
Husband and Wife.

defeat a descent of real property. Doubts whether he can devise. If his mother agrees or disagrees, her four shares are gone during coverture. 6B.2,356, 2,568, 2923, 1H. 356.

After coverture, the wife may defeat from and defeat her purchases in realty, as she pleases, or this whether the hus is absent or not. 13B.349, Co. S. 37, 356. 2B. 435, Ep. 291.

His representatives have the same right as after coverture, she did not make her election. 6B. 356.

If the hus is absent, a wife can make a coverture, and may disapprove of the purchase after coverture. 13B.349, 536, 586.

In Co. 3, a coverture may be granted to commence in future, provided the first limitation is to a person in issue or the immediate issue of such person. It may then be a Dec. of the hus if the wife may not hire, grant, by deed, her own coverture, to commence in future. The fee is absolutely hers. No marital rights are affected, as she inures no liability. does not violate the husband's right to her property, nor to her person. Stat. 3, 294.

It is decided that in Co. 3, she may devise her real estate to commence after the right of the hus, but 3, 37, 356, 2923. The definition of coverture is no stronger in one case than in the other. 2B. 568, 2923.

Prainard Co. 356. In a new Stat, she may devise. may execute a noted authority to do so interest.
Husband and Wife.

also passes to her, provided the authority is coextensive to the interest, it does not flow from it. They are then unconnected as if granted to different persons. Quin. 21, 236. Co. S. 112. 15 B. & C. 102.

Of Agreements between Husband and Wife.

It is a general rule of C. S. that all Contracts between the Husband and Wife are void, and that those made between them before marriage are dissolved by inter-marriage. (Res. is the marriage Contract dissolved?) Co. S. 264, 112. 265. 337. 156, 442.

The reason assigned for the rule is, that the legal existence of the wife is merged, that they become one person. 156, 442. The true reason is generally, that the right & obligation would meet in the same person, that a recovery of damages would in many instances be nugatory by reason of the right of the husband to the wife's property. There are exceptions to the rule consistent with the latter, the not with the former reason. Stats. 329.

If the wife of the Deft. becomes Executor or Admin. to the Deft. the action is destroyed. So if the Deft. had been taken in Execution by the original Heft. he must be discharged. (Consider) 800. 402.
Husband and Wife

1. Contracts between Husband and Wife during Coverture.

At common law, no contract between the husband and wife respecting personal property is valid, for the reason before given, and the C.D. does not recognize a right in the wife to hold personal property. Co. L. 355. 1739, T. 356; 3456. 1739, 84.

A deed of land from the husband to the wife, directly, without at common law (as observed before), for the same cause, i.e., the husband’s right to the property, the control over the subject matter, will be in him. Co. L. 355.

But it is now settled in Chancery (as a rule) that thismony, settled property to the separate use of the wife during coverture, that her agreements respecting that property, even with the husband, are binding. That the husband holds personal property to hold separate use, statutes. Re. Ch. 94, 2 338; 5 339; 171, 2 339. 184, 12 339. 184, 2 339. 184, 3 339. 184, 4 339. 184, 5 339. 184, 6 339. 184, 7 339. 184, 8 339.

A conveyance by the husband to a third person to the use of his wife is good at C.D. Since the Stat. of 1739, a conveyance may be virtually made directly to the wife by the husband, without the aid of Chancery. The deed vesting the use in the Stat. 1739, 342, 2 339. 1739, 4 339. 1739, 6 339.

So if the husband, to encourage the industry of his wife, engages to allow her a part of the profits of it, the promise may be enforced by Ch. 30, 184, 300, 184, 300, 184, 300.
Husband and Wife.

She sues her Husband in these cases by her next friend. 16th 278; 1st L. 496. 2d L. 160. 2 Dev. 27. 2 B. 118.

Donatis mortis causa from the husband to the wife is good in Chancery or Law of the Husb'd die. It is considered in the nature of a testamentary disposition. 2d B. 104. 17th 94. 491.

If the husband covenants with the wife not to intermingle with her estate, he is stopped from doing it, and she is not left to her covenant. (i.e., suppose, says Flav.) she may obtain an injunction to keep all goods no authority to seemto be established at Sav. 17th 334. 335. 336.

As was before observed, articles of agreement between the husband and wife to live separate are enforced both (in Equity) if saved to the extent of the agreement.

2 Vent. 217; 2 Bl. 523; 2 2nd 436. 2 B. 137; 2d 364. 3d; 614. 7d 115. 2 East 253. 1 B. 115; 52. 1 Lord 105. 17th 334. 335. 16 Bre 255. 9d 496. 497. 498. If the husband having relinquished his right to the wife's person should confine her to the guards, she relieves by habeas corpus. (I think this right is not in such cases for it is the husband, the wife, last author.)

Any property therefore after separation coming to the wife will be just so far as his disposal, as if there was no separation, unless the contrary is stipulated. (Some P. 30. 32. 106.)

A son or covert may execute a power or authority given by the husband or by any other person, and is by himself, to convey or devise an estate, if the estate is settled by way of trust for his use. In this case, she
Husband & Wife.

Concerns only the equitable interest, which is not within the Stat. 2 H. 8, taking away his power, 36 Edw. 3, 2 Stat. 23.

As an estate to the use of such person for life, remainder to the use of such person, as the by any writing of such appointment. 2 Edw. 2, 25 & 26 Geo. 3, 6 & 7 Will & Mar. 21. 3 Will & 34 Edw. 3, 1 Stat. 39, 134, 27 Edw. 3, 112.

By way of trust, she can dispose of real property of the husband or of any one else. As an estate conveyed to trustees in trust for the separate use for life, remains due to her. It seems she cannot devise, or execute a power in any other way. 25 Edw. 3, 25 & 26 Geo. 3, 112.

But a power to convey, by will she may execute without a use of it. But not of the power is ever in her own interest. 1 Cor. 312. 25 & 26 Geo. 3, 21 Stat. 11, 134. 3 Stat. 123, 21 Edw. 3, 112.

In this case the appointee or person taking an estate under the execution of the power is considered as having by virtue of the devisee giving the power, through the person executing the power, the 'Devisor's'

A voluntary settlement by the husband on the wife, after conviction is void as to subsequent purchasers knowing the facts, as being fraudulent by Statute 27 Eliz. Conf. 179, 5 Edw. 2.
Husband and Wife.

II. Of Contracts between Husband and Wife before Coverture.

It is regularly true, that if the husband is indebted to the wife (as before Can. 20) before coverture, the intermarriage extinguishes the obligation. 132. 492. Br. 859.

Suppose the husband is indebted to the wife by bond before marriage, the dies & leaves the bond uncancelled, the general opinion is, that it will never revive, for a personal contract once suspended is forever extinguished.


If an obligee marries one of several co-obligors, whose debt is discharged, because one co-obligor is freed. Br. 859. 136. 493.

As the first general rule:—a distinction is to be observed between contracts which do & do not create a duty on the husband during coverture, e.g. a covenant or promise to leave the intended wife a sum after the husband's death, is admitted to be good at law as well as in Equity, because there is here no debt during coverture, and therefore the right & duty do not meet in the same person, i.e. husband. 328. 6. 136. 493.


Such a promise to leave property to the wife made before marriage was adjudged good as early as
Husband and Wife.

It is now settled to be good law at Law 8 T. N. 381.

Another exception to the first rule is: The wife may by accepting a jointure (i.e. a competent livelihood of her own for the wife in lands, tenements &c.) before marriage bar her right of dower. The subsequent inheritance is never considered as distinguishing such agreement. Co. L. 36. 4 Ch. 12.

The Eng. law as to barring dower by jointure is regulated by Stat. of 1793 3 T. N. 2 150. 140.

Requirements of a jointure are:
1. Must take effect immediately on the husband's death.
2. Must be for the life of the wife at least (it is not in fact for her benefit).
3. Must be made to herself, or not in trust for her.
4. Must be sufficient to be in satisfaction of her whole dower.

It is doubtful whether in cases of jointure, a jointure may not sit of personal property, some other estate in the Stat. probably means a larger estate than for life. Decided that it may not, 60 P. Fost. 1785. Stat. 147.

If a jointure is settled after the marriage, the wife may on the husband's death accept or refuse it, to take her dower, but she may not take both. 2 B. C. 140. 1 B. B. 137. Dy. 388.
Husband and Wife

If the wife agrees to accept a gift by devise instead of dower, she may, after coverture, determine to accept or refuse, and generally she may take both, unless the devise is repugant to be in lieu of the dower. For partial proof is not admissible to show the intention. Decided differently by 3d. his decree reversed by Wright in 2d. 10 B. C. 464. 2d. 302. 18 B. C. 57.

An exception is, that when the devise is not supposed to be in lieu of dower yet the wife cannot take both dower and devise, if the husband has devised all his other property. This fact is proof of his intending the devise as a substitute for the dower. 2d. 435. 69 B. C. 128.

It is now a general rule that marriage settlements agreements before marriage, or after, are binding in Chancery. 1d. 474. 2d. 255. 3d. 480. 493. 1d. 324. 9 Ath. 4.

Miscellaneous Rules

If the husband and wife join in a lease, or other conveyance of the wife's estate, for more than 21 years I suppose she may after she becomes disorderly, marry or annul it as when she leaves alone. (at ante) 1d. 347. 1d. 302. 3d. 225. 2d. 670.

If an obligation be given to the Baron's wife, she may refuse the benefits of it, after the husband's death.
Husband and Wife.

After such waiver, it ensues to his representatives, as an obligation, and is alone. 1 Co. 369.

If at C. S. husband and wife are made tenants in common, the may disagree to the purchase or gift after his death. But if it be a joint tenancy, a disagreement by parcel is not effectual. 1 Co. 347. 3 Co. 26.

In Eng. the may disagree by a deed of chide, or "suffrage," by deed. Every taking profits is a good agreement. If an estate is given to the husband and a stranger, the husband have but as moiety, if either of them die the survivor take the whole moiety, the stranger the other. 1 Co. 582. 2 Co. 589. Co. 187. 137.

If real estate is conveyed to the husband and wife, they take by severities and not by moieties. The husband cannot by his own act alone, even as moiety, if he cannot secure the joint interest. 1 Co. 582. 171. 65. 2 Co. 324. Co. 325. 3 Co. 140. 2 Co. 126.

A fine or common recovery suffered by someone is good to her heir, but her heirs (at least). But the husband may ascendit during coverture, or at law. 1 Co. 302. 1 Co. 334.
1 Co. 346. 3 Co. 40. 1 Co. 229.

These are the only conveyances of joint objects to which at C.S. they cannot disagree to defeat after coverture. If the husband join her, the conveyance is good to all intents. It is doubted by some whether the husband can convey by recovery. 1 Co. 302. 3 Co. 300. 2 Co. 373. 4 Co. 43.

If the wife makes any other than a judicial conveyance, it does not expressly or impliedly confers it after Co.
Husband and Wife.

Coverture, her being may defect it after her death. 

3a.

The reason that a judicious conveyance alone is binding is that the wife on the face of it appears as a free sole, which the lic. wife not afterwards permit her to contradict. 1 Bow. C. 22.

If the wife is injured in her person the husband sustaining consequent damages, he has a right of action vs the wrong doer. As for battery false imprison, and slander. For the direct injury she must join. 1000 J. 581. 62 C. S. 21. Bow. 536. 151. 140. Sal. 200. 1 Bow. 672.

In case of adultery he may maintain an action alone, but in this case proof of adultery marriage is necessary. Esp. 594. 4 Bus. 2007. Bull. 275. Doug. 162.

The husband cannot maintain an action for adultery committed with his wife after separation by agreement for he thereby relinquishes all right to her person, of course the alienation of her affections is no injury to him, neither is his family disgraced by her actions. 15 Bus. 542. 57 P. 247.

According to the old C. S. the hus. might give his wife moderate correction. 1 Bus. 265. 151. 163. 1 Bow. 132. 136. 171.

But according to the old law if he beat her violently, or even threatened to do it, she could bind him to the peace, by suit of suffliciat in Chy. or might obtain a divorce propery petition. 1 Bow. 374. 1 Bow. 205. 316. 327.

Now no violence is allowed but if the hus. beats his wife at all she may bind him to the peace at
Husband and Wife.

Law, vice versa. The husbands power over the wife was first impaired in the reign of Cass. 15. 13. 5. T. XI. 433. 2. Ex. 128. 179. 49. 1/2. Ex. 235. 4. 113. 445.

The husband may restrain his wife of her liberty in case of gross misbehavior, as from destroying his property, keeping loose company &c. 1. 8. 947.

But in case of unreasonable confinement, she may be released by habeas corpus. 1. 322. 324. 342. 2. Ex. 97.

The husband is justified in a battery in defense of his wife, if she resists. 3. 2. 134. 3. 2. 28. 52. 54. 92.

If a female slave makes a will in favor of her master, thereby be married, living before her hus. it is voided. 2. 130. 685.
2. 130. 684. 430. 80. 2. 2. 695.

But if she survives the hus. it then revives; for she might have revoked it if she would. 1. 630. 692. 680.
343. 484. 2. 691. 2. 65. 684.

Of the mutual disability of the husband and wife to testify for or against each other.

A general rule is that law and fact cannot testify for or against each other. The reason assigned for this, that they are one person. And one maxim is, "nemo testis debet se in propria causu." Another is, "nemo licet se esse accusare." 2. 4. 2. 2. 44. 430. 47. 678.

But the true reason is, they may not testify for each other, on account of union of interest; nor to each other, on motives of policy, to help family, peace. This is
Husband and Wife.

is indeed admitted in some of the Books to be the reason.

The husband cannot testify even in his interest, where his wife is concerned. E.g. property settled to the husband's separate use, was taken for the husband's debt. In an action at the Exchequer, this husband was offered as a witness by the wife trustees & rejected. Matt. 65, Exp. 720.

Neither of them are allowed in any case even between other parties to give evidence tending to criminate the other. E.g. Where in settlement cases, a mother, marriage is disputed on the ground of a former subsisting marriage, the lawful wife is not admitted to testify to the former marriage, as this would charge the husband with bigamy. This shows that their legal identity is not the governing principle. Matt. 164, Exp. 720.

A general rule, that a person may testify to himself, with consent of the opposite party, for himself. Not so in case of husband & wife. This shows the same as to their legal identity. Matt. 164, Exp. 720. Bal. 280.

Exceptions to the last general rule.
Hale 47. Bal. 288. Contra 1 Hale 301.

2nd. Where the wife exhibits a complaint of the husband to bind him to the peace (as she always may) she may from necessity testify to him. Vice versa. 2 Haw. 632.
Husband and Wife.

3rd. When one of parties for personal abuse to the other, the abuse may grow necessity, testify. This point is not settled by our Decs, but the principles of S. cedela cases have been adopted by one of our county courts. Hall 152, 173; 163, 173; Bull. 287, 2 Nava. 308, Esp. 721, contra.

5th. A woman forcibly carried away and married is witness to her husband to prove the fact. This is hardly an exception, as here is indeed no marriage. Such a transaction is felony under the Stat. Henp. Col. 438, Esp. 721, Bull. 286, 180, 442, 470.

6th. If a man marries having a former wife living, the last wife may testify to him, as she is no wife. Bull. N.P. 297, Esp. 726. Is this an exception true

6th. In actions between other parties (i.e. where the hus. is not a party) the wife has been admitted to give such evidence, as would indirectly charge his hus. civilities. E.g. in an action (for wedding clothes) by one, his wife another was permitted to swear that they were procured on the credit of her hus. 1 Steph. 804, Bull. 287, Esp. 726.

It is otherwise in criminal cases, where the evidence would tend even collaterally to criminate the hus. 1 Mc. 1812, 250, 268, 170a. 301, 840. 11 Mc. 183, 2 Esp. 82.

You can't testify when the evidence is derogatory indirectly in his favor, e.g. an indictment for contempt, the wife of one of the Defts. cannot testify for the other. 8 Esp. 103. Decr. 29th, 1814.
Husband and Wife.

7th declarations of the wife, as to transactions immediately within her province, have been admitted to be proved to charge the husband. Ex. Declarations that she had agreed to pay a certain sum for nursing a child. (Is this Law?) 1 Sam. 32:7. Est. 7:21. 18th Law. 2:37. Ex. 20:14. 5:4. Note.

In what cases husband or wife should join in bringing actions, and in what cases the husband may or must sue alone.

In some cases the husband must join the wife in others he may or not at his election and in some he cannot join her. It is difficult to reconcile all these cases. 16th Law. 4:23.

1st. A general rule is, that the wife must be joined when the right of action would survive to her after his death. 16th Law. 3:34. 18th Law. 3:37. 6:6. 63:1. 1st Law. 5:9. 5:31. 18th Law. 3:34.

Because if the husband might sue alone, he would commencing the action, attach a sole right of recovery in himself, to thus oust the wife of her legal right. 1st Law. 3:34.

In actions real for the recovery of the wife's land, they must join. 1st Law. 3:34. 18th Law. 3:34. 18th Law. 3:34.

So also in ejectment to recover the wife's land or chattel real, for on his death they survive to her. 18th Law. 3:34. 5:9.

So in suits on the wife's choses, which she had before marriage. 1st Law. 3:34. 5:9. 5:31. 6:6. 63:1. 18th Law. 3:34. 18th Law. 3:34. 18th Law. 3:34. 18th Law. 3:34. 18th Law. 3:34. 18th Law. 3:34. 18th Law. 3:34. 18th Law. 3:34. 18th Law. 3:34. 18th Law. 3:34. 18th Law. 3:34.
Husband and Wife.

So to recover rent due to the wife while sole, 60s. 5s. 4d. 

So upon promises made to the wife while sole, 10s. 
C. 71, 16d. 2s.

So for injury to the person of the wife, during coverture, as slander, defamatory & similar. Col. R. 90, 92, 316, 282. 

So for waste on the wife's land, during coverture, C. 372.


This case may have been for emblements. An action for destroying emblements on the wife's lands, as common garden, receptacle, does not survive. C. 325, 133. That the husband may sue alone, or join in this case, the wife. Sim- 
C. 75, 2, 195.

So in trespass for injuring crops or injuring the wife's inheritance during coverture, it is said they may join. 86, 87, 134, 134. C. 371, C. 371. 10. Oct. 477. C. 371.

So in an action of trover for the recovery of wife's property, if the conversion is before coverture, he must be joined; for this is a chose in action, it will survive to him. 390, 391.

So in general, for injuries done to the person or property of the wife while sole; as battery, slander, C. 390, 

In all these cases she must be joined, because it survives to her on his death, which is the criterion.
Husband and Wife.

If the wife's property be taken (lawfully) before court, she recovers afterwards, the husband's wife may join in "Iowas", or the husband may sue alone. 13 Bac. 249. Salk. 114, 1 Com. 547, 1 Gent. 261, 1 Dec. 107. The lot was divided on this subject. Two judges said, the wife ought to be joined; the other thought the husband ought to sue alone. 13 Dec. 107.

Since you seem to think the wife ought to be joined, 38th 62.

The husband may bring an action of Delinences alone, in case of judgment on finding the wife's goods, for he has the absolute possession. 1 Sid. 174.

In an action of trespass by the husband, the common law should be laid to the husband's damage only. Salk. 114, 13 Bac. 307.

The wife may not sue alone, because she cannot appoint an attorney; short is the right, recovery, he could not take her on execution, as it would violate the manhood right of her husband.

2. Out of the husband's distresses for rent due to the wife, while alone, to rescue is made, he may, at his election, sue alone for the rescue, or join the wife. He may consider the rescue as a debt to himself. 23 E. 489, 1 Com. 584, 422, 1 Gent. 374, 13 Bac. 307.

So in an action of debt on covenant for rent accruing out of the wife's land, during coe. 1 Com. 583, 1 Alb. 209.

Why is not he obliged to join the wife in the last case? The real estate survives to her. 1 Com. 587, 1 Alb. 280, 19.

3. 14. 17, 1 Alb. 697, 1 Com. 877.

So if a land is given to the husband, the wife during coe.
Husband and Wife.

Coventure, he may sue alone or join the wife. [Sec. 305, 24th 673, 1 Cor. 534, East 932, 3 Esp. 283. And yet the bond will survive to the wife, if the hus. die without his agreeing to her interest, as in this case, he may. Dyer: It vests in him. Allen 236, 24th 673, East 932.

So if a bond be given to the hus. wife as execut he may sue alone or join her. For he has a right to hold. In account for it, yet this bond would survive to her. 4 Tic. 616.

So on a Covenant according to this hus. as reversion in fee, during coventure. But in this case he must declare on a feisea in fee in himself & wife, a right of his wife, or it is not a separate demesne. Doe 34, 1 Scur. 250, 12 Ser. 1421.

So if a bond to be given to the wife alone, during coventure, the hus. may sue alone or join the wife. [Sec. 403, 1 Mer. 396, 1 Cor. B. Baron 1 W. 371, 13 N. 305, 24th 673, New. 105, 1 Mo 317, 3 Esp. 266. This survives to the wife. 2 676, 2 36 Esp. 266, East 932.

Suppose a legacy given to the wife during coventure. the hus. may sue alone for it, or join the wife, for it does not survive to the wife. 176, BL 108, 97f, 2 90, 19 553, 87 672. 2 Luc. 17 B. 169, 164, 43 9 3 Esp. 266, East 932, 99 Rob. Tr. 4 Cor. 287, 5 That it does survive, see 2 676, 2 676.

If the wife is the Insutioners cause of action, to promise is made to her during covet, she may join in the action dury, in some cases, as the cause of action does not survive to her. 4 Esp. 2205, 2 Cor. B. Baron 2 W, 2 257, 2 263, 7 256, 61, 254 245, 2 424.
Husband and Wife.

But not without an express promise, i.e. a JMP
sit on a contract during coverture. Salt. 14, 126, 109, Baas. 25, 249.

So paid in Law, that the action pursues in this case
to the wife, but not law. This reason given is that she
may join because the hus. affirms the promise to wife
by joining hus., i.e. he agrees that the wife may take the ben-
efit of it. Bro. 777, Cal. 114. 1 Com. 372. 1 Bro. 312. 18 Eliz. 129.

In 2 Eliz. 129, the case in bro. 777 is paid to be shaken,
but the Ct. recognize it as Law

The husband & wife cannot join in a JMP, but with-
out stating the wife interest.

3rd. When the wife is the suffering cause of action to
the hus. sustains consequential damages, she cannot be
joined in an action but for such consequential dam-
ages in case of Slander of the wife with special damages
to the hus. So in case of Assault & battery. The actions are
called per quod. The action which he brings is not sur-
avice to the wife. 1李先生. 172. 346. 1 Com. 572. Salta. 206. 2 Bro.
89. 2 Rob. 534. 3 Tall. 319. 4 T. 389. 1 Com. 301. 538. 15 Be. 390. 1 Com. 573.

This latter action (Assault & battery) has generally been call-
d trespass vi et armis, but it is strictly trespass on the case.

If battery is committed upon the hus. by wife, they can-
not join for the whole injury, for the wife battery they
can, he must sue alone for his direct injury. For his
consequential injuries for goods. 1 Com. 375. 3 Co. 333. 201. 1 Com. 440.

But, if in this case separate damages are given for
the battery of each, the hus. may release as to his battery,
Husband and Wife.

If the (it being after verdict) he may have judgment with the wife for her beating. 1 Wait. 327, notes 655. 1 Com. 575.

So if the wife is found not guilty as to the husband, the verdict is good, (but would have been a general discussion. An exception to the rule that a verdict will not cure defect of mispikes.) Ward. 166. 2 Deed 12. bro. 655. 1 Com. 876.

The husband may sue alone on a promise (made to him in consideration of forbearance) to pay a debt due to his wife, while sole. 1 Com. 512. bro. 110.

So also if due to the wife as executrix, anta dedit. 1 Bath. 117, 1 Earl. 462.

So the husband may sue alone for adultery with his wife, many circumstances will aggravate the damage. As e.g. the rank of the plaintiff, his wife's previous good character, the peculiar turpitude of the defendant. Esp. 342. 1. 2 Man. 2037. 12 H. C. 27. Doug. 162. 1 Deed 1807.

Many circumstances also mitigate damages. As that she had eloped before. She was a prostitute. The husband had her out of doors. He was familiar with other women. 1. 1 Bulk. 424. 4 Lab. 684. 6 Lab. 201. 1 Dane 7. 1 Esp. 11.

If the husband consents to the act, or if he permitted his wife to live as a prostitute, the action does not lie. Bulk. 27. 1 Dane 10. 11. 4 Bulk. 651.

An action of Trespass by the husband alone, for breaking entering his house and beating his wife, was good. For beating the wife was only matter of aggravation, whilst the breaking and entering constituted the gist of the action. Freund. 1 Esp. 407.
Husband and Wife.

And, opposed to the last rule, an action by a husband's wife for imprisoning the wife, per quod the husband's suit remained undone, to their damage, was held good after verdict; per quod being only matter of aggravation. For exq. 610, 7. T. R. 233; 10 B. & C. 306. 3.

If the husband alone, when he ought not to join the wife, or joins her when he ought to sue alone, the misjoinder or nonjoinder is fatal, but not curing by verdict, but would be good cause for motion in arrest of judgment, or the judgment might be reversed by cert of error. 21 B. & C. 183; 12 Sim. 1. 125; 3 H. & C. 153.

But if the wife alone, when she ought to be joined with her hus. The deff. can plead in abatement only if he omits to do this he waives his right. 3 T. & R. 627; 5 Cow. 193; 13 T. & C. 441.

The right of action being strictly hers, the husband may have a cert of error of judgment. Goes 83, 10 B. & C. 387. If the hus. or wife join in an action, the declaration shows no reason for joining the wife, it is ill. 2 H. & C. 805.

That it is not aided by verdict, see 6 Brow. 484; 10 B. & C. 280; 2 Brow. 487; 3.
Husband and Wife.

In what cases the Husband must be sued with or without the Wife.

1. A general rule: that the wife must be joined in actions, which would concern her, otherwise the husband or representatives might be injured. E.g. If the husband should be sued alone for debts, contractually his wife if she survive (for which she is liable only during coverture) and die subsequently, the debt would survive to his representatives, whereas it ought to be hers. 116 C. 494. 3 M. & B. 171; Rob. 391; Moore, 3d, Allan 3272; 7 1125 348; 1 Rob. 281, 440; C. 386; 6 384.

So for torts committed by her before coverture, for those survived by her. 1 C. S. 335; 6 360; 13 384.

So for rent due from her before coverture. So in general, in all actions, to which the wife was liable before coverture, 1 Rob. 369; 6 C. 383; 1 Con. 374.

So for torts committed by her alone, without her husband's necessity during coverture. 6 Rob. 321; 1 Rob. 317; 1 Con. 376; 6 Will. 1 Cl. St. 1237; 1 Rob. 1; 1 Con. 318.

If a lease be made to the husband, the action for rent accruing during coverture must be brought. For if she should survive, she might confirm the lease. 1 Con. 375; 1 Rob. 345; 60; 1 Rob. 337.

III. But regularly, when the cause of action was not surviving, the wife cannot be joined. E.g. if one sales, she is a lifetime married, her husband must be sued alone for rent incurred during coverture.
Husband's Wife

For it survives of the husband, that to her. There she cannot receive the benefit, after coverture, of the husband, but takes the whole benefit of it during coverture. 1 Sam. 37:5. 1 Cor. 6.

An action against the husband, wife, or their joint promise is bad. The husband should be sued alone, for as to the wife, the promise is void. 1 Sam. 31:2. 1 Cor. 375.

An action against the husband and wife, or against them both, is bad. 1 Cor. 376. 1 Pet. 39:1. 1 Cor. 376. 1 Pet. 39:1. 1 Cor. 376. 1 Pet. 39:1. 1 Cor. 376. 1 Pet. 39:1.

So in general, for an act committed by both, or by the husband alone; through the husband's consent, is bad. 1 Cor. 376. 1 Pet. 39:1. 1 Cor. 376. 1 Pet. 39:1.

So it is held bad, if the husband, wife, even if the husband is found not guilty, for he is joined only for conformity, not as parties criminally. In this case, where he was not liable, the action is bad. 1 Pet. 39:1. 1 Cor. 376. 1 Pet. 39:1. 1 Cor. 376. 1 Pet. 39:1.

In an action of trespass, if the husband, wife, conversion must be laid to the husbands, or only a judge may be arrested, or a writ of error granted. 1 Pet. 39:1. 1 Cor. 376. 1 Pet. 39:1. 1 Cor. 376. 1 Pet. 39:1.

If the wife is joined with the husband, when she ought not to be, the action may be abated. In the reverse case, if the misjoinder is not pleaded in abatement, advantage may be taken, after judgment, by a motion in arrest, or by writ of error. 1 Pet. 39:1. 1 Cor. 376. 1 Pet. 39:1.

If at some court being sued alone, there coverture prevails, she may have judgment for costs in her own name, or by decrees facias, her husband? She may have spied together. 1 Pet. 39:1.
Husband & Wife.

The wife, when sick with her hus. cannot plead a
luna, but the hus. must join. Rev. Supp. She is sued alone,
when it is otherwise. 2 Bet. 467, 1967, Doug. 414.

Any thing rel. when taken alone or with her hus.
see next brooks p. 350 page.

Of the Wife's power to Devise.

By a Stat. it loops, all persons of full age, of right,
understanding to, not otherwise, legally incapable, shall
have full power to devise.

So the construction gives to the words "all persons",

James Costes were incapable of devising at C.R.
Whatever was devisable, of the marital right would
not be impaired by such devise. Syden. 173, 2 East 552.

What then was their power to devise? It seems
from the existence of two English Customs, that at C.R.
Whatever was devisable, before feudal tenure, they
might devise lands, lands being devisable before
the Congest, 2107, 377.

During the feudal tenure, the property was
devisable, devor by James Costes, when they had pro-
erty over which the hus. had no control. If the might
devise personal property, given by way of dowry, ad-
stitution ecclesias... 2. Choses in action, without the con-
sent of the hus. But if with consent, it proves that there
is nothing in the nature of counter to prevent, but
husbands right to the property may interfere. Case
in Mass. since Stat. 29. Cap. 11. by which the hus. is entitled
to the wife's choses, after her death. Moore, 1 Med. 111. 123.
V. 15 & 7. 1 Potts. 211. 156. Col. 314. (Brooke on Desires.)

3. Personal property to her sole & separate use. It
may be said that as to this she is a sharer sole. Why
then, ask, may she not devise it? 1 Co 56 5 & 800. 300. 2 414. 75. Bro.
col. 10. 3 Atk. 697. 799. R. 2. 204. 1810. 126. 274.

At C. S. she might bequeath such personal pro-
erty, as would accrue to her on his death, i. e. she pur-
chased the estate. 2 180 352.

So she might bequeath his personal property with
his consent. 1 16 37. 60 & 37. 19. 376. (Riviere v. C. C. 101. 111. 587.
94. 73. (Riviere v. C. C. 19. 111. 19d. 249. 2 264. 217.
Moore 290. 1 Col. 607. 772. R. v. 364. (Rev. 31. 3 Atk. 696. 2 180. 316.

Judge Receveur thinks it politic for the wife to be per-
nitted to devise her property. For be this so? she says that
"provides for some dependent relation or friend of whom
she has received assistance, which is? encourage persons
"to assist her, and says the Judge) it is clearly not contra-
"ry to any principles of C. S."

"(Stat of Ten S. precludes her from disposing by will
"of her real property, which shows that she might at C. S.
"(Receveur). 2 414. 75. 19d. 709. B. 19 1. 225. 2 126. 2 264. 382."

If the hus. & wife separate, she gives up all claim
"to her real property, she may devise it. (Receveur.) 1 16.
"Col. 314. 1 C. C. Book 2. 16. Edw. 3.

A wife may devise that, which she holds in the
"Husband and Wife."

"right of another, as above, she is Executrix. (Judge Burt.) Rom. "340. 1 Pet. 3. 6. 172. 173. Camp."

"As Eng. if the wife devises personal property, and some amount to hers after his death, it will pass as well as his separate property. So also his parapluralia in will pass. 1 Thess. 4. 9.""-

"In those states which have no statute similar to that of New York, I think the wife may devise her personal real estate, provided her husband's rights are not "injured thereby." (Judge Rul."

"If a wife devise her choses in action, it dies before they were collected, the devise is good, for by law they "did not vest in the hand till collected. Judge Rul."

"692. (Rev. 432. 3. 2 17. 699. 698. Act. 33. 2.)"

Mr. Conant thinks a devise of any property would be good, if the wife were to survive the husband.

**Of the Celebration of Marriage.**

Before the Stat. 26 Geo. III. if persons not authorized solemnize marriage, &c. Kings Bench, as prohib. it the ecclesiastics, &c. from treating the marriage as void. That Stat. provides that marriages contrary to its provisions are absolutely void, Salk. 938.

Yet that, &c. would not grant. Acts of the wife's estate to the husband. By this authority, it is deemed void by the former good (Salk. 938).

In questions purely civil, where the fact of marriage comes into dispute, common reputation of the
Husband and Wife.

Marriage is sufficient proof. 4 B. N. 2037.


In case of buggery to celebrate marriage, if the State, the marriage is good, but a penalty is incurred. "If any other person solemnized it? Generally thought void."

Of void and voidable marriages.

Impediments to marriage in Eng. are of two kinds,

1. Canonical impediments. These are consanguinity, affinity, imbecility, and previous contract, which seems to be abolished.

The impediments of consanguinity, affinity, imbecility are derived from the divine law. It therefore cognizable by the spiritual courts.

They are sanctioned however in Eng. by Stat. 32 Hen. VIII. which prohibits all marriages prohibited by God’s law. It is declared in this law that nothing except God’s law shall prohibit any marriage if within the Line of degrees. These degrees are the standard as to consanguinity and affinity. Imbecility is an impediment in divine law.

Canonical impediments render the marriage only voidable, during the lives of the parties. After R. 15. will prohibit.Cols. 33. Salk. 598.

All personsilinear relations prohibited. Doug. 297.

Among relations the most distant degree is
Husband and Wife.

that between Uncle, niece, twice over, and vice versa. Gilb. 158.

Rules for ascertaining what marriages are lawful. 1st. Among collaterals, so far as relates to consanguinity and affinity. Not to marry a collateral relation in the first or second degree. nor one related in the first or second degree to a relation in the first degree or collateral relation, as the daughter of his former wife's sister. See in Conn. Co. 278. Rob. 81. Co. 233. Consent, same page.

If no divorce takes place during the lives of the parties, the issue is legitimate. Bish. 134. Rob. 360. caret 271.

In Conn. a man may now by the new Stat. marry his wife's sister, twice over, which is a deviation from the old rule.

IV. Civil impediments. These are. 1st. A prior existing marriage. 2nd. Want of age. 3rd. Want of consent of parents or guardians. 4th. Want of reason. 5th. Want of license.

1st. A prior marriage will constitute a 2nd Bigamy, which in Eng. is felony, and here legally punished.

2nd. Want of age - The age of consent is 14 in males, 12 in females. But those under this age may afterwards satisfy the former marriage, without another ceremony. They may also disagree, and insist it without a divorce.

If one is under age of consent the other may disagree before it is ratified. 12 Pe. 33. 6 Co. 23. 14 Co. 22. Rev. at 340.

3rd. Want of Consent of parents was no impediment at first, but is made so by Statute.
Husband and Wife.

The law of Gen. is very different from the Eng. in several respects. 1. Marriage within the prohibited degrees, is absolutely void, of course, unless it is illegal, etc. 2. Want of consent of parents: it does not render the marriage void, but subjects the clergyman officiating to a penalty. In Eng. it makes void only where there is a publication of banns. Stat. C. 286. Saluk. 1220. 3d. 84. 499. 1 Cor. 645. 45. 3. 44. 2. 12. 376. 6. 11. 4. 2. 176. 4. 37. 3.

2. Previous contract is never known in our law but if a person marry after entering into such contract with another, the injured party may recover redress in damages. 1736. 623.

If a marriage celebrated in another State between parties belonging to this State, if who leave it for the purpose of evading our laws, good here, the rule of our law not being complied with, the this marriage is agreeable to the law of the other State. 3. 276. 1st. 14. 31. 119. 60. 79. 8. 88. 6. 7. 132. 1082.
Divorces are of two kinds - a vincula et a marce.

The first is total, i.e., complete dissolution of the contract. The second, partial, does not dissolve the relation of husband and wife, but merely separates them.

In Eng. a divorce a vincula is granted only for the canonical impediments (above) and those existing before marriage, as is always the case in consanguinity except by act of Parli. Not these, Sup. Rom., as may be in affectionality. 1st. 263.10th.fld. 10th.d.893.

Causes of partial divorces in Eng. are adultery, cruelty, ground of year. Articulate, grants divorces to take for adultery. Divorces in other cases are granted by the Ecclesiastics Courts. 1st. 462. A. 6th. 682.

Since born after a partial divorce is presumed to be legitimate, the presumption is rebuttable. In case of voluntary separation the issue is presumed legitimate. Subd. ibid. 7th. 123. 1st. 286.

In Con. divorces are ordinarily granted by the judge. 1st. Total divorces by the Jury, the causes here are:

1. Insane contract. 2. Adultery. 3. Three years wilful absence; with a total neglect of duty. 4. In the absence by violent abuse, equivalent to a desertion. 5. Three years absence (inwards of 1/3). Three years absence on a voyage usually performed in three months, without the knowledge of the other.
Husband as Wife.

Legislature in Conn. may grant a total or partial divorce at their discretion & for these causes viz. for adultery. How a divorce affects property.

In Eng. in case of divorce a vinculo, the wife has no dowry nor any support out of the husband's estate. For "nulla sum matrimonium" to 2 B.C. 103.

After a partial divorce for any cause she has her dowry, 666.

She also has Alimony (or a maintenance) still (according to the direction of the Judge). She does not renounce her right to her personal property by divorce; if a legacy comes to the wife, "after such divorce, the husband may claim a release as". 666.

"But may collect her choses in action tid she joint the debts for her debts before marriage & her debts before the divorce."

"By a divorce a vinculo in Eng. such one bastardizes the marriage made void ab initio."

"If the Causality of the marriage be not called in question during their joint lives it cannot be afterwards, the children may inherit, the wife have down the husband's estate. 666.

Law in Conn. as to a partial divorce as the same is allowed in Eng.

But in cases of total divorce in Conn. for adultery the wife has 666. If she is not the guilty party, also alimony not exceeding one third of husband's estate may be immediately assigned her. Also personal property may be granted her.
Of Parent and Child, Guardian and Ward.

By Mr. Gouge.

An Infant or Minor is one, under the age of 21, whether male or female. The period of such age is not the same in all countries. In the civil law, as to matters of contract, it is 25 years. 1 B. & C. 3, S. & S. 103, 104, 105, 106, 107.

Privileges & disabilities of Infants.

1. As to their crimes. No person under 7 years of age can be punished for any offence. There is little or no want of will or capacity of discrimination between right & wrong. 4 B. & C. 23.

At 7, a person is punishable even capitably. Between 7 and 14, an infant is punishable if doli capaciter otherwise not. The maxim of law in this case is, "malitia petit extat, sed non in peccato." 1 B. & C. 23, 464. 1 S. & S. 103, 104, 105, 106, 107, 108, 109, 110.

It is said in the books, that between 7 & 10, the presumption is for the infant, that the prosecution must prove him to be doli capaciter. From 10 to 14, the presumption is on the infant, and throws the burden of proof on him. But this distinction is not supported. I think it clear that the presumption is in favor of the infant until 14; otherwise the rule gives it to the negator. 4 B. & C. 23, 196, 197, 198, 199, 200, 201.
Parent and Child

It is also said, "in some cases in infants above 14, are privileged as to misdemeanors or offenses, not capital: But no cases are instanced except those of omissions. (The char.

by is not privileged in case of just breach of the peace,) as for not requiring a bridge to St. John because the in

fident has not the command of his property, & therefore supposed not to have the means of perform

ing the acts omitted. 2 Coke 180, 19 B. 22. 1 H. 20. 2.

An infant is not permitted to be convicted on his

own confession, without great caution, on the ground of

his want of discretion. The judges are to be his counsellors.

Justice Boulden in a case of this kind, directed the child
to enter a plea of not guilty, where the infant pre

sented in a plea of "Guilty," on a charge of felony. (Now on a charge for a misdemeanor) 6 M. 66. 607.

The presumption in favor of an infant under 7

not to be rebutted; it is presumptio juris de jure. 3 Cow.


There is one instance of a pardon for homicide to

an infant, under 7. But does not prove a previous con

viction. The pardon may have been before trial. 4 B. 227.

A general Stat inflicting corporal punishment sometimes extends to infants, the not expressly named,
sometimes not. The Books leave this point obscure, &
after much examination, I find it difficult to lay down

a definite rule. I take this rule to be: If the crime com

mitted by Stat. 2 is made such as to corporately punish

at 1. 2. infants are within it, the not named. E. g. 52. 2.
the Stat. makes an act to be felony & punished with death.
But if the Stat. prohibits an act, not constituting such
an offence as is corporally punished at C.S. the infant is
not punishable, unless named. E.g. The Stat. of forcibly
carrying away cattle. Here the corporal punishment is called
collateral to the offence, i.e. theft; for, not incident at
C.S. to the act prohibited, or the offence created. In these
cases the C.S. punishes may be inflicted. 1 Bl. 297. 387.
3 Dace. 131. 1 Hale 212. 1 Blamire 364. 1 Blane 279. 1 Blane. 19. 2 Bl. 881.
II. As to Torts. There has been a general error in the
latter part of the profession, that infants were not punish-
able for Torts until 14, as in Crimes; whereas they are
generally liable, civilly, at any age, i.e. for Torts
committed with force. The will or intent is never re-
garded, to make him responsible to the party injured.

W. as in Crimes founded on conversion, which always
supposes a positive mischief and the damages are
not a punishment but mere indemnity. There is an
ancient case where a battery was maintained by an
infant of 4 years, for scratching out a mans eye. In
Torr. 31 q. Div. 375. 1 Blane. 2. 2 Bl. 347.

An infant however is not liable at any age,
for all Torts. One of 17 has been adjudged liable by Stan-
ders. (Boyes says not before that age, but I think this
no authority.) Hence it is said that infants are not lia-
ble in this action, before that age; but this is a new
rejection. 2 D. of 48 24 41. 3 D. is not liable,
Parent and Child.

In this action, in general, the infant is not liable, for he is not a party to the contract. The infant is not liable, but is not one at all, as the case may be, as in decided cases. Say 129, 210, 320, 333.

The infant is not liable, as a common tater, it has been paid, he is not liable in a civil action for fraud or deceit. Indeed it has been held that he is liable civilly, for such acts only, as suppose a kind of violence or force, as trespass, treason, etc. 318, 212, 120, 179, 372.

This doctrine is disapproved by Sir Hamlet in his case. The former held the privilege of an infant to a contract, but a second, that is to a deed. These two great names must at least render the proposition questionable. I think it not, and D. R. held, contrary, that he would be liable even in cases of faith, arising ex contractu. As for embezzling goods, money, etc., 182, 318, 312.

Peach 220.

However an action sounding in tort cannot be sustained in an infant, when the cause of action arises by contract. Because if he could be rendered liable, by varying the form of action, his privilege would be nearly nugatory, as e.g., a horse is leased to an infant who abuses him. Here the ground of action is contract. The wrong is a breach of contract. In the former case, it is a fraud in obtaining the contract. £570, 333.

And it was held by Sir Hamlet in favor, that if a person...
Parent and Child

would take a show himself to trade but as if of age, nor evidence of his infancy ought to be admitted, because if admitted, he would avail himself of his own fault. But this is not law. If it were his contracts would bind him in such cases, he might remove the disability imposed by law. 12 Vic. 203.

In some cases however, this will decree even a contract to be good as an infant, on the ground of fraud, i.e. to prevent the effect of his fault. No precise rule is laid down as to the particular class of cases in which this will interfere. 3Bing 190, 13 Ves. 536. 1 Thornd. 70. 1 1 McR. 384 Eq. Ca. 1 130, 1 Sw. & St. 358, 358. That an infant is no more liable for fraud in Equity than at Law, sec. 1 Thornd. 70.

But this cannot impose a contract as an infant, which is not merely voidable, but absolutely void. This would make a contract for him. But another reason is, no consideration is moving to the adult, so that he is not bound. (page.) 1 Fost. 71, 176. 186, 75.

Miscellaneous particulars. Being the age for choosing guardians, in both males & females, is 14. 10 Vic. 14, 15B. 463 St. C. 24.

An infant may be executor at any age, even in ventre parvis, but he cannot act de facto till 17. In the mean time, an adm. de cura minoritate must be appointed. 1 cow. 235, 5 C. 29. Wint. off, 307. 315, 110, 111, 160. Gard. 466, 167, 1 L. 37, 54. 32, Ray. 338.

No one can be an adm. till 21, for an adm. 
Parent and Child.

may be given bonds, an Excei in Eng. 2073 not. 318021, 36a,
29, 395335 comb 4705 barth 4467.

In Conn. also one may act as Excei it is said at 17. by Stat. for he may make a will. St. C. 47. Sec. 105.

By another Stat. every Excei must give bonds. In
then whether he can act lte 21. As adm. cannot in
29. lte. 33. comb 473. 3181. 139.

Age of consent to marriage is 14 in males & 12 in females. But if one party is of the age of consent it is
the other not. The former may dissent afterwards as well
as the latter. 3181. 436. 489. Sec. 37. 449. 45.

But a female may be betrothed up to and above
(according to some of q.) at birth until death. as entitled
to divorce. 3181. 36. 3. 48. 131. 176. 462.

Age for disposing of personal property by will in
Eng. is, according to some opinions, 14 in males &
12 in females. It proved to be of sufficient discretion
according to others 15, 17, 18. The former seems to be
the better opinion. for it agrees with the rule of the
ecclesiastical law, which in Eng. governs in such cases.
3181. 89. 22. 189. 25. 369. 3. 318. 131. 462. 2. 497.

By our Stat. the age for devising first property is 17.
in both sexes.

Full age is completed on the day preceding the
21st anniversary of one's birth, there is no prorogation
day, consequently one may be of full age when not
21 by little less than 48 hours. 3181. 462. 58. 462. 2. 497.
3181. 89.
II. As to Contracts. In general no person under the age of 21 can bind himself by contract; his contracts are void or voidable: distinction hereafter. 18 B. 465.

If an infant and adult join in a contract the latter is bound, so if they join in a penal bond. 12 Bot. 58.

19 B. 129, 370, Val. 102.

If an adult contracts with an infant, former bound, latter not. The privilege of infancy is personal, it will not extend to a co-contracting party. 2 Str. 373. 2 P. 119, 262 C. 552, 126 C. 38, 1 Mcf. 255, 31 Bac. 140, 1 Scra. 243, 1 Shaw. 17, 1 Id. 41, 44 B. 120, 12 Bot. 58.

As to Contracts to marry. The rule is however different when either party is under the age of consent, as before observed. 2 Str. 318, 3 Bac. 141.

The same rule is observed in Equity, a specific performance will be decreed to the adult, when he could not have obtained one for the infant. Chancery however do it in such manner as not to deprive the adult of his part of the contract. 10 B. 129, 40, 9 B. 280, 393.

The adult being bound when the infant is not, is not inconsistent with the rule, that no contracts both must be bound or neither. This only means that by the terms of the contract both must be bound, as if by the terms, he bound to 18, but it is optional with 18, to be bound to 18: neither is bound, for there can be no consideration for no promise.

But the rule, that the adult is bound when the infant is not, does not hold if the contract quoted be
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The infant is absolutely void. Because it is legal nonsense, no consideration is moving to the adult. Ex. 221, C. 37.

And if the infant has not the consideration of the contract, he is not bound to perform or restore it. It is considered a gift. Query, the contract being discharged, would not be known, after demand, or case. 30 cases. Further, as in Rex. Where an infant bought horses, the there was no original fault. Ex. 221.

It is impossible to abrogate this rule, without destroying the privilege of infancy. The rule is disapproved by many, but it is necessary to settle. The infant is allowed this privilege, or a suit for indiscretion. There are supposed cases, in which a recovery of the infant is to do him no injury, to leave him in statue. As where he purchased an horse, recovered back the money & still detained the horse. But in such might certainly lie without injuring the infant's privilege. But the rule of issue must be general. Yet might not this sometimes interfere?

But for necessaries an infant may bind himself by contract. There are food, apparel, lodging, medicines & instruction, as in valuable trade. 10 Cor. 5. 112. 466. 60 S. 172. 101. 729. 694. 499. 3 Cor. 113. 1 S. 112. 80. 113. 578.

But the things contracted about, must be necessaries for the infant at the times of contracting, which is a
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Therefore a replication by the filler of furnishing necessaries generally is good, he need not set them forth on the record specifically, as if the court must determine them. 415. ch. 17. 4 L. e. c. 114. 11.

As an infant may bind himself for his wife's necessaries, also for his children. 31 Bar. 173. 4. 415. ch. 16. 4 L. e. c. 114. 11.

So, bound for his wife's debts, contracted before coverture, by which she herself was bound, for he takes his own share. Barnes, n. 96.

But he cannot bind himself even for necessaries, if under the care of a parent, guardian or master, 6 duly provided for, for he had the privilege of contracting only that he may not suffer. 21 Co. 74. 122. 35. 124. 26. 26. 36.

Hence he can bind himself even for necessaries only in three cases. 1. If he had no parent, &c. 2. If out of the reach of their care. 3. If being under the care of a parent &c, he is not duly provided for.

But in the two last cases, the infant's parent is also liable for parents are bound to maintain their children. 1 the infant's power of contracting in these cases, is intended not to discharge the parent, but to relieve himself. 113. ch. 44. 1.

Does our Stat. vary the rule, as to the infant's power to bind himself for necessaries? Do not both Cs. adopt the
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idea that the infant, if he has no guardian, is bound by contracts for necessaries? Is he to starve because he is under the care of a parent? St. Cyp. 11. ment. v. Pitt. 251, 287.

As to the infant's power to bind his parent, it does introduce a new rule, viz. that if the parent allows him to contract for himself, the parent is bound. St. C. 273, t. 287.

In strictness, the infant is not bound even for necessaries by his express contract — for he is not of course liable (as is an adult) to the extent of his agreement, but only to the amount of the true value of the necessaries. His obligation then seems to be founded on a contract implied. 3 Blac. 133, 260. 6 Bro. 583. 9 B. & C. 560.

Mode in which an Infant may bind himself for necessaries.


2. By a single bill — i.e., an obligation without a penalty, he may. Chitty 20. 6 Bro. 926, 10 P. C. 35. 11 B. & C. 297.


6. By an account stated, he is not bound, though the
items of the account may state it to be for necessaries. 3 Bac. 134, Co. L. 172. Dall. 169, 156. 40. Nov. 87.

Reason of these distinctions. The reason an infant is not bound by a penal bond, is paid to be, that the penalty is to his disadvantage. 3 Bac. 134, Co. L. 172.

But the true reason seems to be, that the consideration is not examinable. If it now, the infant were bound at all by it, he might be liable for things not necessary. 1 Bon. 236, Ch. 20.

And the true principle of discrimination in all the above cases seems to be this. If the consideration is examinable, he is bound; the contract being for necessaries. But some of the natures of the contract, or security excludes an enquiry into the consideration.

2°. As to the single bill, the consideration was formerly examinable. Is it now in the case of infancy? In the case in Hale, self-replies "necessaries" EST held that it must traverse the replication. 1 Kel. 387, 416, 422, Holt. 729, 1 Dec. 84, Ch. 20, 18. R. 91.

In common cases however, the consideration is not examinable.

3°. As to negotiable note, negotiated. Note not negotiable, or if negotiable, not negotiated. The contract is examinable in the two last cases not in the first (not as to its paid t.) According to the leading principle, since for he is bound in the last cases. 1 Kel. 160, Doug. 111, 1 Kel. 729, 1 Cow. 345, 347, 166, 400, Ch. 9, 318, 116, 415, 35, 121, 20. Ch. 61, 276, 1 Ch. 217, 262, 166, 6, 182, 1 Dall. 61, 64, 31, Ch. 201.
5th A bill of G. not negotiable, seems to stand on the same ground as a negotiable note, not negotiable. Indeed.
6th Account stated. When this rule was first laid down, the items of an account stated were not examinable. This doctrine is now relaxed, it seems, but the rule continues. The reason given by Court is, "The only object in the stating of the account." (Satisfactory) 1 f. 170 Bac. 126. 26. 134. Poy G. 169. 8. 602. Bow. 36. 170. 40. Y. 40. V. Bow. 36.

But in case of a personal bond for necessaries of the infant liable in the original simple contract? It depends on this question: does the bond merge the simple contract? It seems not, if the bond is void for the doctrine of merger is founded on the idea that the former obligation or remedy is swallowed up by the latter. But a void bond creates no obligation or remedy (void personal). 170
Ex. 170. 4. 12. 170. 4. 4. 4. 170. 4. 2. May 360.

By way of analogy, let us take one or two cases to show that he is bound when the security is void.

In Gray v. Towle, a contract originally good not affected by an unavailing obligation. Ed. 36. 170. 6.

But a single bill does merge the original contract for it binds the infant. If for necessities of not, it is only voidable. The obligor cannot abandon the single bill, issues on the simple contract. Ed. 164.
Bull. 170. 4. 115. Bow. 3. 218.
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In case an infant may bind himself for necessaries by a note of hand (this a specially brave, if the consent is explicable, a note by an infant not for necessaries, was only avoidable) the decisions have gone round the country. In 1809, decided in Judge Saffo in Co. of Errors to be void. [footnote 33].

For money lent, an infant is never bound, unless it is actually laid out in purchasing necessaries. At law, he is not bound, unless the lender himself lays it out, even tho' the infant did it, for the contract is good or not, at the time of lending, not made so by matter of post facto. If the lender lays it out, he recovers the value of the necessaries, of no more. 31 Bac. 134. Sal. 279. 385. 10 More. 67. 10 Pow. 137. 5 More 368.

But in Equity, infant is bound, if it is laid out in necessaries even by himself. The lender is in place of vendor, recovers the value of the necessaries, if not more than the sum lent, but not more than the value. 19. 2555. 358. 2 Eq. Ca. al. 546. 10 Pow. 137.

Infant is not bound by a contract for articles to maintain his trade, for they are not necessaries. 10 Pow. 35. Croj. 494. 1 Bac 133. Sal. 274. 10 Cal. 729. See 1083.

So an infant is not bound by a contract to pay for repairing his buildings. 10Pow. 133. 5 Salt. 196.

But it has been held, that if he takes a lease of a house, resides in it till the rent day (the rent not being above the value,) he is liable for rent.
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in an action of debt. So of land. The lat might say it was on the same principles that he must pay for lodging but it cannot be. This rule is so opposed to the ordinary ones of the title that I think it very questionable.

Pou. 38. Con. 320. 2 Buhl. 69.

The is not bound by contract to pay for instruction in singing and dancing. I think it might come in the terms of necessary education, if only suitable to his rank. Ballard has remarked in cases of this sort, that the law must change with times and manners. Pou. 336. 1221. 466.

But the regularly bound at law only by contracts for necessaries, if an infant does voluntarily that he is competent able to do, either at law or in equity, he is bound by the act, unless advantage was taken of him. E.g. If he makes an equal partition, when joint tenant, pays rent or a lease to his deceased father assigns dower, these his at law. So if a mortgagee descends from the deceased mortgagor to his infant son who conveyed on payment of the debt. Pou. 213. 2 B. 684. 3 Bar. 1801. 2. Co. 172. 318. 1 Der. 377. 9 Co. 85. 1136. 4. 575. 3 Bar. 1799. 4 Lewis 13.

This is the only class of cases in which a debt is bound at law except for necessaries (to even have he is at first contribute in equity only).

Infant deft is bound by a decree in equity except that he is allowed 5 months after full age is paid.
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Infant plff. is as much bound by a decree in chy. as an adult, unless paid or prov'd neglect appears in his promise, &c. (or, I suppose, Guardian also). This is not allowed in this case; plff. 3d. 626. 7th. 75.

Such acts of an infant, as do not affect his own interest, but take effect from an authority that he has a right to exercise, are binding. E.g. Infants sign duties, pay, or receive debts, or pay, discharge taxes, &c. (an office that he may hold). 3 Burr. 1802.

A promise after full age will bind the promisee to a contract made before, tho' it was not for necessaries. But this rule does not hold where the original contract was void, only where it was voidable. 2 T. 373. 1 P. 390. 5 Pl. 253. 3 Pl. 124. 145. 1 S. 31. 2 Co. 275. 1 T. 348. 16. 21. 165.

And if he should have given whilst and for a written security, which is absolutely void, a promise after full age will bind him the original part of contract being sufficient to support the subsequent promise. 169. Bull. 155. 3 Pl. 136.

This rule is otherwise, if the written security was only voidable for this, the past contract being merged, does not remain a consid. for past promise, but such security would probably be.
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Affirming by the subsequent promise. The action must be brought in the writing, I suppose, of the new promise, referred to a plan of infancy. Esp. 164, Ball. 155, Decr. 83.

But when a person, after full age makes a new promise in consist of a contract made during infancy, he is bound no farther than the new promise extends. E.g. New promise to pay 20½ ct. if the debt is paid in three years, after originally in one year. Esp. 164.

To a plan of infancy, the replication of a promise after full age, is sufficiens as far as the plff is bound to prove it, by proof of a second promise made. If def. was then an infant, he must prove it. 1 Ves. 398. Esp. 164, 31 Bac. 132 n.

Decided by our ct. of errors, that an action on a note given by an infant is not supported by proof of a new promise, that the action shall be on the new promise. Did the ct. consider the note void? Decided by ct. of Errors 1869 that an infant's grant is void under our Stat. 1 Root 58. 109. Ball. 153. Esp. 164.

If an adult, jointly interested with an infant, as a cause of action, obtains a renewal of it in his own name only, he shall be deemed to have acted as trustee, the infant may claim his share of it, if it proves beneficial; otherwise, not. 1 Ves. 398.

If an infant is sued for a debt, on a cause of action, to which his infancy is a good defence, he is not discharged in motion, as if a home court, on common bail, but must plead his privilege. 155, 40, 480.
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What contracts made by Infants are void or what voidable.

Contracts of Infants not for necessaries, are generally void or voidable, (at once.)

Courts lately are inclined to construe contracts of infants as voidable only. This construction is generally advantageous to the infant, as it allows him an action when he attains full age; the other party can not take advantage of it. 3 B. & C. 122. 4 B. & C. 432. 1 Burr. 366. 2 Burr. 1865.

It is laid down as a general rule under this head, that those contracts, in which there is an apparent benefit, or semblance of benefit to the infant are voidable only; otherwise, as to those in which there is no apparent benefit & they are void. The last part of this rule is questionable. 9 Cr. 183. 136. 145. 2 Co. E. 356. 3 M. & S. 310. 1 B. & C. 33. 38. 54. Moo. 105. 1 Rob. 730. 2 W. B. 151.

Hence, his purchases are voidable only - supposed to be for his benefit. But is every purchase beneficial always as to him? 3 B. & C. 125. 145. 2 Co. E. 238. Rob. 730. 2 Rob. 240. 3 W. B. 328.

So it is said, the power of atty. by an inf. to receive seisin of an estate, is only voidable because for his benefit. The rule is true, however false the reason may be. 3 B. & C. 136. 1 Rob. 730. 31 Burr. 1808.

So an indenture by an inf. slave, to serve his master, is voidable only as it may be for his benefit by working an emancipation. 2 Co. 158. 311.

But under the last branch of the rule, it has been said
said, that a lease by an infant, not reserving rent, was void. Moore 185. 2 Bov. 216. 6 B. 54. 2 C. 37. 7th B. 150. 3 Bacl. 157. 304. Vail. 102. 1 Coll. 828. 424. 436. 533. 12 perfume. 152.

So if only a trifling is reserved, it is not the full value. 3 Bov. 309.

This rule is disputable. For 1st, there appears to be no judicial deciding on this point. 3 Bov. 304. 3 Bov. 1806.

And 2d. Many worthy opinions are the other way. Thus, 

hay leases by infants are voidable, without any reference to rent. 3 Bov. 309. 1 Pitt. 542. 2 Ed. 45. 308. 1 Bov. 5. Moore 73. 5 Bov. 533.

And 2d. Mansfield, in case of Touch & Parsons, has distinctly denied the doctrine. Indeed, he proved it upon principle. For 1st. It is well settled, that an infant may make a lease, without rent, to try his title. 2d. (in the opinion of the infant's lessor) the infant's lessor can in no case avoid a lease on account of the lessor's infancy. This amounts to a full demonstration that a lease is only voidable. Yet were it void, every one might take advantage of it. 1806. 1799. 18 Nov. 38. 3 Bov. 137. 1 Tyl. 74. 1863. 2 S. 374. 1 Cr. 25. 70. 393. 9. 2 S. 161.

Another reason of the Mansfield, that an infant cannot plead non est factum, therefore the lease is not void. 3 Bov. 149. 2 Bov. 837. 10 Bov. 43. 5 Coll. 119. (This argument appears to have very little weight, because a power of atty (generally) is strictly void, yet the infant cannot plead non est factum.) 3rd. Bov. 315. 3 Bov. 1804. 1807.

So also it is said, that a penal bond by an infant is void, as it cannot be for his benefit. I do not think
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interest the true criticism in this case. As the infant is not bound, it can avoid the contract when voidable only, it can be of no disadvantage, but may be of advantage to leave it at his option to avoid it or not. As in all cases of executory contracts he is perfectly safe (as appears to me) when it is only voidable, why should he absolutely void? 1 Cen. 269. 1 Sel. 729. 2 Mc. 267. 3 B. 139. 3 Ed. 392. Butt 106. C. 164. Poole 35. 5 B. 239. 334.

I cannot find that this point was ever decided. Many opinions seem inconsistent with the rule. 3 Burr. 1864. 5. 12600-940. 128 D. 12. 254. 126 C. 93. 2 Jess. 172.

That it is not now a principle, it is said-1st. An infant cannot plead non est factum. This is not decision. 3 Burr. 1864. 5. 12600-940. 128 D. 12. 254. 2 Jess. 172. 5 Co. 119. 20 Rep. 315. 603. 302. Pow. R. 17. 97. B. 8. 275.

2nd. If having given a personal bond he relinquished property for the payment of his debts, obligations, etc., if the non est factum were payment of the bond, which they would not do, if absolutely void. 3 B. 146. 12 Ed. 282. 3 Wood. 492. 1 Hoo. 79. 1 Pow. P. 37.

It is questionable, then, whether the last branch of the rule is law. i.e. whether it forms a general criticism. It is certainly vague. The privilege of infants is guarded without it. It is generally advantageous to the infant. 3 B. 146. 139.

The first branch relates chiefly to personal injuries, it seems agreeable to principles. i.e. is not contradictory.
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...tory to any settled principle or decided case, there appears to be no reason opposed to it...

The last branch relates to sales, conveyances, leases, and obligations entered into by infants. But as to sales, conveyances, leases, and obligations by infants, the true rule of discrimination seems to be this: All gifts, grants, sales, deeds, or obligations, made by infants on which do not take effect by manual delivery, are void. Those which do thus take effect, which are thus delivered are voidable. This rule has been laid down by Perkins & Co. (who it has been justly said is the law himself) it was recognized in the case of Touch vs. Parsons. 2烘 12. 19. 8. Bur. 1834. 6. silk. 8. 259. 31 Bac. 1864. 9. Pd. 1730. Sick. 10. 5. Bac. 535.

For example - First, if an infant's assent is voidable only, because there is a manual delivery, by which it takes effect. 31 Bac. 136. 10. 8. 32. 3. 21. Bur. 1864. 5. 21. silk. 8. 259. 96. 15. New 42. Py. 109. Co S. 262. 3. 380. 1. 20. 74. 1. Mod. 25.

But it is difficult to lay down a rule of discrimination, not confound the former with the latter part of the rule.

So if an infant sells a horse, declaring him, it is voidable only if not delivered, it is void, but the purchaser is liable to the same for taking him. 31 Bac. 139. 21. 8. 12. 19. 8. 1. Mod. 132. 7. 10. 51. 332. Sick. 10. 1954. 875.

None of our books give the reason of this distinction. I suppose it founded in this, where the contract does not take effect by manual delivery, the other party depends upon...
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Upon the infant's word, this is regarded in law as nothing. But if there is manual delivery, he cannot contradict his own act, for it changes the very substance of the property. (My reason a little technical.) 3 Brev. 154. Park. 9, 12. 10 M. 137. These authors to the principles supra.

The words "which take effect by delivery" are an essential part of the rule as to deeds also. Make a difference between deeds which carry an interest, and those which merely delegate a power. The first are only voidable, the last void. E.g. Grants, leases, releases. By deed are voidable only they take effect by delivery. I.e. convey an interest. 3 Brev. 130. 2, 3 Brev. 106. 64, 65 p. 259. 860. 2, 81 p. 42. 6 Sh. 2, 202. 14 Ed. 2, 15 s. 11. 149. (Tul. 22.)

But a power of attorney by an infant is void. It does not take effect by delivery. I.e. conveys no interest but only delegates a power. (I'll aside in a summary way.) 3 Brev. 130. 2, 81 p. 42. 6 Sh. 2, 202. 14 Ed. 2, 15 s. 11. 149. 12, 130. 12, 32, 35, 37. 33 p. 176. 67 s. 75. 21, 176 p. 526.

An exception before mentioned, is a power of attorney to accept pursuiv. This is voidable only, as it is introductory to a purchase, that has a semblance of benefit to the infant. 3 Brev. 180. 2. 3 Brev. 136. 12, 12, 32, 35, 37. 33 p. 176. 67 s. 75. 21, 176 p. 526.

Powel denies the distinction between deeds conveying an interest, and those delegating a power, but gives no reason for his opinion. 1 Brev. 322. 31 Brev. 142. 57, 33. 67 p. 326. 3, 30. 301. 2 Vul. 226.

Upon the whole the law under this head appears to me...
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me to be contained in the first branch of the first rule that purchases by infants are voidable only. I say the 2d rule, that they conveyances, leases, deeds, &c. are only voidable when they take effect by delivery, but void, when they do not thus take effect.

This appears to me to be the general doctrine. But perhaps the whole of both the general rules above stated, is to be attended to.

The second seems to me to furnish the true criterion in general, as to conveyances by infants, &c.

Perhaps it ought to be modified by the last branch of the first rule, thus—If the privilege would not be sufficiently guarded by construing the contract voidable when an interest passes by delivery, let it be void otherwise, only voidable. Then as to grants, leases, obligations, &c. made by infants, the 2d general rule forms, I think, the general criterion of the last branch of the first rule forms an exception to it, or modifies it, when necessary for the safety of infants. This is agreeable to Mansfield's opinion. 31 June 1804, CBl. 319, 13th, 33th, 13th.

Thus in the ludicrous case of an infant lady agreeing to sell a Barber 20s. of her hair, it took effect by manual delivery, but was declared void, because it lay to the Barber. 3 Feb. 139.

So, if an infant sells a horse to a bankrupt, it is construed void, or he could not recover the horse without the expense or trouble of payment, &c.
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All agree that executory contracts (as promissory notes, oral agreements, simple bills of exchange) by infants are generally voidable only. Esp. 169. 1 P.r. 698. 3 Bac. 140. 1 Mod. 25. 137. 1and. 131. 1 Pib. 1 Bn. 139. 137. 157. 19.

And upon our grounds, a vote of submission to arbitration is said to be voidable only. 513ac. 336. 133. 393. 3 Bac. 134. 1 Pib. 17. 183. 1 7.

If a contract is void by third persons, a the adverse party may take advantage of its invalidity (as creditors may of a fraudulent conveyance). If voidable, only the party from whose privilege the invalidity arises, the representatives can take advantage. 4 Co. 124. 8 H. 0. 82. 3 Bac. 142. 3 H. 0. 82. 313. 3 Bn. 334. 3 Bn. 337. 3 Bn. 338. 3 Bn. 339. 3 Bn. 340. 3 Bn. 341. 3 Bn. 1884. 6. 1 Vol. 74. 1 7.

3 Vol. 74. 1 7. 3 Vol. 74. 1 7. 3 Vol. 74. 1 7. 3 Vol. 74. 1 7. 3 Vol. 74. 1 7.

If a voidable conveyance is made of real estate, only the original party, his privity in blood, can take advantage of it—not his privity in estate, as a rent man, or reversioner. 3 Bac. 142. 566. 0. 82. 3 Co. 337. 1 Pib. 355.

Voidable contracts may be affirmed by the infant after he attains full age. The confirmations may be express or implied. It is implied when an infant takes leases it continued in possession after full age, that is then liable for rent, even for that which accrued during his minority. The ratifies it ab initio. 2 Bn. 69. 1 Bac. 334. 1 Vol. 73. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7. 3 Bn. 145. 1 Pib. 734. 1 7.
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But a void contract cannot be confirmed: it is void, nullity. E.g. infant leases, take a new lease, and pay of the same interest neither increasing the terms, nor diminishing the rent. The 2nd lease is void. I think a new contract or a rescission of the 2nd one might be made on the 2d consideration, for this is as good as a void as a voidable contract. 2 Bl. 766. 5 B. and C. 332. 366. 6 B. 176. 1 Bl. 328. Doug. 33, 34. Graft. 204. 148. 114. 315. 7 T. R. 83. 10 T. R. 74. 18 T. R. 124. 279. 180. 181. 160. 279. 180. 181. 279. 180. 181.

An infant having reached a full or complete recovery of judicature, conveyance by matter of record may avoid the conveyance by act of error during his minority, but not afterwards. His age can be tried only by inspection by the judge—no instrument to be tried by the country is admitted to the record. Co. L. 380. 3 B. & C. 173. 174. 185. 12 Co. 122. 2. Mod. 229. 12 B. 177. 243. 12 B. 177. 243.

It is said that an infant's conveyance by matter in pais, as by deed, if not matter of record, is avoidable, either during his minority or afterwards. 2 Bl. 766. 5 B. and C. 332. 366. 6 B. 176. 1 Bl. 328. Doug. 33, 34. Graft. 204. 148. 114. 315. 7 T. R. 83. 10 T. R. 74. 18 T. R. 124. 279. 180. 181. 279. 180. 181.

But it seems settled now, that a transportation by the infant cannot be avoided, he after he attains full age for his re-entry is itself not binding. If course, original infant remains only voidable, and may be confirmed at full age therefore a stranger cannot avail himself of this re-entry, because the same of the conveyance is by lease or release. 3 B. & C. 177. 180. 181. 3 B. & C. 177. 180. 181. 2 Bl. 161.

So if an infant makes a lease for years, divided by Lords Mansf. & Hardwicke. in Co. of Kings Bench, that he may not
not avoid it till of full age, Justice Buller observes, he is bound by it, i.e. (he means) during his infancy. 2 T.R. 161. 3 Bac. 137. 4 Co. 380. 3 Bac. 140. Contra 2 Bull. 69.

Sales of personal property by an infant are voidable, at any time, I suppose. 5 Bac. 141.

**Exempt cases in equity.**

Marriage settlement agreements, made by infants with consent of parents or guardians, are in most cases binding in equity. Such agreements being but as靠着 to the principal or primary contract. 1 Brow. 42. 4 3 H. 36. 103. Ch. 152.

Equity assumes a sort of discretionary power over infants; it directs their consciences, according to the circumstantialities of the case, enforcing many contracts which at law are not binding. 1 Brow. 401.

Thus the interest of a female infant in a money portion, has been held to be bound by a family settlement, agreement with her hus. before marriage. 3 H. 61. 1 Br. n. 624. 4 Cru. 49. 1 Brow. 401.

It makes not whether the wife exist. is in possession or depending on a future contingency. 1 Brow. 42. 101. 10. 574. 5 3 H. 605.

So it is well settled that a female infant may bar her right of dower, by accepting under such agreement a settlement by way of jointure; for as the jointure is of personal estate. 5 Br. C. 570. 2 Eg. Ca. al. 101. 2 Brow. 8.

53, 1218. 355. 1 Rob. 4. 271.
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Whether an infant male can thus bind his real estate is said not to be decided. Briscoe says he cannot. Pro. Law, 68. 170. 4 Cruise, B. 14.

It has been decided that a male infant leased or covenanted in the settlement of marriage with his wife, with consent of his parents. 3 Bla. 364. 3 Wils. 249. 2 C. B. 311. 13 Ex. 52.

And it was held by Sir W. Blackstone that if a female infant bound in any covenant or marriage with consent of his guardian for consideration of a competent settlement to convey his inheritance to his husband equity will rescind the agreement. 1 Bla. 263. 1 How. 448.

I think this rule is not law. Sir Hardwicke says it is going a great way. Sir, where the settlement by the husband is for an adequate consideration, the wife leaves after

3rd. 613. 13 Spec. 109. 4 Cruise, 9. 16.

But Sir Hardwicke says her real estate is not bound unless she had a settlement by her husband. death takes possession of it. And that the estate not go into the competence of the settlement. 1 Bla. 211. 16.

The law is also in opinion, it binds that a subsequent ratification after the wife becomes discretion is necessary. 1 Bla. 195. 3 Mer. 410. 5 G. 15. 4 Cruise, 179. 78. contra quod 2. 24 P. 383.

At any rate it seems agreed that such contracts by female infant to bind her real estate is not binding unless made before marriage. 3 P. B. 314. 3 Ack. 86. 10 Bla. 70.

The general question whether an infant can bind his
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real estate by such agreement is said not to be settled, because says he cannot. But it is clear, that if a marriage with an adult, he covenants that his real estate shall be settled on certain uses, he is bound by it. 4 Conns. 215. 3 Me. 345. 1 Sle. 74.

But no agreement made by an infant to settle his or her estate, will be enforced unless it be just and reasonable, and for adequate consideration. 2 Will. 244. 2 Beav. C. 47. 30 B. 115. 1 N. 192. 1 Tal. 69. p. 3. Att. 615.

If an infant capable of making a will bequeaths personal property for payment of his debts, his executors bound in Equity to pay them the he himself would not have been. 12 M the 287. 6 Beav. 146, 7 Beav. C. 17. 1609. 402. 7 Tal. 74.

As law, as before, an infant may ratify his contracts when of age. So in Equity, a contract made by another for an infant, may be implicitly, as well as expressly ratified by him after he of full age. Thus, lands belonging to his children were leased by their mother for 41 years. They having accepted the rent for long time after of age, the lease was established by law. 16oth 487. 9 Beav. 146.

What powers an infant may execute.

An infant cannot execute a general power of attorney, nor real estate for want of discretion. Thus, if a man sit devise real property to an infant, he does with it what he pleases, he could not exercise that power. 22 Will. 28. 3 Beav. 138. 3 Att. 395. 8 Beav. 42. 2 Co. L. 392. 3 Att. 285.

But a naked, special power he may execute. For here he is a mere instrument, having no interest, which can be
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affected, no discretion is necessary. 3 H. 710, 713, 723, 726, 730.

But he cannot execute a power over his own inheritance, because he might thus evade the disabilities which the law imposes on him. 3 H. 710, 718, 730.

It is said in 3 H. no precedent in a Ch. of Law or Equity that a power over real estate may be executed by an infant. This is too unlimited for a rule—general power is meant. 3 H. 710, 718, 713, 723, 726, 728, 730.

The general rule seems to be, that an infant not interdicted, may execute a power so as to bind his principal to the extent of it, if it does not amount to a discretionary power over real estate. 3 H. 710, 713, 723, 726, 728, 730.

And he may execute a general power over personal estate, (the his own interest is affected by it,) if old enough to bequeath it by will—secus nol. 3 H. 742, 750, 753.

And where an infant tenant for life, with power to make a jointure, covenants in pursuance of the power to settle a certain part of the land on his wife for life, the covenant was held good in Equity. Where the power was special. 20 Edw. 2d. 224, Star. 104.

What offices an infant may hold.

The general rule is, that an infant may hold a ministerial office, requiring only skill & diligence—not a judicial one. E.g. Brit. v. Stewards. Guinle v. 3 H. 123, 125, 725, 730, 726. 20 Edw. 2d. 224. 76 Edw. 1809, 1833. 20 Edw. 2d. 224. 76 Edw. 1809, 1833.

The reason given why an infant may hold a ministerial office is, that if he is incapable (as before he attains...
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(6 years of discretion) it may be executed by a justice, 3Bae.125.
24.5.368. 1160. 4:8 Croc.279.368. 2Ael.133. 41Mod.274.

May be then held by any offices, which cannot be executed
by deputy. What would he think to do if only appears 3Dove.369?

It is difficult to say what is the law in Conn. on this sub-
ject. Infants never held offices here. We have not Custodiam-
ibus as in Eng. None but a Deputy can act by deputy.

At C.B. an infant cannot be an atty. for he cannot be
sworn. 3Bae.126.

For a juror for the same reason. I also suppose be
cause a juror acts judicially, 3Bae.126. Mod.328.

May be an atty. at any age—may act at 17.

Regularly an infant officer is bound by his official
acts, as an adult. E.g. An infant Gardener is liable for an
escape. liable in debt, if the escape is upon execution.
5627. a. b. 3Mod.222. 2Inst.382. 3Bae.125. 8Bae.44.1 Mod.369. 2Inst. 129.

How far an infant is affected by the nonper-
formance of conditions annexed to his office or estate.

Conditions are. Express & implied.

1st. By express conditions, infants are bound like adults.
If then an infant holds an estate to which an express con-
dition, imposing a forfeiture is annexed, he forfeits the
estate by nonperformance. This rule is founded on common
justice. 3&2. 236. 2Bae.333. 343. 369. 2Doe.121. 9Inst. 144. 36Bae. 120.
366. 44. Burt. 43.

An exception is, when the condition imposes a join-
ty—ie. a forfeiture distinct from the loss of the estate. In such
cases, the infant is not bound to pay the penalty, e.g. to pay double rent. 3 Dec. 129, 60 & 61 Vict. 200, 80 of 29. 29.

29. Implied conditions may be either at common law or by statute.

Implied conditions at C.D. are either founded on statute or on contract or not founded on any law. 360 & 40.

By the former (regularly annexed to estates) infants are bound, on motives of policy, e.g. guardianship is granted to an infant in fur. For if into the estate by wardship, by mismanagement. 360 & 40, 60 of 233. 80 of 29, 80 of 233.

By the latter (regularly annexed to estates) infants are not bound, (by privilege of infancy) e.g. infant inherits for life, alive or in fur. This is no forfeiture of the estate. So of a homestead. 360 & 40, 10 of 233.

As to conditions implied by statute, the rule is.


But where the Stat. gives merely an entry, but no recovery, infants are not bound by the condition. E.g. gift, alive or not alive. It is no forfeiture of the estate. (as adult) For the Stat. gives the entry only on entry, but no action to recover. 360 & 20, 203 & 233.

19 & 20 Vict. 21 & 22 Vict. 292.
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May not the reason of these distinctions be, that in the former case, where the State gives a right of action for waste, to recover the estate, it rests on the graver. But in the latter case, where the State may enter, the right does not expressly take away the estate.

Infants are barred by Stat. of Limitations unless they are specially excepted. (as in general no actions can be instituted to infants) The State of Limitation are in the nature of conditions annexed to a right. 3 Brev. 123, 512. 1 Dev. 31. 15 Eg. C. ab. 304. Pec. 6 Eliz. 321.

And if an executor or trustee for an infant does not sue within the time prescribed by the Stat. The having power to sue, the right is barred by the Stat. The exception notwithstanding. This rule must relate to cases in which the executor has a right to sue in his own name. E. G. a contract in favor of the infant's father deceased. The rule holds in equity as well as at law. 1 P. W. 339.

In what manner infants are to sue, and be sued.

We come now to treat of the means by which infants may assert their rights, to be enforced as to their duties.


If an infant sue without one of these, the right may plead to his disability, to thus defeat the action. 3 Brev. 148. 9 R. L. 306. Palm. 296. 9 R. L. 287. Calvin 123. 256. 727.
Parent and Child.


These cases are four. 1st. Where he sues his Guardian. 2 B. & C. 644. 6 B. & C. 632, 7 B. & C. 640, 2 B. & C. 629, 8 & 9 B. & C. 674.

2. Where the suit is by a Stranger, the Guardian will not appear for him. The Guardian forbids the suit, he cannot sue at all. 3 B. & C. 629, 7 B. & C. 640, 8 & 9 B. & C. 674.

3. Where the infant has no Guardian. 3 B. & C. 629, 7 B. & C. 640, 8 & 9 B. & C. 674.

4. Where he is entitled to, is out of the case of his Guardian. 3 B. & C. 629, 7 B. & C. 640, 8 & 9 B. & C. 674.

In all other cases, he must sue by Guardian. 3 B. & C. 629, 7 B. & C. 640, 8 & 9 B. & C. 674.

According to some opinions, however, an infant may sue in any case by Guardian or next friend. But will this take away the Guardian's control & authority? Why then is one appointed? 3 B. & C. 629, 7 B. & C. 640, 8 & 9 B. & C. 674.

If husband & wife sue, the infant, not an infant, as far as law is concerned, must appear by Guardian, both may appear by 3 B. & C. 629, 8 & 9 B. & C. 674.

When an infant sues by his Guardian, the latter is liable for costs, it is compulsable to give security for them. (So when the suit is by his next friend.) And he is liable to an attachment or non pro. But the Guardian is reimbursed from estate or settling the age of his Guardianship. 2 B. & C. 630, 7 B. & C. 632, 8 & 9 B. & C. 634. 9 B. & C. 632, 10 B. & C. 632, 13 B. & C. 651, 60, 61. 6 B. & C. 629, 70, 71, 72.
Parent and Child.

According to some opinions, the infant is also liable for the costs, so the Def. may proceed to utter at his election. If that
is so, he is liable for costs, in law or equity. (The note
was revised at C. R.) This seems to be the better opinion,
but it is reserved to be allowed, or not, on settlement of the
Guardianship account. Sta. 708, 2 Co. 33, 1 Bulst. 108, 6 Co. 166.
Co. 2, 127, 360, 61.

If costs cannot be given, those awarded to an infant
Def. would be error. 2 Sta. 127, 2 Guy, 2 Co. 293, 3 Barnes 3, 105, 128.

Infant Def. is clearly liable for costs, when judge goes
against him, he is always supposed in fault. Sta. 127, Guy 106.
1 Bulst. 184, 115, 140, 223, 226.

It is said that the Guardian or minor of an infant Def.
is liable to costs. (Dee.) If so, he is liable in the first in
stance. E. 36, 164.

In Eng. both the Guardian and friend of the infant
must be admitted to prove appear by the Ct., or by writ out of Ct.,
that the infant may not be injured by having his interest
committed to improper hands. 3 St. B. 145, 1 Sta. 304, 709.

In Corn. when the suit is brought by a Guardian
over Ct., take care, never inquire into his qualification. But if
he is not friends, he is to be admitted by the Ct. the act about it has
not been sufficient. Dee at present. Jeffry in Dec. 14, Pep. 61, 419.
Parent and Child.

Any one may bring a suit, as next friend, for an infant, even without his consent, (for he does it at his own risk) i.e., may commence the suit, but may be disqualified by the Ct. 1Bac. 650. 3 H. 149. 151. 167. 4 J. & K. 16. 5 H. 511. 103. 464.

If an infant and an adult are parties in an action by them, both may appear by atty. for the suit is in altera ductus, but the adult may appoint an atty. for both. But if they are sued, the infant must appear by guardian. 3Bac. 88. 185. 1Reg. 258. 2Esq. 878. 2846. 602. 2Laws. 922. 2 Mot. 102. 7Bally. 232. 600. 1449. Scra. 784. At. 318. 9 Mot. 236.

So, it seems, if an infant, sole eject. purs alone, he must appear by guardian. 3Bac. 150. 2Esq. 520. 464. (Cant. 123. 2 L. & H. 223.)

N.B. not, if advert. present 102. 3.

II. How to be sued. An infant defendant always appears by his guardian, not by processes only, for the State. 102.

Winston do not extend to actions at infants. The pleas issued by the Guardian. 3Bac. 148. 2Laws. 225. 250. 7Bac. 680. 280. 969. 3Bac. 890. 92. 128. 2 Mot. 251. 7Mot. 255.

As in any action to the husband [the wife being an infant] she must appear by guardian. This being the next friend does not enable him to act for her as def. Otherwise, she is a de fide. There is some doubt on this rule, but do not find it any where denied. 3Bac. 150. 1Mot. 258. 2Mot. 185. 7Bac. 878. 186. 91. 160.

If an infant having no guardian is sued, the Ct. usually at the instance of the pty, must appoint one, prove nata, calling guardian ad litem. This is generally some de fide. at the bar. 3Bac. 149. 180. 364. 2Sc. 280. 280. 280. 280. 133. 2 2Scr. 125. 3Sc. 627.

Ex.
Parent and Child.

But if the infant has a Guardian, the Ct. cannot appoint one; at least, until the former is out of the reach of process, or has mismoned himself. 3Bac. 150. n. 1St. 94. 8St. 193.

The process does not abate, because the Guardian is not summoned. Time is given to cite him to appear at least so in Conv. Title. Plea to

(By the Guardian in the general rules is meant, in eng.) he appoints for the infant, suits in general, (not for his person or estate) by letters patent, out of Ct., or one appoints by the Ct., in which the suits arise. Hereafter.

6B. 109. 6B. 187. 2B. 189.

If an infant appears by letter, if judge is given as heirs, it is erroneous (in fact, not in the original record. But if error coram nobis his. (generally issued by the Ct. which rendered the original judg. 3Bac. 149, 150. 461. 640. 971. 511. 12B. 215. 1Dec. 68.

Should the assignation of the error conclude with a verification, or to the Country? It seems with the for. men. 1Bac. 92. 6B. 350. 904. 1Bac. 215. 1Dec. 51.

So if his Guardian is not cited, if judge goes to him by default, it is erroneous. Part. 116.

So, it seems, if an infant appears by letter, if judge goes to him, it is error. 3Bac. 130. n. 640. Pt. 44.

But by Stat. 21. 14B. Ct. if judge presides for him, after verdict, the party opposed cannot reverse it. 3Bac. 149. 150. n. 640. 2Bac. 580. 1Bac. 193. 1Bac. 97.

If an infant suits with others, who are adults, appear.
by any entire damages are given to them, in Eng. the whole judge is erroneous. 1. B. & C. 278. 97. 2. I. 399. Col. 776. 886. 366. 367. 978. 428.

The rule is otherwise, if damages are severally assessed, it seems more probable that judge is erroneous as to the infant only. For this is substantially as if there had been several distinct judgments. 820. 38. 39. 186. 328. 4. B. 220. 222. 1. Col. 763. 776.

And in B. & C. it has been settled, contrary to this, that where adults and infants are sued together as sureties (the guardian not being cited) the judge, as there is erroneous as to the infants only, to the damages were entire. The rule is reasonable, for each is liable for the whole, not as partial contribution only, but in case of contracts. Part. 116.

In Eng. if an infant & adult join in a suit, it may be recovered as to the infant only. I suppose because their interests are distinct. This join at the in for an infant is merely a common appeal once made, except it be as matter of record. Falls within the rule that where an infant & adult contract, the latter only is bound. 2. B. & C. 278. 978. 366. 399. 115. 124. Moore 365.

2. Dech. 108.
Parent and Child.

How far the Law regards Infants in Womb as Men.

Infants unborn are to many purposes, considered as in specie in several cases now, in which they formally were not. 113 El. 130.

The killing of an unborn child is no murder, but a great misprision (i.e. highest sort of misdemeanor in its limited sense). 31 Bac. 665. 413 El. 198. 1 Haw. 121.

But if the child, having received a mortal wound or injury in utero, is born alive, at the end of the wound to within a year and day after the injury done, it is murder (i.e. it seems it may be murder). 413 El. 1938. 1 Haw. 221. 3 Inst. 39. x. 1 Hale 493.

An infant in utero may inherit, but till the birth, the interest descends to the heir presumptive. Doug. 38. 413 El. 208. 108 El. 686. 8 Cau. 60. 7 Col. 1. 6 Goo. 39. 295.

An unborn child may take by devise as p. Sam. 413 El. 208. 413 El. 686. 8 Cau. 60. 7 Col. 1. 6 Goo. 39. 295.

An infant in utero may take by devise as p. Sam. 413 El. 208. 413 El. 686. 8 Cau. 60. 7 Col. 1. 6 Goo. 39. 295.

So as to a Legacy. Sidney. 1 Bl. El. 386. 10 Bl. 180. 13 El. 108. 2 Bl. 67. 225. 100 W. 485. 2 Cau. 25.

Bom. 114. 113. 7 El. 386. 6 El. 49. 51.

So as to a Legacy. Sidney. 1 Bl. El. 386. 10 Bl. 180. 13 El. 108. 2 Bl. 67. 225. 100 W. 485. 2 Cau. 25.

In the distinction, see title. Devises &c.

In 2, 23, might not such child take by devise as well as by will. Perhaps to commence in future. 1 Bl. 24.

The estate descends to the heir presumptive in being till the birth, for the child may be born dead. 2 Med. 9. 10 Bl. 486. 2 Cau. 25. 108 El. 114. 1 Bl. El. 386. 6 El. 49. 51. 1 Haw. 135. 100 El. 177. -
Parent and Child.

Such gift may also under the Stat. of distributions take a distributive share of the personal property. 26th 446. 29th 2, Act 717.

So may take under a will (or other treat) for raising portions for such children as A. shall have living at his death. Posthumous progeny habitus. Act 7, 35.

So under a bond in favor of such children (despars).

2, 35th 7, 722.

An injunction not waste lies in behalf of such a child for if the law allows all gifts to minors to inherit, it certainly shall take care of the inheritance. 2, 7, 35th 10, 11, 2, 35th 7, 7, 722, Act 117.

Under Stat. 12, 7, 11 an unborn infant may have a testamentary guardian, i.e. an appointed by the father, by his own will. 7, 35th 7, 722, Act 117. 35th 7, 722, Act 117.

May be an exec. but cannot act till 17, and if two are born, they shall be co-executors. 35th 7, 722, Act 117.

2, 35th 5, 7, 29, Statutes of 7, 725.

So if one decease or be beneath to the unborn child, if 2 or more are born, they shall take jointly. 35th 7, 722.

Of the relative rights & duties of Parents & Children.

The inquiry under this head, renders it necessary to consider the distinction between legitimate & illegitimate or bastard children. For these rights & duties are different, when refers to these two classes of children.
Parent and Child.

First, then, who are legitimate? Who are bastard children?

A legitimate child is defined to be one born in lawful wedlock, or within a competent time afterwards. 136.466. Esd. 244. bro. 584.

That is, no other than a child thus born, can be legitimate. But it is not true, etc. And so that every child born, etc. 136.466. 240.660. 495. 136.467.

An illegitimate child is defined to be one begotten out of lawful wedlock, or within a competent time afterwards. 136.464.

This definition, I conceive, is incomplete. Suppose that after the conception, the parents intermarry, that the father dies before the birth. Is not the child legitimate? He is according to the above definition a legitimate child.

My definition of a legitimate child is: one begotten out of lawful wedlock, not born either during lawful wedlock, or within a competent time afterwards, or neither begotten, nor born in lawful wedlock, nor born within a competent time afterwards.

The definition before given of a legitimate child amounts to only this: that if a child is born during lawful wedlock, the presumption is very strong that he is legitimate. 136.467.

Thus anciently no other proof of illegitimacy was admitted in such case, than such as rendered legitimacy in-
Parent and Child.

It is impossible (proof of improbability was not sufficient) and the fact could be proved only in two ways—1st. By showing
improbability of access to the wife by the husband. Co. 2 3, 4, 5, 6, 74, 76, 94, 113, 123, 131, 132.

2d. by showing his impotency. But the rule is much altered. (Post. 34.)

1st. Formerly, no other proof of non-access was admissible, than that of husbands' absence, extra quattuor
menses, from the time of conception to the birth. Absence within the realm was not provable. Co. 2 44, 3 35.

2 Bac. 3 11, 122, 4 353. 2d. Co. 35. 4 433, 5 Bac. 3 11, 122, 135, 3.

If the husband had been absent for any length of time, that of his wife's having a child, however soon after his return,
the child would have been legitimate, hus. not being impotent.

So if after absence beyond three for 20 years, he should return to marry a woman, the child be delivered next day,
the child would have been legitimate. Co. 2 44, 3 35, 4 353.

2d. As to husbands' impotency—formerly this fact
not be proved, otherwise than by want of age. Bac. 3 11,
1 35. 2. 35. Co. 2 44.

According to some, the age of impotency is twenty
under 14. According to others, the age of 18 is the limit. Bac.
3 11, 4 357, 5 2 44, 6 3 35.

The evidence admissible under these rules, is suppo-
sed to prove improbability of legitimacy.

No similar rules in Codex. if the old ones are now
established in England.

1st. Non-access may be proved by other evidence than
Parent and Child

that of absence, extra question maria. The question is left to the jury, upon the special circumstances of the case, they may find non-accept, tho' the host has been within the reach. Co.1. 244. 30. 2755. 6. 745. 469. 319. 225. Esp. 489.

2. Impotency may also be proved by other evidence than want of age, as by husband's state of health. Esp. 483. 314. 490.

These rules also seem to admit no other proof of illegitimacy than what amounts to an apparant impossibility to Esp. 483. 314. 490.

It is lately settled, that other evidence than that of non-accept of impotency is admissible to prove illegitimacy, e.g. that the mother cohabits with it, that the child was reared as a bastard, called by the name of A. Point. mother took his name &c. This goes to prove in probability only, it furnishes no direct proof of non-accept impotency. Co.1. 394. 478. 314. Esp. 483.

The issue of a marriage, which is null at any rate, is legitimate. It is case of a total divorce for causes existing before the marriage, rendering it unlawful. 10 Bl. 435. 458. 440. Esp. 235. 314. 314. 1 Co. 337. 260. 7. 66.

But the legality of a marriage, not absolutely null, can be called in question, only during the lives of the parties. (Found on the same reason, probatable cause.) Upon this it is found the marriage, that issue cannot be bastardized after the death of either of the parties. (i.e. issue born during lawful and cohabit.) 1 Bl. 440.

A child begotten & born after divorce a mens et
Parent or Child.

There is presumed to be illegitimate otherwise in case of voluntary separation. The presumption in both cases may be rebutted. 1 Bl. 449, 591; 10 Abs., 212. 87, 497; 12 Abs., 491. 1 Bl. 418, 497, 544, 561, 681, 682, 683.

Where the question of legitimacy depends upon that of access, the wife is not admitted to prove non-accept. This rule is founded in decency, morality, and policy. Others may prove it but she is admitted to prove her own in continuance from the presence of the case. 1 Cop. 682. Bull. 112, 69, 98, 415, 662, 682.

She is a good witness to prove the time of the child's birth, the fact of marriage. It is the beast. 1 Cop. 692.

So declarations of the father or mother as to the child being born before their marriage may be proved after their death. This is not bastardizing the born during wedlock, the credit of disputed declarations is left to the jury. So an answer in Ch. by either parent is good evidence. 1 Cop. 594, 5.

So tradition, common reputation, or entry in a family Bible, inscriptions on a tombstone, or any evidence as to the time of a child's birth. 1 Cop. 674. 1 Bl. 50, 512, 112.

Bull. 561, 231, 279, 597, 783.

By the civil & canon laws, a child born before marriage is legitimated by a subsequent intercourse of the parents. Not so by the C. & T. since soon. 1 Bl. 434, 684, 685, 686, 687, 688.

So, all children born of a widow so long after her husband's death, that by the usual course of gestation they cannot be his, are bastards, for they come not within the rule "born within a competent time after marriage." 1 Bl. 684, 685, 686, 687, 688.
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What is the "compelling time," mentioned in the definition (i.e., within what time after the husband's death, a child must be born to be legitimate) the law does not exactly ascertain—indeed it belongs to obstetrics, rather than Law—Col. 456, Cro. 541, Esp. 485.

According to some opinions, 9 solar months, or 10 days, are the usual time of gestation—i.e., 280 days, allowing 50 days to a month, averaging the months of the year, about 285 days. According to others 40 weeks, = 280 days—Cal. 456, Cro. 538, Bac. 312, Cod. 1234 n. 12, Col. 456.

Coke says 9 solar months, or 40 weeks are the ultimate or farthest limit—this is incorrect, yet 9 solar months seem to be the usual time. Cod. 1234 n. 12.

It is agreed that the usual time may be shortened or prolonged by various causes. Bac. 312, Cal. 456, Cro. 541, Col. 334.

The rule is that a child born within the usual period of gestation, computing from the husband's death, is legitimate—i.e., present in the womb during the period of Col. 456, Cal. 456, Cro. 536, Bac. 312, Cod. 8.

But one born 9 months + 10 days after, has been held legitimate, the mother having suffered much hardship. So, one born 9 months + 28 days after, under special circumstances. Bac. 312, Cro. 541, Bull. 115, Esp. 485.

If a widow marries immediately after her husband's death, a child is born within such time, as that according to the usual course of gestation it might be the child of either husband. The child may, when of the age of discretion, choose either of them as father. — Col. 456, Cod. 8, Bac. 312, Col. 334.
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It is said that one may not be bastardized (i.e., proved to be a bastard) after his own death, because personal defects die with the person. 1 Bac. 313. 7 Co. 46. 9 Tch. 268. 16 Bac. 315. 245.

But this rule holds only as between bastard and a mulier puissac, i.e., between a son born before the valid marriage of his parents, and the lawful issue of the marriage. (Bastardizing by imputing a void or voidable marriage is a distinct thing.) Esp. 486. 5 Blk. 120. 3 Dov. 410. 11 Bac. 315. 245.

If then a bastard issue enters upon his father's estate, he is prized, his issue shall lose to the exclusion of the mulier puissac. 1 Co. 44. 9 Tch. 268. 16 Bac. 313. 245.

But to exclude the mulier puissac, there must have been an interruption of possession by the bastard issue, to a descent to his issue. Hence, during his life, the mulier puissac may evict him. So if his issue is unknown at his death. 1 Co. 244. 11 Co. 824. 11 Bac. 316.

Rights and Capacities of Bastards

A bastard's rights are such only as he can acquire for he can inherit nothing. Being called mulier puissac, or filius populus. It is also said that he is not of him to any one, except his own issue. 1 Bl. 388. 245.

But the maxim, that he is nothing filius, does not hold to all purposes. E.g., not to marriage within the prohibited degrees. 5 Blk. 268. 9 Tch. 366. 16 Bac. 405.

For it cases, in which the law requires the consent of either parent, to a child's marriage. 17 Bl. 98. 605.

Indeed it seems to apply only to the law of inheritance, as Justice Fuller says. (17 Bl. 105.) 11 Bl. 405. 605.
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A bastard is quasi nullius filius, because he cannot inherit it. Sir 5.188, C. 122. 1804. 389. 1804. 329. 15. 212.

A bastard has no surname by inheritance (as legitimate issues have) but may acquire one by reputation (continued for some time) 1804. 389. 123.

And he may purchase by his name, thus acquired, as by the name of A. S. (see title "Devises") C. 12. 110.

So by the name of A. S. the son of S. he having gained the reputation of being the son of S. C. 12. 314. 338. By 314. 229. 12. 310. 1804. 389.

But by the description of "issue" it seems he can never take. I suppose because "issue" is generally used as synonymous with "heir of the body." He cannot be heir in any sense. C. 12. 6.

I think this is going too far, so that the rule is too general. For "issue" and "heir of the body" are sometimes words of description.

But he cannot gain a surname by reputation, nor to the reputation of being S. S. but by continuance of time. C. 12. 314. 1804. 338. 123. 110. 65. 529. 1804. 389.

If hence of a contingent remainder is limited to the eldest son (whether legitimate or illegitimate) of J. S. (who has no son) the afterwards has an illegitimate son he cannot take, for at his birth he has not the reputation of being the son of J. S. and it is uncertain whether he ever will. C. 12. 65. 65. 529. 1804.

But it has been said that such a limitation to the
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eldest son. I will enure to her bastard some afterwards born, because he acquires the denomination of the child, he being born of her, so that there never is any uncertainty as to the person. If there were uncertainty in the person, it is only objection, it seems obvious in this case, that the limitation seems good. [Bac. 209, Boylan. 306.]

But is it not limited to too remote a contingency? allowing that there is no uncertainty as to the person, when born; is not the futurity birth of a bastard itself potential? Hargrave leaves it in doubt; the from his note, the better opinion seems to be the limitation. [Bac. 170, B20 E. 510. 1806. 529. Cod. 26.

A bastard can have no heirs, except of his own body for all other kindred must be traced thro a common ancestor, he has none. [Cod. 26. 186. 459.

In Eng. a bastard's settlement is regularly in the parish in which he is born. Derivative settlement is a species of inheritance; by legitimate children only. If the child lives with the mother, if nurtured in another parish, still that in which he is born must support it. [Bac. 362. 3. 459. Cod. 427.

There is an exception to the rule, which a Froidish practiced on the parish, in which the child is born, i.e. if the mother is sent by order of justices to a parish to which she does not belong to be there delivered. In this case, the child is settled in the parish, from which she was sent. [Bac. 459. Cod. 121.

So, if she goes to beg in such parish, is apprehended for...
Parent as Child.

In vagrancy, the child born there, is settled in the parish to which she belongs. 136. 43.

The maxim, that he is nullius filius, conceives applies as far in Con. as in Eng. except that the mothers place of settlement is here transferred to the child. 136. 45. 46. 47.

The Duty of Parents to Bastard Children.

The duty of parents to such children, consists chiefly in their obligations to maintain them. As to the mode of enforcing this duty in Eng. see 136. 55. 56. 136. 64.

The relaxation of parent to child is not recognized as to purposes, party, civic, yet as to certain natural duties it is. 136. 56.

The law in Eng. on this subject depends upon the State.

In Con. as in Eng. both parents are chargeable for bastards support. 136. 45. 46. 47.

As to the mode of proceeding in case of bastards, no statutes or municipal regulations in Con. have suited in these points for which see Swift's System.

If the reputed father whom part is found guilty, the judge is that he finds guilty to or sends Committee. This judge in Eng. is called an order of filiation. 136. 54. 55. 56. 47.

If the woman dies a married before delivery, or suffers an abortion, the debt is discharged. 136. 45.

What the mother has sworn, or her examination before the Magistrate is good, even in Eng. after her death, to support an order of filiation so in Con. 37. 84. 56.

In Eng. on a prosecution by the Town or parish officers, 136.
Parent and Child.

The mother is not compellable to testify who the father is, till after a month from her delivery. 1 Bl. 458.

Point of these prosecutions, was originally by the Ct. This is still the practice. But it is said, that it may be by jury. (Judge crop.)

Reciprocal rights and duties of parents and legitimate children.

1. The duties of parents to such children, consist principally in three particulars. Maintenance, protection, and education. 1 Bl. 446.

1st. The duty of maintenance is founded in natural law. Those who have given life, ought to preserve it as long as they are able. This duty is reciprocal. Consists in providing necessaries. 1 Bl. 455.

The obligation of parents to support infant children, when able to do it, is absolute, unconditional. Infants, in judgment of law, are never supposed able to support themselves. 1 Bl. 449, 14 Cr. 204, 14 El. 263, 337, 12 H. 160: 3 Will. 397, 2 Com. 200.

This duty is enforced in Eng. by Stat. 13 El. 6 in Com. by a Stat. 1 Bl. 448, 1 Stat. 222.

This obligation under these States, extends to grand parents as well as to parents. And it does not cease with the infancy of the children, but grand-children. For by these Statutes all persons who are poor, incapable, or unable (this want of understanding, age or infirmity) to support themselves, shall be supported by their
Parent and child.

Parents, or grand parents, of of sufficient ability, 1 Bl. 449. 10. Sc. 234. 1 Bl. C. 232. 3. Stra. 190.

But parents are not bound to support their adult children, if the latter are able, by labor or otherwise, to support themselves. 1 Bl. 449. 1 Scr. 230.

On the other hand, all the same obligations under our law, rests upon children of grand children, the parents of the children being unable to support themselves. 1 Bl. C. 232. 3. Sc. 190.

In Eng. children are under the same obligation. But, it seems, grand children are not. Stra. 190. 2 Bulst. 345. 3 Sc. 232. 1 Bl. 434.

The obligation to found here, in parishes, in Eng. to support paupers, is only secondary. Relations are liable in first instance. Stat. 242. 183.

Grand parents are not liable, if the pauper has able parents, nor grand children, if children are able. Suppose the parents are able to afford only a partial support, are not the grand parents bound to contribute, too, of the grand children, etc.

If in Crown, a man marries a woman having children by a former marriage, he is bound to support them, says Judge Litt, according to the received opinion, during infancy, whether or not she was able, i.e., if he is able, he is entitled to their service. This is the humane, but I think it is not law, at any rate, his obligation to cease with the coverture. 2 Bl. 252. 381.

In Eng. a man is not bound to support his wife.
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Children, by a former marriage, even during coverture, no question is made as to the wife’s liability, at the time of the marriage: 2 St. R. 25d. 1164. 1268. 119. 1310. 592. 296. 331. 341. 1267. 296. Byst. 341. 296.

In the Stat. 63 Eliz. § 3 the only natural relations are not our Stat. thus confine itself. 3 Fre. 19a. 992. Byst. 114. 3etc. 792. 1292. St. 228. 296. 296. 350. 1292. 155.

And maintenance by the second husband is a duty considered for a promise by the children, when they attain full age, to repay the expenses. 4 East 26. 1164. 592. 297.

But is not this the true principle (for I think it just) that the husband is bound (being of ability) if the wife was; for he takes her children once, otherwise not? 1292. 350. 1292. 155.

And if so he ought to be liable here, unless the wife was; he ought to be liable in Eng. if she was. 1292. 992.

Clearly a man is not bound, either here or in Eng. to support his wife’s parents, in notions of domestic policy. But ought not her property to be liable, if she was? 1292. 1992. Byst. 341. 392. 1292. 361. 1292. 155.

So one is not bound to support his son’s wife, after a divorce a mensa et thoro. This rule seems to imply that he must support her before such divorce. 1292. 992.

Suppose a parent has parents, or children, able to support him, who are liable? Parents or children. I think both equally.

But this duty to support children does not disable any one to disinherit his children by will, either in Eng. or here. There is little danger of an unjust disinheriting by
Parent and Child.

by a parent, to take away the power to be to break sound law on the subject. 1 Bl. 449. 589.

By our Stat., if a man dies without issue, leaving no widow, who is unable to support herself, and has no relations bound to support her (at supreme), his estate in the hands of heirs illegitimate is charged with his support during widowhood. 3 Bl. 384.

In the mode of enforcing the duty of maintenance, in Eng. see 1 Bl. 449.

For the mode in Can. see 3 Bl. 382. 3. 3. 2. 60. 168.

In action lies in Can. for necessaries furnished to minor children. 3 Bl. 382. 3. 3. 2. 60. 54.

20. Protection. The duty of providing children is also founded on natural law, but is rather permissive than enjoined by municipal law. 1 Bl. 450.

Thus it is permissibly a parent to maintain, adopt a child in law suits, without incurring the guilt of maintaining quarrels (or "maintenance") 1 Bl. 452. 1 St. 584.

So he may, justly, a bailing in defense of his child, i.e., may use the same violence, which the child himself might. 1 Bl. 452. 1 St. 581.

In a case of manslaughter in defense of a child. 1 Bl. 452. 1 St. 583. 3rd. 296.

And these privileges are reciprocal, i.e., a child may act in defense of a parent. 1 Bl. 484.

32d. Education. Parents are bound to give their children suitable Education. It is a natural duty. 1 Bl. 485.

There is no provision in Eng. to enforce this duty, except
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that poor children, may be bound apprentices by the overseers & 2 justices. If that parents are forbidden (under no penalty) to send children abroad, to be educated in the Polish
religion. 183.426.481

For the regulations in born, see Stat. C60: 123.

The duties of Children to parents consist in their obligation to obey & be subject to them, during infancy, to support them when poor, & to protect them when necessary. 183.453.4.

II. As to the Rights & powers of parents

1. The parent has a right to correct his minor child, in a reasonable manner. This right is said to be founded in the parents duty. 183.452. 184.150.

But if the parent exceeds the bounds of moderation, it may be influenced by malice; the child may have an action by process amon.

It seems that there must be unreasonable correction. or malicious to subject the parent. 184.245. 161.

For the authority being in a great measure discretionary he is not liable, for slightly exceeding the limit prescribed in the rule, nor for a mere error in judgment as to the proper degree of correction, or this is a distinct family government.

This power of correction may be delegated by the father to a master (a schoolmaster). the latter is then, as to his duties, in loco parentis, but may not delegate the power to a 3d person. 183.453.
Parent and Child.

2. The consent of the parent to the marriage of a child under age is also necessary by the first two four own 136. 452.

3. A father has no power over his infant child's estate, otherwise than as trustee or guardian, to account when the child is of full age or as the case may be below. 136. 452. 3.

A minor is entitled to all the property he acquires, otherwise than by service. E.g. By gift, grant, legacy.

4. The father is entitled to whatever his infant child acquires by service—so he is a servant to his father. 136. 453. 246.

Add a gift to the child of his earnings would not be good, if it be to defraud creditors. (Judge Crane.)

Hence the parent is entitled to an action for goods.

If any one who has beaten or otherwise injured his own child, so as to occasion a loss of his service, as in case of a servant. Esp. 658. 660. 113. 136. 455.

So for enticing away one's child. Chap. 223.

So if an infant has been beaten or injured, he is entitled to the damages for the immediate personal injury. Esp. 658. Esp. 646.

If the parent has incurred any actual expense in consequence of the injury done to his child, as in the cure of a wound, he may recover that also in his action, if specially laid as a ground of damages in his declaration. 3 Play 259. Volt. 18.
Parent and Child.

So an action lies for a parent, & anyone who has seduced his daughter, made her pregnant, for qui pro quo reasons, at least. The loss of service is said to be the gist of this action: it was certainly the original, but not generally considered as the nominal ground of the action, i.e., as that without which no action lies. 2 T.C. 1037, 1850.

So decided by the Supreme Court in a suit by Guardian for taking away his ward. 2 T.C. 320.

The expense incurred by the parent during her illness, may also be recovered, if specially laid. Would not this alone support the action? 3 T.C. 118, 1870.

In a case in Barr. the daughter aged 23 years was not provided for by her servant, nor was it stated that the servant was obliged to support her. 3 T.C. 187, 1878.

Yet the loss of service is not the rule, nor the principal ground of damages. But the injury, or grace occasioned to the family is. For 1. Evidence of the slightest service is sufficient, as if the only milk came to 3 T.C. 105, 1868, 65, 1868. 2d: In action lies for damages, even the child in a pecuniary view is a burden, & no first to parent. E.g. In case of a nobleman's daughter who only lives his cravat once a week. P. 308.

3d. The character of the daughter determines in a great measure the quantum of damages. Evidence of her intimacy with other men, goes to mitigation of damages. 2 T.C. 472.
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4. In cases of this kind, have part withstanding acts of service, when there was no solicitation, as in case of a prostitute, (Justice.)

So in Eng. if the father has permitted the dept. when a married man, to visit the daughter, (Lev. 20:27.)

But still it has been held both in the older and modern cases, that the action does not lie, unless the daughter is, in some way proved to have been a servant to the parent. (Brom. 1333. 31 Hen. 73. 192. 165. 166. 167. 168. 171. 180. 199. 200. 210. 246. 257. 263. 270. 296. 370. 374. 376. 378. 379.)

Sir Kenyon has lately decided that she not be proved to have actually served her parent, but that it is enough if she lives in his family, as he is then deemed a servant, (Suppose.) But I think the rule does not apply to adult daughters only to minors. (Lev. 65. 275.)

The age of the daughter is not material, if she acts as servant to her parent. No contract of service is necessary. If under age, she is an servant of course. (Conceive.) And if she serves another without wages, or receives them herself. (20.) 21 Hen. 3. 270. 146.

It is said by Sir, that the daughter of the resident in her father's house at the time of the injury done, (The city Bar.) I think the rule does not cover in all cases. As if she is an infant at a boarding school, or having another family for the benefit of the parent, (Lev. 45. 31 Hen. 187.)

If an adult, this may perhaps be necessary, because she: not otherwise be a part of the case in (31 Hen. 187.)
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It is also said by Eph. that he, his heart in vain, she must be a minor. But neither he nor any other judge is any authority. An action of the case of an minor furnishing no ground to believe that he did, 1 John. 18. 7.

The action also lies for one standing in loco parentis, as an agent, or a master, 1757, 47. 58.

An action for seducing the person of a child is substantially an action on the case, for the damages are consequent. 1st. John. 18. 2. 1782, 47. 117. 175. 67. 10. 167. 8. 16. 7.

But in Eng. (Thomew, not why.) The action is, in form, baste 175. 67. 10. 167. 8. 16. 7.

But where the defendant enters the house, the pleading for breaching it entering his house, it being debauching his daughter as aggravation, i.e., as a ground of consequential damages. Here the action is both in substance of form, breach of the gist is the unlawful breaking entering the house, 27. 15. 2. 10. 1032. 9. 20. 58.

But if the action of trespass is brought, a license to enter the house defeats it. In Eng. it must be pleaded, being a justification, as a bar to the action, but cannot be pleaded under the general issue. But see 175. 67. 10. 167. 8.

According to Super Swift, a license is a defense, in this case. So he says the Subsequently makes the defendant's power absolute, 22. 11.

This opinion is clearly incorrect. If the license to enter was given by the owner, the action.

[Additional text not clearly visible due to image quality]
Parent and Child

Rising an Estacy entering to distress & a traveller entering an house without permission other committing a trespass.

Cited: 191, 260, 146, 446, 967. Exp. 339, 403. 2 Bl. 8, 12, 15, 5 Dec. 181, 12, 16, 17.

It has been made a law whether an action will lie for taking away the wife's child without alleging loss of service or other special damages? E.g. Trespass or filio capta? It seems it will lie for the parent has an interest in the child to provide for his education. In humanity, policy, it is all concurs to give a remedy. 3 Bl. 186.

The authority of the Father ceases, when the child attains the age of 21. for he is then emancipated. 1 Bl. 453.

The mother as such, has no authority during just life, when she corrects, she is supposed to do it with his consent, I suppose. This rule amounts to little, only gives him paramount authority. 1 Bl. 453.

Know for a parent is made liable by the acts of his children.

1. The is liable for his tools (by being minors) under his care to the same extent as a master for the tools of his servants. This is on the ground that he is their master.

2. So he is no otherwise liable on their contracts, than as a master is, for those of his servants, except in the case of contracts for necessaries.

Under our Stat. of a minor or servant, being allowed to contract for himself, by the parent 1 makes a contract, the parent is bound. St. C. 273.

3. In certain cases under our Stat. the parent is obliged to pay fines inflicted on his infant children.
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case of Sabbath breaking, omitting to work on high ways, including military duty. St. c. 228. p. 308. q. 37.

Different kinds of Guardians, their rights & duties.

A Guardian, is a temporary parent, i.e. a person in loco parentis, during the ward's minority. There is much confusion in the Books, on this subject. Morgans Notes on S. 12. is the best treatise. 1 Bl. 460.

In Eng. the Guardian has the charge of both person & estate of the ward, i.e. both are under the care of one guardian but the person may be under care of one guardian, as the (Roman) tutor, the estate, under that of another, as the curator. 1 Bl. 460.

There are: Guardians by C.B., by Stat., by Custom.

1. There are 4 kinds at C.B. - 1st Guardianship in Chivalry. This was used only when an estate was held in Knight service, trusts in an infant by descent. It was abolished in Eng. at the restoration. It was never known to our law. 6 Bl. 34. 2. Bl. 493.

2. Guardianship by nature, is exercised by a natural Guardian. Some Books mention this kind as if confined to the father. Some as if confined to parents. 3 Bl. 385.
6 Bl. 45. 2. 3. 24. 415. 1 Bl. 461.

By the C.B., however, the father, mother, or any other ancestor may be Guardian by nature. The father's claims include all others. The mother is second to. All among more distant ancestors, if they have an equal claim, as of the infant is heir apparent to his paternal or maternal Grandfather.
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Father, prior in the possession of his person, seems to decide the preference. 3 Com. 415. 36 Co. 32. 38. 36 Co. 38. n. 12.

This kind extends to the person only—not to the estate. 36 Co. 38. n. 12.

It extends only to the heir apparent of the ancestor, not to the other children. It admits of De. thus for whether in Eng. the daughter can be the subject of it, or the heir presumptive. 36 Co. 38. 36 Co. 38. 36 Co. 38. n. 12.

In law, all children are heirs apparent, by trust extends to both the person and estate.

In Eng., the father may supersede the claim of other ancestors by appointing a testamentary guardian. 3 Co. 38. n. 12. 38. 41. n. 14. by Stat. 12. 18. 11.

If the father was natural guardian (not as to any other ancestor) the person of the ward belonged to him in exclusion of the right of the guardian in chivalry. 36 Co. 38. n. 11. 36 Co. 38. 36 Co. 32. 36 Co. 32. 36 Co. 22. 36 Co. 5. 114. Moore 335. 36 Co. 415.

In Eng., indeed the parents are still natural guardians of all their children. By this is meant, not that they are natural guardians at law, but so designated by the law of nature. When there is no one provided by positive law, the Chancellor, in his discretion, settles the guardianship on the Father, or when he dies, upon the mother. 36 Co. 38. n. 12.

3. Guardianship in socage tenure (like that in chivalry) from tenure, it takes place only where an in-plant under 14 is seized of land, derived by descent photonaly socage tenure. 13 Bl. 461. 36 Co. 37. 38. n. 12. 36. 37. 17.
Parent and Child.

It belongs to the nearest of the infant's kindred, to whom the land cannot possibly descend, that there may be no temptation to an abuse of trust. 1 B. & C. 461. v.

Among claimants there is no distinction between the whole & half blood. If 2 or more kindred are in equal degree, priority of possession decides; except that among brothers & sisters (of half blood, I suppose) the eldest is preferred & among lineal ancestors, males. Cod. 85. n. 10.

The guardian may lease the wards estate till he is 14. or may maintain ejectment in his own name. 3 Bown. 413. 2 Rol. 46. 6 Geo. 3. 2 B. & C. 122. 2 B. & C. 883. 9.

This guardianship extends to the person, to the personal estate, to incorp. heredit. & it seems to personal property. Because it is said, the custody of the person draws after it that of every species of property. But this is in the supposition that there is no paramount guardian. Cod. 87. 88. n. 13. 1 Rol. 60. 60. Hurl. 17. 2 Bown. 416. Vaugh. 186.

This trust is not assignable like that in Chivalry, for it was intended for the infant's benefit. Cod. 90. n. 18. n. 11. 8 Geo. 13. Plow. 292. Vaugh. 181. & 2 B. & C. 193.

At 14 the ward may enter on the guardian's estate, & occupy the land. (for at that age he may choose one) The guardian is then accountable for the profits he has allowed his reasonable expenses. 2 B. & C. 86. 2 B. & C. 812. 2 B. & C. 687.

The may be superseded by a testamentary guardian. Cod. 80. n. 13.

A Testamentary guardianship for nurture takes place only when there is no other guardian. It extends to children who...
Parent and Child.

Who are not heirs apparent to their persons only terminate at 14. Cannot exist in Conn. 113.461. 3 Comm. 427. 3 Co. 35.

Moore 928. 6 Co. 84. 88. note 12. 89. p. 13.

It is exercisable by the father or mother only. 6 Co. 84. note 13. 2 1st 14.

It seems, it can never take place as to the heir apparent, for if there is a parent he or she is natural guardian in this case till 21. 6 Co. 84. note 13. 2 1st 19. 113. 461.

II. By Stat. 12. 12. a father, whether of age himself or not, may by will or deed with 2 witnesses, appoint a guardian for any or all his children, who are infants inconsiderate to infants in distress or none. The appointment is either in possession or remainder. May continue till 21, or terminate before that age. This guardianship extends to the person of all the estate. 6 Co. 84. 113. 462. 10 B. E. 703. 4 417. 115. 2 60. 129. It supersedes all others.

This species of guardianship is not assignable for the father made the appointment, this special confidence. 2 60. 234. 3 60. 417. 2 1st 14.

As to guardians by Stat. 44. 54. 60. P.B. for personal under 14. see 6 Co. 84. note 14. 113. 360. 60. 3 60. 417. 2 60. 3 65.

III. Guardians by Custom exist in different places in Eng. but they come not under the general law. 6 Co. 84. note 14.

IV. Guardianships not enumerated by the Stat. 3 60. 417. 2 60. 89. note 16.

1st. By election of the infant. This takes place only when there is no other provided either by the law or the father. E.g. if he holds no lands by knight service, or by socage.
tenure he has no guardian in chivalry or seignory if above 14 he has no guardian by nurture if not heir apparent he has no natural guardian it may have no testimonial guardian.

This kind is of later origin. But it has been in use ever since the restoration (1660) of it since before. Election is said to be frequently made before a judge on the circuit. Co. L. 27, fol. 375.

There is no prescribed form of election in Eng. and Baltimore when 18, named his Guardian. Co. L. 27, n. 16.

age for choosing a Guardian is said to be 14 in Eng. yet it is also said that the choice may be either before 14 or after. Indeed it is said that before the restoration in law the practice of choosing was almost confined to infants under 14, the C.S. naming a Guardian after that age in a great measure unnecessary. I conclude that no age is settled, but that the Judge may suffer the choice when he thinks proper. Bl. 245 G. 249. Co. L. 27, n. 16.

2d. Guardian by the appointment of the Chancellor was also unknown to the C.S. This species like the other is of modern date. It seems that the C.S. of Ch. has reserved this power since the year 1666, Co. L. 27, n. 12. Bl. 245. 249.

The Chancellor never appoints however when the infant is otherwise provided with a proper guardian. In other cases the power of Ch. is discretionary it extends as well to the removal as to the appointment of guardians. The Chancellor may remove even a testamentary
Parent and child


So this may appoint a temporary guardian, may compel one to give security to make discretionary orders as to the support of the infant, or as to his estate. No such authority.

Conn. Lisiom. 2. 21. Bac. 673.

2. By appointment of the Ecc. Court. The law at the power of this Ct. to appoint is not fully settled. A claim of the right of appointing for the personal estate of the person also, provided there is no other. This right as the person has always been denied. 3. Com. 418. 15. Bin 176. 2. Dec. 162. 2. 21. Bac. 673. 23. 6. 1854. 23. 184. 1496.

It is lately denied as to the personal estate of the infant, these that such Ct. can appoint as their only.


4. The last species unknown to the Ct. is Guardian ad litem. specially appointed for a particular suit, when an infant (minor for plot) has no Guardian. May be appointed by any Ct. in which such infant is sued. 2. Cor. 183. Co. 2. 47. 2 Dec. 136. 2 Co. 51. 2 21. Bac. 636.

In Eng. can children, having no C. E. Guardian, c. 7. 16. 14. whereas guardianship for nurture ceases if the father is living, or how are they provided at C. E. the father? Suppose continues natural guardian of them all according to the import of the term in equity of the Chancellor settles the guardianship upon him, when necessary. 2. Com. 32. a. 16. 2 Bac. 69.

2. Com. 23. 2. 2 Dec. 118. 126. 2 Kr. 14.
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Now, indeed, by Stat. 13. Car. 2. guardianship in such cases, is given to the Father. cod. 89. n. 18.

Under our Law, there is no guardianship in chivalry, in oden - the testament - by Custons, by appointe - of phys. - of Ecc. & c. Of course we have only 1. Natural Guardians. 2. By appointment of probate. 3. As titre.

One or two pages of municipal regulations on the subject of Guardians are omitted here, for which see Stat. E. 

- Nocti Reilly

In Eng. as in Conn. all Guardians (except in Church) are compelled to account for the wards property in their hands. cod. 89. n. 2.

The usual remedy in Eng. is by a bill in Chis. - this proceeding is more extensively remedial than an action of account at law, in compelling disclosures under oath, the production of papers. As the action of account in the 20th. cod. 85. n. 2. Bac. 67. p. 637. 1181. 462.

It is not uncommon in Eng. for Chis. to compel them to account annually. cod. 138 super.

The usual remedy in Conn. is by an action of account, which is nearly as remedial here, as a bill in Equity in Eng. St. Con. 36.

If the wards estate is in danger from the Guardians insufficiency, the latter, tho' a parent, may be compelled to account at any time by Chis. in Eng. - By ct. of Probate in Conn. 2 Con. 23. 2 Bac. 67. p. 637. 1871. 462.

In case of misconduct by the Guardian,ship in Eng. may displace him. So if there is reasonable ground to
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approaches misconduct, the [illegible] may order him to procure security, or refusal displace him. Indeed the Chancellor in such cases acts at his discretion, and makes such orders as he thinks proper. 2 Com. 223. 1 Eg. C. al. 26. 261. 1 Pat. 293. 2 Mcq. 177. 2 Boc. 674. 11 S. 463. 1 All. 49. 2 All. 488. 10 H. 138. 1 Ves. 642. 18 H. 247. 1 Ves. 160.

No. Guardians, except parents are bound at their own expense to maintain their wards, but may apply their wards' estate to his support. 1 Bl. Ch. 37. 2 Com. 232. 3 May. 398. 12 Ves. 455.

And the parent, when guardian, if not of ability may apply the wards' estate, (not of common right but by leave of the Court,) in Eng. 2 Bl. Ch. 37. 12 Ves. 455.

But a widow, having married again, is not bound to support her children by a former marriage, but may apply their estate, otherwise the 2nd husband would violate the marriage by the burden of their support. I think, in principal, the husband is bound in this case, if the wife at the time of marriage was of sufficient ability for this; for, this voluntary act of hers, alters their support? 1 Bl. Ch. 297. 12 Ves. 160. 1 Ves. 160. 164. x 2 Ves. 365.

It has been said that for any thing more than necessary or ordinary expenses in maintaining a child the parent may apply the child's estate, if the object is for the child's benefit, of the expenses reasonable, e.g. money advanced for the child's apprenticeship, to an useful trade. 2 Ves. 352. 2 Ves. 138. 255. 2 Com. 236.

This rule is denied by 2 P. Hargrave in the case of apprenticeship, chap. 24. But it seems every case.
Parent and Child.

of the child must stand on its own circumstances. The Chancery, or Chief Probate, here, gives permission or not, in his discretion. 10th Arg. 106. 2 B. Com. 292. 1 Dec. 167.

(But if the father pays for an extraordinary education, he cannot be reimbursed from the child's estate.)

In cases where the interest of an infant mortgaged is deemed to be recovered en a bill for redemption, the guardian is empowered by Stat. to make the recovery. So may be enjoined to do it under a penalty. And if the infant had no guardian, the guardian ad litem appointed by the Ct. is authorized to recover. (In Eng. the infant may not.) 1 St. Com. 226. 4 U. & B. 1794. 15 Bl. 675.

So by our law, the guardian of infant heirs of joint tenants or tenants in common, is empowered with the assistance of such persons as the Ct. of prob. Shall appoint to make partition of the land. 2 437 4 B. Com. 1801.

It is said that the guardian or proctor may sell the ward by equal partition in Eng. But I doubt if this is law, for the infant may do it. 2 B. Com. 884. 10 Dec. 1801.

If the wards trustee, on a compromise accepts from the guardian less than is due, the ward not the guardian has the benefit of the discount. For the latter has no right to make a speculation for his own benefit, with the ward's estate. 2 B. Com. 234. 2 B. Com. 687. 2 P.C. 295.

The guardian is considered in Chancery a trustee to the ward. If a stranger maliciously enters on an infant's land and takes the profits, he is culpable in Chancery to account as trustee.
Guardian, a liable as a trespasser, at the election of the infant. ( Former is preferable.) 1 St. 48, 129, 132, 129, 2 Com. 230, 293, 63, 1. Rol. 361. 2 Com. 295, 342, 1 Eg. & C. at. 280.

If he receives the profits of another hands during the infancy of the latter, if for several years afterwards he shall account in Ch. for the whole. 2 Bac. 637. Eg. & C. at. 280.

Guardian must allow interest for the wards money in his hands, unless he shows that interest could not be obtained for it. (Judge Rive) 2 Bac. 629.

It is the duty of the Guardian, having personal property of the wards to pay debts, charges on the wards estate out of that property, & not with his own. 2 Com. 231, 261, 262.

And if the wards estate is in mortgage, the guardian ought to apply the profits of the estate to the interest, or the surplus, if any, to the debt. 2 Com. 231, 261, 262.

If guardian has no proof to use the wards money in land. But if he does so (taking a deed in the wards name) the latter may, at full age, take either at his election. & if he takes the money, he is compellable in Ch. to recover the land. 2 Com. 231, 261, 262.

But if he dies without making his election, his heir shall have the money, his heir cannot claim the land. For the right of this election is personal & transmitted. 2 Com. 231, 261, 262.

In general, the guardian in accounting for the wards money, is obliged to pay only principal & interest. But if the money was directed to be appropriated in a particular way (as in funds) the guardian has appropriated.
Parent and Child

As to the marriage of wards, the chancellor exercises an authority which belongs by any of our acts. The Act of 1840 provides that marriages without consent of the guardian be void. If the guardian consents to an unequal match, he may disallow it and punish his discretion. He also punishes, as for contempt, those who object to the marriage, after the prohibition. (Ch. 88, 2 & 3 W. 1. 1842, sec. 160.)

So if there is only an apprehension of the wards being married to his disparagement, the court will not consent; the chancellor will prohibit it, because the person of the ward is in jeopardy. The court enjoins the guardian of the other party not to permit it. And if in extreme cases, this authority may be exercised when either of the parents is guardian. (Ch. 88, 2 & 3 W. 1. 1842, sec. 164.)

According to usage in law, guardians may bind wards as apprentices.

Guardianship of females is said to be determined by marriage. I doubt the rule, except in the case of an infant, is of full age in which case, he becomes virtually her guardian. The rule is not true, however, if the wife only is of full age. Guardianship of males is not so determined. (Ch. 88, 2 & 3 W. 1. 1842, sec. 165.)

Suppose it is a law inconsistent that a minor be bound to his wife, guardians, when under a guardian himself?
Parent and Child.

Settlement of Infants. For the mode of acquiring a settlement in Corn. see Stat. 23 Eliz. 1st By Birth. The place where a child is first known to be, is prima facie, the place of his settlement. (See subjoined table.) 1 Bl. 362, 5th Ed. 933, Cons. 285, 2 Bl. 485, 12th Ed. 369.

This is generally the place of a bastard's settlement in:


And in all cases, if neither father nor mother has a settlement, the child is settled in the place where it is born - rebuttable as to legitimate children in Eng. at p. 155.

2nd By Parentage. The settlement of the father or maintaining parent, is that of the child. In Eng. of legitimate children only; in some of bastards also, bastards are settled with the mother. 1 Bl. 362, 3, 385, 2 Bl. 487, 2 Bl. 362, 3, 385, 387, 1473, 3 Bl. 111, 2 Bl. 487, 2 Bl. 367, 17th Ed. 154, 156, 17th Ed. 155.

Settlements of this kind are called derivative. Those by birth, original. 2 Bl. 116.

The settlement of legitimate infant children (not emancipated) regularly follows that of the parent. If the parent acquires a new one, it is immediately communicated to his infant children. 3 Bl. 114, 17th Ed. 112, 2 Bl. 367, 3, 385, 2 Bl. 487, 2 Bl. 367, 3, 385, 387, 17th Ed. 154, 156, 17th Ed. 155.


Except in Eng. where a widow having children marries a second husband, for she is not bound to support them. If she does, they go with her for maintenance. (Acquire her settlement.) 2 Bl. 487, 2 Bl. 367, 3, 385, 2 Bl. 487, 17th Ed. 154, 156, 17th Ed. 155.
Parent and Child

In Conn. a praed gaius no settlement by living with his guard appointed by probate, 1 Rob. 151. 2.
By the acquisition of a new settlement, the first is lost, but in no other way. 153. 353. Sally 882. q. 2 Rob. 886. 396.
An infant may under some circumstances gain a settlement of his own by commorancy; but his division of this settlement is lost. E.g., an infant apprentices in Eng. may gain one by living with his master—not so in Conn.
1 Rob. 364. 2 Rob. 887. 2 Rob. 116. 356. 1 Rob. 151. 2.

This gaining a settlement works an emancipation, i.e., he is no longer a servant of his father. 2 Rob. 356.

After a child is emancipated (i.e., after he ceases to be considered in law as belonging, in character of servant to the parents family, or as being under his caret of government) he cannot take the benefit of a new settlement acquired by the latter, even tho' he continues to live with the father. 3 Rob. 116. 356. 4 Rob. 883. 881. 3 Rob. 366. 276. 4 Rob. 116. 1 Rob. 116. 886. 6 Rob. 356.

A child's emancipation is effects:
1. By full age. 2 Rob. 356.
2. By marriage. 3 Rob. 882. 6 Rob. 356. 3 Rob. 116. 2 Rob. 356.
3. By gaining a settlement of his own. E.g., an apprentice. 3 Rob. 356.
4. By contracting any relation inconsistent with his remaining in a subordinate station in his father's family, i.e., under the care & government of the parent, as that of a soldier, so is the law. But I do not see why, if he remains a short time thus cease to be a soldier, he still not again he under the control of the father. 2 Rob. 356. 3 Rob. 116. 1 Rob. 356. 6 Rob. 247. 8 Rob. 356. 1 Rob. 116. 882. 2 Rob. 356.
Parent and Child.

Attaining full age is not an emancipation of the party continues a member of his parental family, etc. (Suppose continues as servant). But suppose he boards as a quest with his father 67. 352. 2 and 276.


If there a woman settled in and married a man settled in 15. 13. is the place of her settlement, or she is a fact and loses her major as settlement. 156. 310. Salt 528. 156. 383.

And it has been decided, that if the husband has no settlement, hers is suspended during coverture, but revives on the husband's death. The following is the production of a way on this rule.

"If woman having a settlement.
"Married a man with none.
"The question was, she living dead,
"If that she had, was gone?
"Death of John Pratt; her settlement,
"Suspended did remain,
"Giving the husband, but him dead,
"It doth revive again."

Response by the parents judges.
"Giving the hus., but him dead
"It doth revive again."

156. 312. Strw. 544. 583. Fact 232.
Parent and Child.

But it seems now established, that if the husband (having no settlement) does not remain in the reversion, or being in the reversion does not remain with the wife, her maid en settlement continues. Indeed the Ct. holds, that if he has no settlement, hers is not suspended. Ev. St. Co. 363. 322. 370.

And in this case, her children by the marriage are entitled with her, to her maiden settlement. Ev. 362. 370.
Master and Servant.

By Mr. Gould.

A servant is one, who is subject to the personal authority of another. A master is one, who exercises that authority. The authority must be personal, for subjects to civil authority is not servitude. The authority exercised by the master, is generally by virtue of a compact with the servant, or his guardian, not always.

Kinds of Servants in Law are, 1st. Slaves. Apprentices. Menial Servants—agents of any kind, as factors, brokers, stewards, clerks, builders, shipmasters, attorneys. Debtors assigned in service. 1 Bl. 423. 1st C. 34. 1667. 464. 9

The first of these kinds are unknown at C. S. 1 Bl. 423. 1667. 468. 2d 1 Salk. 666.

1. Of Slaves. It is doubted by many whether Slaves have ever been legalized in law, but it doubtless has been so far as our municipal laws could legalize it.

Of legitimate slavery, or his hire, it must depend on natural law, civil law, or our own local laws.

First, According to natural law, slavery, if authorized at all, must be by a state of captivity, or was by contract, or being born of a Slave, which is called a negative kind of birthright. 1 Bl. 423. 4. 1st. By Captivity. It is, therefore, that the captor has a right to keep his captive, otherwise.
Master or Servant.

to enslave him.

But the right to hire exists only in case of necessity in self-defence—i.e., in case of actual capture, the captor cannot be
rendered this necessity. 158.423. 2. Balthasar 246. 250. Amsterdam.

2. By Contract. This cannot lay the foundation of strict slavery, which implies an absolute right over the property,
liberty & life of the slave.

A man has no right to dispose of his own life. Ego
he can confer no such right on another. Neither can he
make any absolute sale of his liberty, for this would imply
an obligation to obey every unlawful command, destroy
free agency.

And as after such a contract, he can have no right
of property, there can be no consideration for such a sale.
no quid pro quo? But a contract to serve another is good,
it is only a sale of his own labor. 158.423.4.

3. By Birth. This presupposes the slavery of an impa-
parent created in one of the last mentioned ways. Therefore
the foundation fails. 158.424.

Indeed, the common law clearly does not recognize any
species of private slavery. We can the local laws of
any country, or favor of slavery, be enforced in England.
Both 636. 897.

Indeed a foreign slave, on landing in Eng. becomes free,
i.e., he is protected in the enjoyment of the rights of free security,
Thine were indeed, in Eng., under the feudal system that.
Mastet an Servant.

What were called villains, but they were never absolute Slaves. The Law had no Right to kill a man, then. 2 b. 24. S. C. 183, 199, 204.

But there are villains in Eng. now. There in villany was virtually abolished by Stat. 12 Edw. 3. evry then, if it is, there were; but "villains in Eng." 2 S. C. 293, 296.

Indeed the character was hardly known there, in the reign of Elizabeth. Amst. Eng. 2 S. C. 330.

Third. By our Local Laws, I conceive a qualified Slavery is legalized. Judge Rive differs; we have indeed no express Act, authorizing, but many recognizing & counting upon it. St. C. 163, 213, 33.

There has been an acquiescence of our Legislature, in the known practice of holding Slaves. We have indeed no positive decision in point; but the Supt. C. have several times manifested an Opinion, that Slavery was legalized here.

It was decided by the Supt. C. that a master cannot maintain it for his Slave, tho' the Slave might be both or taken in execution for his masters debt. 2 S. C. 66.

Decided also, that an action for taking away a Slave, must be the same, as for taking away an alien slave.

But strict absolute Slavery has never existed in C. For the master has clearly no control over the Slaves life, as it has been settled, that a Slave may hold property, free for it by his own hands.

Decided by the Supt. C. that the marriage of a Slave, with consent of the master, is an emancipation. 2 S. C. 350, 27, 25, 14, 536. 533.
Master and Servant.

A slave was not emancipated by marrying a citizen. But no consent of the parties is here required. 23 C. 138, 139, 140.

But a wife was emancipated during coverture. If she married a free person of the United States. 23 C. 138, 139, 140.

Can an illegitimate child be a slave by birth? In New York, the civil law is met. For partus sequitur ventrem. Otherwise in the right law. 23 C. 138, 139, 140.

Slavery is now nearly abolished in New York. The importation of slaves is prohibited. Children born of slaves. Children born of slaves after March 1, 1794, and before Aug. 1, 1807, are free at the age of 25. Those born after Dec. 31, 1807, are free at 21. Importation of slaves is also now prohibited by Stat. of U.S. 399, 399, 399, 399.

It is generally agreed, that offenders may be judicially condemned to slavery for crimes. As e.g. in New York, for hardship, &c. This is a qualitative civil slavery, or banishment.

II. of Apprentices. So called from the word apprendre, (to learn) being generally bound for a term of years to serve their masters that they may receive instruction, usually bound to the professor of some mechanical art, sometimes to husband & others. 426, 426.

They must be bound by deed. A parcel contract of apprenticeship is not binding at law. Nor can a defective contract of apprenticeship be construed into an hiring by the year. Being void. 16 U.S. 182, 16 U.S. 182. 9th U.S. 117, 117. 6th U.S. 346. 8th U.S. 346. 8th U.S. 346. 8th U.S. 346.
Muster and Servant.

It has also been said, that the relation of master and apprentice cannot be created, until the latter is expressly retained by the name of apprentices in the deed. But this is denied to be true. 3 Bac. 546. Whart. Just. 37. 41. 2 T. 77. 78. East. 5324.

All other servants may be retained by bond. But, those the law makes the distinction out of regard for apprentices or their servitude, is so strict. 3 Bac. 546.

In Eng. the children of poor persons, I suppose, may be apprenticed, but by consent with consent of 12 juries, if those to whom they are offered are controllable to take. 1 N. C. 428.

A similar regulation is Conn. Man. 719. 721. females etc. 18. 1st. 62. 63. 62. 4. 532.

All servants are entitled to wages for their services. Apprentices however only by express contract. 3 T. R. 374.

The wages of menial servants are settled by contract. Those of servants in husbandry, by the oath or oaths, 2 Exch. 8. 1 N. C. 428. In Conn. all servants wages are settled by contract.

By Stat. 5 Eliz. it is enacted that masters may bind them, &c. by indentures of apprenticeship. But (as the privilege of infancy is not extinguished in a way) it has been uniformly held, that the infant is not liable to the covenant. That the only effect of the Stat. is, that while the relation is not directly abolished, the parties respectively enjoy their rights. Vincula the duties resulting from that relation; that the minors, if he desires the full time, shall be free of his trade. But if desire, must he may not be retained, nor can an action be maintained on a covenant.
Master and Servant

As if the master or guardian join in the indenture, he is bound by the covenant. So at C. S. he is liable for non-performance of what is to be performed by p. a. p. h. D. q. 500. 1. 58. 375. 1. 58.

As such, shall be born, as that of f. p. f. A. major here are more bound by such contract, than by any one.

This may be a good for an apprentice leaving his master. Such condition is implied. 1. 4th. 53. 116. 126. 126.

It is said an apprentice cannot be discharged otherwise than by deed, i.e., when the discharge is by agreement of the parties. Because the obligations must be discharged, or legal, one quo legalitas. 1. 3. 54. 63. 1. 44. 1. 22. 1. 66. 1. 68. 1. 68. 1. 100. 1. 100. 1. 100.

But conveying or delivering up the indentures must discharge the apprentice, for the deed no longer exists. 1. 53.

And in this case, says, the master, our Supreme Court, that the master, after having discharged the apprentice, by deed, could not maintain an action of apprentices’ reward for the master was guilty of a wrong in making the agreement with the apprentice. (I conclude the master might have maintained a suit for the master.) 1. Day 153. 3. 3. 72. 3. 67. 3. 67. 3. 67. 3. 67. 3. 67. 3. 67.

An apprentice may be discharged by bond, by C. S. for default of the master, or punished for his misbehavior, but is done in Eng. by quarter sessions or by justices, a by, but only in cases where the binding was by the master, for justices. 1. 1. 274. 1. 106. 7. 2. 1. 37. 1. 37. 1. 37. 1. 37.

A master cannot at C. S. assign his apprentice for the contract is fiduciary. This right is found in a partnership.
Master and Servant.

trust, not transferable. Different by the customs of London.
3 Bde. 556. 1 Bl. 280. 12 Mod. 553. 1 Dech. 134. 3 Bde. 555. 3 Bl. 219. 2 Dech. 182.
Doug. 69. Sall. 68.

An award of arbitrators that an apprentice shall be assigned, is void, unless it be by custom or consent of the apprentice, 3 Bde. 126.

But, the at law, the assignment of an apprentice does not pass his master's right or interest in him, it is good as a covenant or agreement to bind the assignee. If this be the words are "grant of an assignment" to words of a grant merely. The assignment is void as between the master and apprentice, not between the master and assignee. And if the apprentice serves under the assignment, he may gain a settlement by it, in Eng. But he is not compulsorable to serve, nor can the assignee maintain any action on the original indenture.
2 Ray. 683. Salk. 68. Doug. 69. 166. 76.

As the master cannot assign to, so he is bound to help him under his own care. He may not send him abroad nor to improve, unless by agreement, as the nature of the business requires it. 3 Mod. 280. 12 Bl. 496. 3 Bde. 553. 1 Dech. 194.

The effect of the master cannot hold the apprentice, for the master's right is not transferable. 1 Ch. 95. 2 Mod. 38. Sall. 63. 61.

But it has been held, that the effect is liable, as the covenant to teach the apprentice, his bonds to procure him teaching. This rule has very justly been denied, for who is the master to bound himself to send for a teacher, more than parent to furnish another apprentice, in case this dies? 1 Dech. 177. 5. 2 Mod. 219. 2 Bl. 125. Sall. 66. 61. 2. 66, 296.
Master and Servant.

Whether the Master's exec. is bound by the covenant to furnish diet, clothes &c. to the apprentice, has been a question. According to the current of law, he is liable. Suppose, for instance, the master had no right to the service, he ought not to be liable for the necessaries. So if a premium is given and the apprentice the exec. ought to provide maintenance, just as a probational part. It will be better to express the conditions in the contract.

In Eng. City, has in some cases ordered part of the premium to be restored, on the master dying soon after the apprentices commenced. That event cleared a large sum, when a small one had been agreed upon by parties. 1 B. & P. 407. 3 & 4 Will. & Mar. 104.

So a Master, on turning away an apprentice, has by decree in Chy. refunded a part. 2 B. & Q. 244.

So, also, on the master becoming a bankrupt, which dissolves the relation. It is denied that bankruptcy is for so: a discharge, but said that the summons will in such cases discharge the apprentice. 1 & 2 B. & C. 592. 5 & 6 B. & C. 882.

And when justices in Eng. discharges an apprentice, they may order the master to refund a part of the premium. 3 B. & Q. 552. 11 B. & Q. 426. Sal. 67, 490. 11 Mod. 110.

Whatever an apprentice earns by his labor while an apprentice, is his, continues, belongs to the master, as of fact, until withdrawn or claims. 1 B. & Q. 552. 10 & 11 B. & Q. 415. 11 & 12 B. & Q. 104, 498. 12 B. & Q. 69. 13 B. & Q. 29.
Master and Servant.

Property of any kind that is earned by the apprentice may be recovered by the master as his own in any proper action.

And this rule holds, as the labor (or another) is without the master's consent, not in the line of the master's occupation. 12 M. & W. 82. 12 M. & W. 40. 6th. by 2 Pl. 333. 3 Eld. 68. 2 E. & J. 107.

The last rule does not hold it seems in the case of other servants. Here the master cannot recover servants wages. This proper remedy is an action on the case. For the loss of service of the employer because of the former retained. So an action as the servant himself for breach of contract. 3 B. & A. 389, 567. 2 B. & A. 117, 558. 2 B. & A. 259. 2 B. & A. 63.


For taking away one servant with force, trespass lies for enticing him away, an action on the case only. In England, the wrong was enticing. But the action is called trespass by the Act of 1821. It was supported, but I do not see how. 15 Geo. 2. 2 B. & A. 506. 3 B. & A. 360. 4 B. & A. 187. 6 B. & A. 187. 6 B. & A. 187. 6 B. & A. 187. 6 B. & A. 187. 6 B. & A. 187. 6 B. & A. 187.

In Eng. apprentices gain a settlement in the parish on which they serve the last 40 days in that.

III.° Of Menial Servants. These are servants employed in extra domestic duties.

If the term of service is not fixed by the contract, the hiring is construed in Eng. to be for a year, when the regulations provide that the employer has, or the other maintains that the servant serves. So such cases in Cov. 136, 928. 2 J. R. 158. 8 Dec. 546.
Master and Servant.

In Ex. by Stat. 5 Eliz., a servant in certain cases cannot leave his master — nor can the master dismiss the servant without notice. Parties allowed by a justice, not so in bonds. 1 Bl. 425.

IV. Of Day Laborers. No general rules applicable. Judges, etc., to these, except (in Eng.) by Stat. 3 Eliz. 6 Jac. 1; these provide that all persons having movable effects may be compelled to labor. Judges at the sessions to settle their wages. Some trials are to be inflicted on those who give no account of wages. 1 Bl. 426.

V. Of Agents, factors, brokers, etc. These are servants in relation to such acts as affect the property of their employers. The principal, has not the same general control over them as a master has over a common servant. They are bound by their own contract for labor, according to their contract. 1 Bl. 427. 16 Geo. 3, 469, 89. 2 East, 282.

It is difficult to lay down general rules as to rights and duties of this class of servants.

Every factor, broker, or agent, strictly, to pursue his commission for his own security. He is not liable for casual losses, otherwise, he is. 16 Geo. 3, 469. 89. 2 East, 272.

A factor may retain the goods of his principal in his hands to satisfy a general balance of account in his favor. But by giving up the goods prior to the principal, the lien (which is inseparable from the goods) is lost. It is considered an abandonment. 2 Bl. 284. 46. 72. 136. 469. 89. 3 East, 255. 2 Bl. 284. 46. 72. 136. 469. 89. 3 East, 255.

A factor, having the same lien on the price of the goods, etc.
Master and Servant.

the hands of any person to whom he has sold them. *Comp. 281, 286.

A Factor has no lien on the principals goods until his
comes to his actual possession. Constructive possession, as the
delivery of a bill of lading, is not sufficient. They do not

Rules as to factors lien, belong to this branch. *Sus.

If the Factor gives more, or less, less than his commis-
ion warrants, his principal may disclaim the purchase. If
he sells at a low price, he himself must bear the loss.
*Lex. 220, 168, 516.

A Factor has no right to have the goods of his prin-
cipal; if he does, the principal may maintain two
in the presence, or tendering to the Factor the balance due
to him, without any tender to the bailee. The Factor's
lien is a personal right, which cannot be transferred.
It admits of a Dec. whether he might not have them
for the principal. *Stew. 263, 264, 6, 175, 176, 583, 648, 468, 622, *Stew. 1178,
176, 122, 214.

But he may sell the principals goods (your teach-
dying consists in buying & selling), i may sell pro-
duces for the price in his own name, for he has a ben-
beneficials interest, viz. his commission. It may also be
general convenience requiring it. The principal especially
in distant Country. *Stew. 285, 262, *Comp. 256, 176, 177, 283, 999,

So an Auctioneer (a species of Broker) may sue for goods
sold in his own name, tho they were known to belong to another. He does
a factor, contracts in his own name. *Stew. 188, 176, 591. 50.
Master and Servant.

In a Ship Captains may sue in his own name for the freight, cause supra, Peth 453.

In each of the preceding cases however, the action may be by the principals, and in the like cases, in the same manor.

An auctioneer is not liable for selling goods to the highest bidder, the town, or les than the owner directed. The direction was unlawful, for the act of selling up goods for sale at auction amounts to a contract with the bidders that the highest bidder shall have them. But he is bound by instructions to set up the goods, on the first instance, at a particular price; directs it as a house for per 1,000, or he must make up the deficiency. Coaps 395.

An Attorney also has a lien on the papers and judgments of his client, for his fees. It may direct the adverse party to pay the costs he incurs, it not to his client. If then the party to the latter, the party may compel him to pay over again. But this right is subject to the equitable claims of the adverse party, when the client - e.g. a deed for which claim he may retain the client's debt. 2 East 424, 392; 1 S. 95; 2 Ten. 440, 847; Doug. 106; 2 Pick. 1272; 16 Pick. 62; 6 Pick. 138; 4 Pick. 88; 9 East 464.

An agent, who executes an instrument for another, as in his principal name, not in his own, or he binds his, 2 P. 96, 36; 10 Mass. St. 350; 501; 6 Sim. 408; 9 Sim. 140; Stan. 705; 3 Pick. 246; 2 Pick. 486; 2 Pick. 124; 24, 7 Pick. 62; Stan. 958; 9 East 95. — The common


counsel is ch. 10, by C.D. his agent, the no particular form is necessary. 2 East 162.

An agent cannot bind his principal, by deeds without an authority, for that purpose, in his behalf.
Master and Servant.

An agent for the public, contracting as such for the public, is not personally liable on his own contract, e.g. Embassies, & other public things. So decided in 12 Cr. 172. 674. 1802. 1 East 382.

VI. Debtors assigned in Service. This case was unknown to the L.D. The assignment is now very usual in law. For further particulars, see 54 Eliz. 33. 34. t. 35.

**General Rules.**

1. When the master is bound by, from the advantage of, acts of the Servant.

**General principles.** The acts of the servant, which are done by the master's command, express or implied, are in legal contemplation the acts of the master; regular acts done by the servant in the performance of business in which he is employed by the master, are deemed to be done by the master's command. Dei facit per alium factum, sic. 1 Bl. 427. 4 Inst. 109. 76 Bl. 442.

So that whatever the servant does by the express command of the master, whatever the master expresse permits him to do in the course of his business, whatever he does within the bounds of an authority given him by the master, are the acts of the master.

A contract made with a servant, as servant (he being authorized to make it for the master), is made in legal contemplation by the master himself. E.g. If with a blank of a counting house. 3 Mac. 529. Kent 360. 2 Knt. 411.
Of a Servant is cheated of his masters property, the master may recover it by action, as the wrong done. Rol. 26. cap. 123. 3 Inst. 557. For if the Servant is robbed of his masters goods in the absence of the master, either the master or he, or both may have an action (as the hands are in point) for the injury. The Servant may sue for it, by reason of his own liability to the master. For he is not liable generally, in cases of robbery. The true reason is that the goods are considered as the servants goods; all persons except the master, and further, there is frequent necessity for an immediate prosecution. The master may not be out of the way. *Bol. 105. 6th ed. 265. *Bac. 67. 3rd ed. 528. *Bell. 3d ed. 12 77, 54, 117 8.

And in this case, a recovery by either bars the others action, and even the commencement of an action by one prevents the others from prosecuting circuity. 8th ed. 137.

When the servant sues, he declares on a loss of his own goods, which he lost, as the reason that they are his, as well as except the master. 3 Bac. 87. 3rd ed. 528. *Bell. 6th ed. 142.

But if the Servant is robbed in the presence of the master, the latter only can sue, for if such case the taking is deemed to be from the person of the master. 9th ed. 141. 6th ed. 140. 1st ed. 148.

If the masters money is gained from the servant by an illegal contract, the master may recover it back by action, *Bell. 1st ed. 105. But it is otherwise if the servant squanders it, there being no fraud. *Bol. 6th ed. 105. But if goods are squandered, the master can recover from a bona fide purchaser, for the latter is bound to look into the servants title.
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Goods can be identified, but money cannot. In these cases where there is no fraud, it is the same as if money t were gained from the master. 2 Bosc. 538.

If an skinner servant robs the guest, the master is bound to make restitution. This is a case sui generis, to prevent collusion between master & servant, to secure travellers. 1 Bl. 205; 11 B. 32; 32. D. 266.

So if a servant of an innkeeper sells bad wine to the injury of the health of the guests, the master is liable to an action. 1 Bl. 63; 1 B. 75.

But the servant in this case, is said, not to be liable, tho' he knew the wine to be unwholesome... because he acted as servant... But I doubt this. 2 Bosc. 538; 1 B. 75; 2 Bosc. 548. For the act is unlawful twofold in the servant: it is a general rule that when any person has no power (i.e. right) to do a given act, whoever does it at his command, is a wrongdoer, as well as the person commanding. A servant is bound to obey only such commands of the master as are "honourable." 1 B. 32; 32. Bosc. 32; 1 B. 64.

If then, the servant does an unlawful act, fur the command of the master, both are liable, by a general rule. 2 Bosc. 32; 32. Bosc. 32; 1 B. 64; 32. D. 268.

But it is said that if a servant in obedience to his master's command does an wrong act of which he knows. If ignorant, he is not liable, there being no culpable negligence in him, for he is but an involuntary instrument, e.g. the
Master and Servant.

Master locks me in a Room, gives the key to the Servant, commanding not to let the door be opened, the latter is not liable for false imprisonment. 2 B. C. 369.

But I contend that the Servant is liable, if the act is in itself unlawful, accompanied with force, for in the former case a civil remedy being sought, the law does not regard the intent of the person committing the act. If liable he is liable for all the consequences. And in this latter case the intent is not ceased. Subject, that no injury has been committed. 3 B. C. 382.

Those acts of the Servant, which are not done by the master's command, expressed or implied, are regularly considered as the acts of the master. As when the Servant acts without the master's direction, it not in the discharge of any authority or business, with which he was generally or especially entrusted by the master. The master is not liable for injuries thus occasioned to third persons. or upon contracts thus made. E.g., a Servant learns his trade in the fields; commits a battery on a black in his master's house; buys land. (2 B. C. 362; 3 B. C. 282; 2 B. C. 224; 3 B. C. 523.)

Upon this principle it has lately been decided that if a Servant, while actually performing his master's business, commits a wilful injury to another, the master is not liable. E.g., driving the master's carriage with force to another. This was not done in furtherance of the master's business. The command is implied. It is the same thing as if the Servant had wanted to be thus.
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...others carriage, by casting a stone against it. East 100. 137. 48. 7. Sal. 45. 161. 228. 1.A. 132. 3. 7. 8. 2. 154. 6. 40. 6. 6. 1. 40. 3. Cont. 14. 100. 3. 40. 5.

But of a servant in the performance of his master's business, commits an act injurious to a third person, then negligence in want of skill, the master is liable. The master is his master, employs & directs his servants, but he is not an insurer of their morals or judgments. In the one case, the servant in the other not. E.g. rendering a carriage, at supra, this negligence. 

In the latter case, the injury is occasioned by an act done for the master, not in the former case.

A carter's servant drove negligently by another cart, fell off a peak of sack, the master was held liable. So where one drove over a boy. Will 41. 58. 3. 54. 2. 67. 6. 30. 40. 7. East 100. 140. 40. 1.

If a surgeon apprentice injures a wound, this negligence in execution, the master is liable. 3. 58. 9. 4. 6. 40. 2. 67. 60. 4. 67. 60. 4.

So if a blacksmith's servant, in driving a horse, came in this negligence on want of skill. 140. 40. 1.

The distinction between willful & negligent wrongs committed by servants has been but lately settled or fully understood. And the history of this modern trespassers upon the subject, is somewhat singular. 140. 40. 1.

In 140. 40. 1, it was the master for the servant wilfully driving his carriage on the plaintiff. It was held that "the party was the direct action."

In 140. 40. 1, the case was brought by the master for neglect of the driving his carriage on the plaintiff. It was held
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that case, was the proper action, 2 T.B. 442, 3d. Ed. 446.

In East. Trespass was brought, as the master, for a servant
willfully driving his carriage to the plaintiff. Holton, that no
action is. ic. 2d. the master. East 106. 1547. 472.

These decisions however are all correct; the trespass was
not the proper action in the first case.

For without doubt, when the master is liable, for even
a specious injury committed by his servant, without his
actual direction, "case" is the proper action. The master
is liable, on the ground of negligence, to the proper action
as the servant is such case is trespass. Douglas, 366.

If a servant, employs in his master's business another
servant, also by his negligence in performing it injures a
stranger, the master is liable, as is also the last servant in
most cases. If the injury were done by one employed by
the last servant, 3d. 114. 306. 311. Doug. 366.

But in the last case an action lies only of the immedi-
ate agent or the master. This intermediate servant is not
liable, for he does not commit the injury, did not the mas-
ter of him who does. 3d. 114. 311.

In general (cf. supra) the master is not liable for the
wilful acts of his servant. But it is otherwise (concurring
with the wilful wrong amounts to the violation of a con-
tract between the master and party injured), e.g. a servant
do a Blacksmith willfully lame a horse in shoewing him.
A Taylor's servant willfully destroys cloth for. For in these
cases there is an implied promise by the master that
all necessary skill & care shall be used in performing the
work. The master in such cases is liable on Contract. 176. 506.

A sheriff is liable, civilly for the acts & defaults of his
deputies in the execution of their office, e.g. neglecting to oper-
cate legal process &. do so arresting & by mistake under
a writ of 13. 6. In this last case the judge is the sheriff.
176. 506. 138. 136. 236. 136. 236. 136. 150. 150. 150. 150. 150.

And for some neglect of duty, the sheriff only is liable,
at least, the under-sheriff is not. (i.e. to the party aggrieved.)
For in such case the action is one for a breach of officials
duty only, and the deputy, not being a known public of-

And for some neglect of duty, the sheriff only is liable, (i.e. to the
party aggrieved.)
For in such case the action is one for a breach of official's
duty only, and the deputy, not being a known public of-

At 13. 6. 310. 510. 410. 

For positive acts, the under sheriff is liable, e.g. embezzling
an execution, voluntary escape. In such case, he is not said
as an officer, but as a wrong doer. 176. 506. 150. 

Sheriffs are also liable for even the wilful acts of de-
puties, if they include a breach of official's duty, e.g. embe-
selling, voluntary escape. 176. 506. 150. 150. 

In corn, both are liable, in all the above cases, it
deputy is here a known public officer.

A Postmaster is not liable for the defaults of his
subordinate officers, for he has no hiring (i.e. from individuals),
makes no Contracts with them, receipts for the public
public has the postages the is a public servant. This is analo-
gous to a servant employing a servant. 176. 506. 150. 150.
Com. 704. 704. 704. 150. 150. 150. 150. 150.
Masther and Servant

But a Post masther is liable for his own actual de
fects, so is a Dep't Bell. 2 Mcb. 643. 26 Car. 186. 219. 299.
And Indeb. abs. will lie to him for money illegally receiv
ed to his own use. Conf. 182.

The Masther is bound by Contracts made for him by
the servant, whenever the latter is making the contract
acts within the scope of an authority delegated to him by
the masther. In this case the act of the servant is the act of
the masther. The authority may be general or Special. Ex.
dep't or Indeb. 2 Gans. 563. Conf. 186. 2 Kel. 721. 224. 3 bulk.

A general authority to contract is one, which is not
confined to any individual Contract, but extends to all con
tracts generally, as to all of a certain kind. E.g. An employe
servant to purchase necessaries generally for his family
on trust.

A Special authority is confined to one or more indi
vidual specific transactions, as to buy a horse or a bust.
A general authority may be implied from the
masther's usual or frequent practice. 1 Mcb. 593.

A Special authority may also be implied, as for
Masther stands by, heads his servant, contract for him
it does not defeat. 1 Mcb. 109.

If the masther has often sent the servant, for necessa
ries with money, it has permitted him to trade for him,
in another way. He is not answerable for what the
servant may afterwards take upon trust. There is
no implied order to the seller to trust the servant.
Master and Servant.

The implied order to the servant to trade on trust. 126. 628.

3 Salk. 234. 1717. 98.

And if a servant without any prior authority, or special, buys goods for his master, and then, comes to 3 letters use, he is liable, for there is a subsequent agent. (See a stranger instead of a servant made the purchaser) Brown. 60.


Suppose in the last case, that the servant had kept the money given him, he bought on trust. Then, being no prior or authority in the servant to trade on trust, would not the master be liable, because the goods had come to his use?

But is there any subsequent agent in this case? 3 East. 224.

3 Salk. 234. 3510. 60. 110. 60. 10.

If the master has permitted his servant to trade for him, he may in future discharge himself by giving the tradesman to trust to, but not by words known to himself, or the servant only. Now, for a time, by a private disposition of the relation, for it shall become notorious. And in all cases the prohibition or disposition should be as public as the credit given by the master to person. Brown. 64. 236. 3510. 60. 10.

And when the servant acts within the scope of a general authority, even an express restriction not made public, but known to the purchaser, will not exonerate the master. e.g. a servant at a livery stable sells a horse with a warrant. Here, a general credit is given to the servant. 3 T. B. 52.

Salk. 104. 625. 104. 625. 104. 625. Here the servant were only a special agent, here, no general credit is given. The above distinction applying.
Master and Servant.

to contracts as general made by servants, ibid. 27 Es. 266.

If a servant is selling property, which he is authorized by the master to sell, to make a warranty, the master is bound by it, and to the warranty was expressly restrained.

These principles make me doubt the case of Southern, 2 Mace. 535; 3 Mace. 535, 632, 683, 680, 679; 2 Male. 938, 939, 940, 941, 942, 943, 944.

I doubt also the rule that if a servant sells an unsound horse at a fair, the master not having directed him to do so to any particular individual, properly lies as the master; the pecus of the horse is directed. I cannot see the least reason for this distinction. 3 Mace. 535, 2 Male. 939.

According to the general rule, if a merchant, who sells goods for his master, warrants them to be sound, the master is bound by the warranty. So in other similar cases. 2 Male. 939, 683, 680, 679, 678, 677, 676, 675, 674, 673.

The servant is regularly not liable on the contracts, which he makes for the master, but he may subject himself personally even in transacting the master's business, by an express agreement in his own name, as if he made a warranty on his own credit. 3 Mace. 535, 2 Male. 939, 940, 941.

And undoubtedly if he makes in the master's name a contract, which he has no authority to make, by which his master is not bound, he must be personally liable in some form.
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From the action of the contract, "I conclude, or as the case may be, for 'paid'" (具体的数字)

This wife, child, relation, or friend, acting for him, under general or special authority is his servant within the rules of law, the acts of the servant as the acts of the master. No new rule on this subject. 1 Bl. 430, St. 6, 292.

Master is not liable for expenses incurred by the servant, servant's sickness. Rec. is not the usage, otherwise in bon. in the case of apprentices? 2 Esp. 37, 32, 16, 27, &c. 16 Esp. 270, 15నె. 447.

How far a Servant is liable for his acts or defaults to Strangers and his Master.

Those acts of the servant which are not done by the master's command, express or implied, are not in law the acts of the master - for these, therefore, the servant alone is answerable. In these cases he does not act as such. 1 Bl. 431, 3 Esp. 292, 293.

And this rule applies regularly to all cases in which the servant's acts are not in the discharge of any business or authority with which the master has entrust him - as in cases of willful thefts of the sort. 1 Bl. 430, 3 Esp. 327, 328, Salt. 15, 169, 270.

There are other cases in which strangers, injured by acts of the sort, may have their remedy to the master, as the servant. The rule seems to be: That if the servant in performance of his master's business, does an injury to another, through negligence, ignorance, or want of skill, the servant himself (as well as the master) is liable to the party injured, provided the transaction, in which the servant was engaged for the master, was not founded on contract, between the master.
Master and Servant

Stranger. E.g. a servant negligently driving his master's carriage into another's breakwater - or of one person. (Ach. 1086. H. 1. 32. E. 380. R. STIT 441. 128. 3 TAY 220.)

Secrecy. I conceive, if the transaction is founded on contract, at supra. In such cases the master only is liable to the injured, or the contract, expired or unfulfilled. For the act of the servant being here the act of the master, the rights of the third person are the same as if the injury had been done by the master himself, on which cases there will be a mere breach of contract, as in the case of a Blacksmith's door, showing a horse & laming him - or tailor's scissor making a garment unskillfully &c. 18. 491. Comp. 108. 10. STIT 532. 586.

There is however an exception to the last rule. The master of a ship, as well as the owner, is liable to the freighters for damages occasioned by his neglect. The proceedings is strictly a matter of contract between the owner & freighters. But the master is considered an agent, besides the owner and frequently unknown. (Salk. 40. Earth. 58. (Desert. 1087. 238. 3 TAY 220. STIT 125.)

If a servant commits a willful act, he is liable I conceive, in all cases to the party injured, even tho' the transaction was founded on contract, at supra. For the act is not in performance of the thing contracted to be done - is not in pursuance of the servant's authority is a distinct wrong. If the master himself had done it, I think, the owner might waive the contract, done him in his name. (Desert. 108.)

A public agent is not personally liable. An illeg.
Muster and Servant.

The contract upon this principle is, that for money hath lie not of an officer of the revenue, for an overpayment, application must be made to the governor. 

But this action will lie v. a public officer, for money,所得 or illegally received by his servant, to that he acts for himself. It is a private wrong done, &c. &c. 187.

If an atty. knowing of it being told, to a release from A. to B. brings an action for A. to B. he is not liable to B. for any alien's lawsuit. It is paid for to note as servant. 

[N.B. 1 Ab. 28, 22 L. 3, 4 B. 3, 583.]

But where the atty. goes to offset, after a nonsuit, and at the 2d. d. he was held not liable to the 2d. for fees. 2 B. 31, 16d. 125.

The servant is liable to the master for all without wrong, in all negligence, by which the master is injured. As if a servant entrusted with the care of cattle, of the master, suffers them to die for want of care. Bac. 96, 400, 460.

If a merchant servant lends his master goods, for the debts are paid, they become forfeited in consequence of the act, the servant is liable. 2 B. 96, 400, 460.

An action lies v. a servant, for a leak in one of the master's orders, no damages being sustained. Correction is a sufficient dep. So for all marriages. 2 B. 96, 400, 460.

But if a servant disobeys or neglects to perform any lawful command of the master, or the latter in consequence of this disobedience or neglects any damage or action lies. 2 B. 96, 400, 460, 468, 183, 2 Rob. 38, Moore 263.

This is the same, where there is a neglect of duty.
the man thereof commands as in all, neglecting his client's case.

Exp. 67, 2. 600 325 2. Mar. 2060.

The servant understands regularly only for diligence and fidelity, not for strength or dilation. Therefore, generally, he is not liable for those occasions by those accidents, to which ordinary diligence and fidelity are not sufficient, as stabbing by 3. 11. 686. 10. 6. 100. 966 34.

So the servant is liable over to the master, whereas the latter has been subjected to damages for injuries occasioned to others by the misconduct or inattention of the servant. Cases rule. 2. 11. 1148, 10. 6. 100.

Thus rule: however, supposes the master, not to have been solely, a party to the wrong committed by the servant.

If he was, he has the claims on the servant. For they are joint, but severable, if the master commands the servant to commit a trespass, he is subject for it. 3. 11. 1148, 10. 6. 100, 10. 6. 100.

For servants, embarking to sea, "leaves them.

Masters authority over the Servant.

The master has a right to chastise his servant for any breach or neglect of duty, as for disobedience, insolence, and neglect. But the correction must be reasonable to be justified. 3. 11. 1148, 10. 6. 100, 10. 6. 100, 2. 11. 1148, 10. 6. 100, 10. 6. 100, 10. 6. 100, 10. 6. 100, 10. 6. 100, 10. 6. 100, 10. 6. 100.

Thus, the first rule does not apply, however, to all servants. Those of the 5th. class are generally not liable to correction as factors, brokers, attorneys, ship masters etc. And it appears to me doubtful whether the right of correction extends to
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The rights of the master and servant are substantially the same, as that of a master and his children supposes the servant to be under the personal domestic government of the master. The master undoubtedly has a right to chastise his slave, apprentice, or minor servant. He probably is also a debtor assigned to him in services. Due to day labourers, unless members of his family.

The may correct a slave or apprentice of any age. But if he beats any other sort of full age, he is not justifiable before the justices of the peace. Act 625. 3 Eliz. 1/2.

So if this correction is by the master's son, the master cannot justify a wounding of his servant for he must chastise, moderately if at all. If there be no error, the master, for assault, battery, wounding, he can justify as to the assaulter only, but not necessarily as to the wounding. Wounding is no crime. 4 Eliz. 2d. 226. 269.

By Stat. 1, 2 Eliz. 2, the master may plead double "not guilty," as to the whole of a justification, moderate, i.e. quitted as to part. 3 Eliz. 2d. 226.

The master, in his justification the remainder, the place where, the business on which. These being matters surmised. 3 Eliz. 2d. 226. 227.

The master cannot delegate his right of correction, the authority being personal. A schoolmaster does not correct...
Masters and Servants

A master can be sued by adesired power, but on his own right. 3 H. 32, 323; 1 Edw. 164; 2 Reg. 52, 273; 4 Ste. 593; 6 Esp. 410.

If the master iscoronning the Servant kills him, he is guilty of a less serious homicide, manslaughter, as murder, according to the circumstances of the case. 3 H. 32, 323; 1 Edw. 164; 2 Reg. 52, 273; 4 Ste. 593; 6 Esp. 410.

A Servant cannot avoid a deed obtained by duress of his master. In giving this duce the servante acts as a mere stranger. 10 H. 577; 2 Brow. 756; 3 H. 563.

Masters remedy others for injuries done to them, in relation to his Servant.

An action lies in favor of the master of any one who entices away his servant. It is laid with a per quod, because the only injury is servitium arevit. 10 H. 577; 2 Brow. 756; 3 H. 563; 182, 403; 164; 182, 464; 182, 480; 2 Reg. 52, 273.

If a Servant is taken away with force, this is quiet trespass, when is a proper person action. If no force there is done strictly cause the trespass, is laid in Eng. 2, 29, the case. 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464.

So if a Servant without enticement leaves his master, without license or just cause, is claimed by another knowing of the former relation, action for loss of service lies to the latter. 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464.

But no indictment this not for enticing away a Servant. It is a private injury, 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg. 52, 273; 182, 464; 182, 480; 2 Reg.
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If a servant is beaten by a stranger, he may have an action for the battery. If a loss of service is occasioned by it, the master may also have his action. The servant is injured in his person, the master by loss of his labor. A recovery by one is no bar to the other's action. Their rights are distinct.

D.Bac. 355, 8.C.B. 12, C.B.C. 132, 2 Bulst. 83. 163. 175.

The master in this case must declare with a plea good. if he cannot recover if there had been no loss of service.

D.Bac. 355, 8.C.B. 12, C.B.C. 132, 2 Bulst. 83. 163. 175.

If one beats another servant to such a degree that he dies, the master has no recovery. The private injury is viewed as the public.

D.Bac. 355, 8.C.B. 12, C.B.C. 132, 2 Bulst. 83. 163. 175.

If a surgeon employed to cure a servant wounded intentionally injures it by improper treatment so that the master loses his service in consequence of the treatment, an action lies for the master to the surgeon.

D.Bac. 355, 8.C.B. 12, C.B.C. 132, 2 Bulst. 83. 163. 175.

Suppose the injury done the negligence or want of skill, the action lie for the master? For the servant it would.

D.Bac. 355, 8.C.B. 12, C.B.C. 132, 2 Bulst. 83. 163. 175.

In case of a servant killed away or leaving his master without license, if a recovery had been satisfaction received by the master to the servant is a bar to the master's action. To the stranger, who entered as such, the servant for hire is but one cause of action.


Being whilst a recovery without satisfaction is a

Master and Servant.

What acts the Master or Servant may justify in each others defence.

A master may maintain, i.e. alrit to a justice, his servant in an action for a stranger, without shewing maintenence. 1 Berg. 28 Oct. 1143.

The servant may clearly justify an assault in defence of his master, as far as the master might in defence of himself, as it is part of his duty. 3 Bac. 568. 1 Kace. 26 Oct. 1603.

But he cannot in defence of his masters goods or person, for he is not servant to the latter. This right proceeds out of the relation. 3 Bac. 568. 2 Dau. 1651.

Whether the master can justify an assault on defence of his servant, is questioned by some, because he may have an action for the service, so he may for injury done to his goods, but he may defend them, opinions are contradictory. But it seems the masters interest is sufficient to justify him, that it is his duty to protect his servant. 4 Wm. Dec. 32, 32. in Most. Hall. 4 St. Eliz. 5. 3 Bac. 568. 30 May 53.
2 Hol. 54. 5 Bald. 407. 1860. 329. Law. pl. 129. 5. Law. 1C. 101.
Sheriffs and Gaolers.

The nature of the Office and the manner of appointment.

The word "Sheriff" denotes in its original sense, the Keeper of a County. It is derived from two Saxon words "Shire" and "reeve", a governor or officer of a County. At first, the office is the first office of the county. 111 Ed. 329, 340.

The Sheriff in Eng. is appointed by the King out of a nomination of three persons made by the twelve judges. He was formerly appointed by the inhabitants of a County. He was an elective officer, but he is now appointed by the King. 111 Ed. 342. 1. 4 Co. 32.

By Eng. Acts 4. Ed. 23. 23 Hen. 6. the Sheriff holds his office only for one year, and yet it hath been said that a Sheriff may be appointed during the King's pleasure. I say is the form of the royal writ. I know not on what ground such an observation is made. 4 Co. 32. 4 Edic 939. 111 Ed. 342.

In Court, the Sheriff of the respective counties are appointed by the Governor of Council. There is but one for each county. In Eng. they have generally but one Sheriff, but there are sometimes two. The Sheriff holds in person, during the pleasure of the Governor of Council, so that the office depends entirely upon them.
Sheriffs and Gaolers.

by death, resignation, or removal, Stat. 6, 833.

It is the duty of the Sheriff to reside in the county to which he is appointed, it is a county office. He has no business out of it, 4 Bac. 633.

He has regularly no jurisdiction out of his own county, but if it be necessary for completing an officer, act, regularly begun, then he should go out of the county, he has for this purpose authority to do so. Thus if a Sheriff is commanded by habeas corpus, to bring a prisoner from another county for the first act, bringing him out of jail, is to be done by the Sheriff of that county where he is committed, and if he has not power to come out of it, he cannot complete the bringing him here. So also if the Sheriff levies an attachment on property, the Sheriff lives out of the county, he may go out of the county to serve the process on him, i.e. there must, as we have seen before, he a copy left at the House of the Sheriff. Now the Sheriff may go out to serve this, for it is a continuance of a right not yet consummated, 4 Bac. 635.

And if a prisoner escapes from one county into another, the Sheriff of the former county may pursue and take him, for here the reception is nothing but the continuance of his local authority, 37. 4 Bac. 635.
Sheriffs and Deputies.

of the Sheriff's Deputies.

A Sheriff by C. S. may appoint Deputies and
under Sheriffs who may execute all his ministerial
offices. The most important of the Sheriff's
duties are of the ministerial kind and it is a rule
that a ministerial office may be executed by a
Deputy. But the Sheriff cannot delegate his jurisdiction
authority to anyone. Tit. 15, Sec. 440.

But by a late Stat. of Conn, a Sheriff cannot
appoint a general Deputy without the permi-
sion or approval of the Ct. of Common Pleas of
his County. Also without their approval he may
appoint a Special Deputy, i.e. one to execute a par-
ticular process. Also the Sheriffs of the several
Counties may appoint each other their deputies,
without the approval of the Ct. of C. P.. a Deput.
must live in his County, but a Deputy need not.

As the Deputy is but a Servant to the Sheriff,
it follows that the Sheriff may remove him at pleasure;
but while he continues in office his general pow-
er cannot be abridged by the Sheriff, for while
he holds the office, he is bound by Law to perform
the duties of it. Nath. 95, Tit. 13.

Under our Laws also the Ct. of C. P. may in
certain cases, issue, suspend and dissolve a deput-
y on before acting in that office on complaint made.
At C. S. he is removable only by the Sheriff. Stat. C. 501. a 502.
Sheriffs and Gaolers.

In Eng. the Deputy Sheriff acts officially only in the name of the Shf. A writ in Eng. is never directed to a Deputy Sheriff; he is never known as a public officer, but merely as a servant of the Shf. The Deputy Sheriff, in common language, does the Shf's commands. Having done these, he gives an account to the Shf, who must make the return to the proper officers in his own name. Cited 65. Const. 62.

In law, on the other hand, the Dep. Shf. is a known public officer. The courts may be directed to him. These returns are the returns he makes in his own name. Whether there is an independent direction to him is not. Stat. 1. 24. 1797.

A writ directed to the Shf. only, may be as well as in Eng. be executed by his Deputy, with this difference: that in Eng. he makes the return in his own name, whereas in law, it must be done in the name of the Shf. Kirby 1237.

I have observed already, that when a Deputy continued in office, the Shf. cannot abridge his official duties, by contract or agreement by the Deputy to abstain from executing certain process, or not to execute it, within certain local limits in the County, if void, as it is contrary to law—it is his duty to execute all processes. 2 Rob. 114. The rule above prevents the Shf. from appropriating all the profitable branches of the business. Giving to his Deputy such parts as are more lucrative, for which the recompense is left liberal.
Sheriffs and Deputies.

A sheriff may act by deputy, but a deputy cannot delegate his authority. A ministerial authority is original, and may be delegated, but it cannot be delegated in the hands of a servant to the original holder of it. A deputy must then act in his own person, tho' he may command assistance in the same manner that the sheriff, 4 Bac. 442.

If the sheriff directs a warrant to two persons either of them alone, may make the arrest. It will be recollected that in civil cases there is a difference between a private authority and a public one. When a public ministerial authority is conferred on two or more, it is general as well as joint, it may be executed by either alone. It is otherwise as to a private authority. It is joint not general, and as it is so expressed, 1817, 19 St. 181, 4 Bac. 403, 603 esta.

If a deputy is guilty of any neglect of duty, the sheriff may maintain an action on the case of him immediately, or if there was a bond of indemnity given, he may maintain an action on that. If the sheriff is liable, then for such neglect of duty to the party injured, and as he is liable, it follows that he must have a remedy. A deputy, sheriff, when he enters on his duty, in judgment of law, implicitly agrees to perform it faithfully. Will. 98.

The sheriff is ex officio keeper of the peace in his own county. The parish is his deputy, aged or sick, if he is appointed so, he is also removable by the sheriff. The sheriff is keeper of the peace, but it is his business to
Sheriffs and Gaols.

Confine a prisoner not committed to bail in the county Gaol in his county. This is the place intended to be the scene for confinement. He has no right to put him anywhere else. The court cannot commit a theft, any other than the common Gaol into a place of confinement, if he does he is guilty of false imprisonment. This is laid down as the general rule. So it however there are exceptions, as in the case where Gaol has been burned down. In such like cases he must provide some safe place for the confinement of prisoners. 

A Sheriff, being the officer, keeper of the Gaol, cannot himself be imprisoned in it, for if he shall put by force he can let him self out when he pleases. For he has the control, it carries the keys. Abstration is generally but one. Gaol in the county he cannot be confined. Generally can not be arrested in a civil case, for no man is liable to an arrest who cannot be imprisoned, of course he cannot be put to bail. As this is a consequence of arrest, for he cannot be taken out of his county to be committed, and be commit him in his own Gaol, save whilst he is acting without being absconded. But in a criminal case, suppose he may be committed to the prison in another county, by necessitate 226. This in a civil case the Sheriff can not be committed, yet he may be hotter to trial in common. In pursuance of the same principle it was held that the Sheriff with cannot be imprisoned in any civil case. Hence of a Sheriff among a general
Sheriffs and Gaolers.

prisoner, he is guilty of an escape. The United States Marshall may the prisoner in a common jail. It has been determined in Conn. that if a Sheriff is arrested, the suit shall abate, i.e. in a civil case, I doubt the correctness of that decision. If he cannot be arrested, he ought to be discharged. There are several analogous cases. If a poor Court is arrested, it is to be discharged, but the suit does not abate. This case above 27 have been proceeded with as if it had been a summons for the Sheriff to be summoned. Title 45, Sec. 239. Likely 45.

Some more to treat.

Of the Liability of the Sheriff for the acts and defaults of his Deputies.

The Deputy being the servant of the Sheriff, the Sheriff is in many cases liable for the acts and defaults of the Deputy. The suit of the Deputy is the suit of the Sheriff for the Sheriff. See 42, 3 Will. 87, 22 Dec. 158, 1 Vest. 391, 9 Mfrs. 117.

And this I would observe is the foundation of the Sheriff's right to take security from the deputies for the faithful discharge of their duty. This bond is only for the Sheriff's own security, for if any other person should take a bond from the Sheriff for a full and fair discharge of his duty it is to be void. Title 49, Sec. 49.

As to the extent of the Sheriff's liability for the acts of his Deputy the rule is that the official acts of the deputy are to all civil purposes considered the acts of the Sheriff, he is therefore liable.
Sheriffs and Constables.

but with regard to the acts of the Deputy which fall under the Criminal Law, they are not to be regarded as his acts. The Sheriff is liable civilly, not criminally, for it is by fiction of law that the acts of the Deputy are the acts of the Sheriff. But the Sheriff makes a new criminal by omission. Suppose that the Deputy having in his possession a lawful process, should burn or otherwise destroy it. Then the Sheriff is liable civilly only, and the Deputy himself is liable for the riot, 21 May 1874. 1 Wn. 238, 138, 42, 257, 50.

I have said the Sheriff is liable for the Sheriff's acts of the Deputy. But for a Deputy's private acts, not committed in the exercise of his office, the Sheriff is not liable. He is supposed to be a stranger to these acts. If the Deputy shou[ld] commit a battery not in the execution of his office, the Sheriff is not liable.

It has therefore been questioned whether the Deputy is subject to the 252 A.R., as in an execution by B., the Sheriff is liable in respect to A. It has been contended that the Sheriff is not liable because he did not command the act. But it is well settled that he is liable as he did not command the Deputy to execute the process on the master's behalf. The Sheriff must suffer rather than the 3rd person. (Backman.) 3 Wall. 329, 2 Bl.R. 832, Dec. 42.

For a mere neglect of duty by the Deputy, the Sheriff, if he alone, is liable at C.C. to the party for
injuries. The Deputy is not liable for neglect of duty to any person but to the Staff. But to the Staff, he is liable, whether he has given a bond of indemnity or not. Thus if a Deputy Staff suffers a neglect or escape, the party's remedy is to the Staff, himself. The reason is, that the Deputy is not a known public officer; the process is not directed to him, he has not omitted any act that appears on the process he was bound to perform. 5 Co. 89. Comp. 403; 6. Sail. 18. Roll 94. 2 Boc. 243. 85. 66. 603.

I would here observe that what is called breach of duty, is meant neglect of duty. Other wise, you cannot reconcile the cases. The rule is not laid down very distinctly in the books; in the case in Com. nor from which all the others spring. 2. Mansfield, says: 'Whenever an action is brought for breach of duty in the office of Clerk, by a Deputy, it must be brought to the High Clerk, as a breach of duty in him, if it proceeds from the Under Clerk's fault, that is a matter to be settled between him and the High Clerk.'

On the other hand, for an actual tort committed by the Deputy in his office, he is liable as well as the Chief. The Chief is liable because the Deputy is his servant; the Deputy is liable because he may be considered a tortfeasor, for the Chief does not authorize him to commit a tort — as in the e.g. where a process is wrongfully executed on another person. The Chief is liable equally.
Sheriffs and Guardians.

But the deputy may be considered as a mere taker - the fact, subject which he is to act does not authorize him to commit a tort - if he does commit a tort, then, he is to be considered as any other individual. Luke 18, 1 Cor. 166, 6 Cor. 3, 176, 743, 810, 121, 374, 251.

Hence if a deputy is guilty of a voluntary escape he is liable. The deputy is considered as any other person who resists the persons of the honor of the laws. So if the sheriff consigns money to a deputy he is liable as any other individual to be paid. But in the default of a Sheriff deputy pointed out by the sheriff, the sheriff is never liable. The liability of the sheriff for the default of his deputy arises from the supposition that he has selected for his deputy an improper person; but in this case the sheriff has nominated an individual to serve the process; he must therefore abide by the consequences. If the sheriff selects the special deputy, he is then liable in the same manner that he is for the act of his general deputy. 6 U.C. 120, Exp 568.

In short, the deputy is liable as well for neglect of duty as for positive torts, in the execution of his office. This distinction between the rule of the common laws is founded upon this that here the deputy is a known public officer; he does business in his own name, subscribes his own name to what he has executed, and the map can, I by said in his official character. Sect. 32. I have said the sheriff is an agent to the sheriff.
Sheriff's Gaolers.

Now it is a rule, if after the Sheriff's death, a before a Successor appointed any person escape from jail, no person is liable for the escape. The Sheriff, being the only official or his hands has expired, therefor he his Representatives, can be subject to: the Judge cannot be liable, for the death of the Sheriff is an execution of the delegated authority under which he acts. 3 Co. 72. Cas. 836.

And in this case there is no other remedy than that of recapture - the person interested may retake the prisoner. 105 Va. 14.

If a Sheriff, having begun the execution of Process, is removed before the execution is complete, the court proceeds to complete the execution of process as an entire thing. A rule in this Court, as to all officers qualified to serve process, as constables. Such business as he has commenced before the determination of his office, he must complete. 10 Th. 92. 502. 1 P. & E. 932.

I now proceed with more particularity to consider.

The Authority & Duty of Sheriffs and Gaoler.

In Eng., by C. B., the Sheriff is a Judicary, as well as an Executive & ministerial officer. Hence it is that he holds his office & acts himself as judge. 126, 263.

In brief, the Sheriff has no judicial authority, he is an Executive & ministerial officer and it is the same in U.S. generally. I propose then, to treat of the Sheriff as a ministerial officer, etc.
Sheriffs and Deputies.

Conservator of the Peace is an Executive Officer, where I shall show the difference between an Executive and a ministerial officer.

An Executive Officer is one who executes the Law without any commands from a superior officer. A ministerial officer is one who executes the Law in pursuance of a command from some superior officer. Now the Secretary of State, the Secretary of the Treasury, etc., are executive officers. They have duties that they perform by authority of Law, without any command from some superior officer. But when called upon by the President to assist him in the cabinet, in that capacity, they are ministerial officers. So the Sheriff, as Conservator of the Peace, is an executive officer, when he executes by order of a superior officer, he is a ministerial officer.

The Sheriff as Conservator of the Peace is the first Executive Officer in the County as D.S. if he is the highest county officer, all persons are subject to his command. 13 c. 343.

Upon principles of the Law, he may execute his powers to commit to prison, without a warrant, any person who breaks the peace, or attempts to break it, or any other course of his judicial authority, may bind them to keep the peace, but in cases this he cannot do. He is being no special to pursue, but all traitors, murderers, felons, and other misdeeds commit them to jail for safe custody. When he does these by law, he is an executive officer, but...
Sheriffs and Constables.

When the sheriff by precept is a ministerial officer, he must also defend the counties from all enemies, & when they come into the land for this purpose, as well as for keeping the peace & preserving good order, he may command all the people of the county to attend him, called the poeple summoned.

13th Summons, every person above the age of 14 years, & under the degree of a Peer, is bound to attend on warning; under pain of fine & imprisonment. 15th, 39th, 1756, 168.

In case he is empowered by Stat. to suppress all tumults, riots, &c., & all other unlawful assemblies, he is empowered to command all suitable persons to his assistance, Suitable persons are presumed to be all persons of the county, all persons over the age of 15 years for in case the peers of the realm, or all persons then above that age may be included, it upon refusal to obey they shall or conviction be fined. By the same Stat., constables are clothed with the same power to suppress tumults in their towns, as sheriffs have in their county. Stat. 5, 184.

These are the legal duties of a Sheriff as an executive officer. But his more common duties are those arising from his ministerial office. As such he must execute all legal process directed to him, & on refusal is liable at Law to fine & imprisonment, as also to an action in favor of the party injured. Not indeed that he is on all occasions to execute process, necessary absence, &c.
Sheriffs and Constables.

excuse him, if so, with previous engagements.

176. 249, 244. Fox, 106. Oct 6, 566.

In one particular relation to this rule there is a diversity between the Eng. Law and ours. Here the Sheriff is liable to a civil action for neglecting to return a Writ. In Eng. he is not so in Eng. There is a rule of Ct. to compel him to return a Writ if in case he does so refuse to return that the term mentioned, an attachment issues. 4 B. C. 366, 2 Ta. N. C. 233. 1 Bac 53. 266. 3 B. C. 297. 3 P. 37. 566. 566.

By our Law the Sheriff is bound when required, by our Law, to give a receipt for any writ delivered him. If when he refuses the question is may be vitiated which is to answer the same question not to act if the claim is the same as to Constables. This provision is seldom carried into effect on mass process, on bills of execution or final process, is always done. 566. 566.

A known officer, as a Sheriff or any constable, is not bound to show his writ line. For he makes the arrest even if it should be in question the reason is, that being a known public officer, every one who trusts him to have such authority, it shall submit to any process served by such officers, but when the arrest has been made he is bound to show his, that the party may know upon what cause the arrest is made, and it seems to be settled that he must show it at soon as he convenes in the same after he has made.
Sheriffs as Officers.

In Arrest. On the one hand, a Special Deputy or Shiff must show his warrant before he makes the arrest of requiring, and if he does not show it, the party may resist him, for it is not known that he is an officer, or that he has any authority more than any other individual. If it is not required, he need not show it, 48 Stat. 52, 66th Leg., 2d Sess., Ch. 155, Sec. 2609, 55 T.N., 153.

And the Shiff, or his deputy may command the power of the county, when required by the execution of lawful process. I before observed he might do this in his executive capacity, for the purpose of apprehending traitors, 47 Stat. 192, 38th Leg., 1st Sess., Sec. 643.

And by a Stat. of Texas, in case of an overt opposition to his excess or a suspicion that it will be made, the Shiff, with the advice from a sufficient or a Justice of the peace, may raise the militia of the county, and all militia officers and soldiers are bound to obey him, but he has this power at 5, without such advice. 48 Stat. 52, 66th Leg., Ch. 155, Sec. 2609.

And the Stat. provides that he shall not return "nothing done," for having the power of the county, he is presumed to be able to perform his duty. Constables may do the same in this respecting Texas.

If the manner of executing Process.

The Shiff or other officer cannot break the outer doors or windows of a house to arrest a person, or his goods in a civil case.
Sheriffs and Constables.

"every man's house is his castle." This was the remain of feudal barbarity. Every man then had his castle to defend himself at all civic process, but as this was the rule of the barbarous times, it has continued since its settled; but it is absurd, there is no impropiety in saying that a man's house should be his castle, it thus suffers him to evade the process because of the fear. There is no reason why on principles he should be allowed to prevent an arrest by closing his doors twice or more than he could in his feather in the street. 6 Co. 91. Campb. 1. bro. E. 909. Dec. 62. Eph. 606 Trilly 383.

It is said in some of the old Books, that the execution of process be made contrary to this rule; by breaking the doors to of a house, the execution is good; the the Thieves will be liable as a trespasser. But this is not law, the rule is not founded on principle. So if it were not considered void, the officers will be allowed to take it as advantage receive a benefit from his own wrong, which is contrary to every principle of policy, of justice, or law.

But the execution of the process is not illegal, the law may discharge him in a summary way or in virtue of they pleasure, or leave him to his place. This discharge is a summary way proves that the process is legal, they will not always discharge the judge discretionarily with the 606. 92. 2 Braddy, conj. 21. A. 32d.
Sherrifs and Gaolers.

I do not find the Books explain what is meant by the term "breaking." Some have observed that in breaking a door there must be a demolition, as to break a lock of. But this is not necessary. Some the lifting of a latch is sufficient, breaking being but one of those. This is breaking, I think just, that in the case of breaking by Sherrif, no slide, nor removing any kind of fastening or lifting a window would be a sufficient breaking.

But this privilege of Castle is now construed very strictly that extends to nothing but outward doors & windows. Nothing but these are prohibited. If these, the officer can enter the outer door without breaking, he may break any inner door, &c. &c. but he must not do it wantonly. The may require the inner doors to be open, &c. &c. on refusal, may break them. Conv. 67, 1602, 262, bomb. 17, 327, 2 Thom. 37, Esp. 50, 500, Col. 54.

Further, the privilege of the mansion-house extends only to the person, family, & goods of the owner or occupier of the house; not to the person of another. 2. Mand. To says it is an invidious privilege, ought never to be extended by construction. If then A is in B's house, &c. he not permit the officer to enter, he may break the door. So also, if B's goods are in A's house, 5693, 7606, 92, 132, 136.

In a criminal process the privilege is not allowed at all. The officer of it be necessary.
Sheriffs and Gaolers.

may break the door after a request to search it on motion for the public rights are superior to those of an individual. 5 Co. 93. 4 Bac. 489.

The rule is the same as on a process to free charity of a prisoner, and of forcible entry & detainer. 12 Co. 211. 4 Bac. 485. Moore 606.

And when a person known to have committed a felony is pursued either with or without a warrant by an officer or private person, his house is no protection. Bacon says it is different. If he is only suspected to have committed a felony I apprehend it can make no difference. But the process without a warrant is a hazardous one. If he is found innocent, the person breaking the door will be liable no doubt for it. I also for forcible entry in prisoner's case.

2 Maria. 129. 6 Bac. 485.

So also the order door may be broken to suppress any affray, or to prevent a breach of the peace of the peace. If the persons in the affray are pursued by an officer they get into their house, he may break the door, for this is just pursuant to 4 Co. 658. 659.

So also on a merit of haberes facias in probar no the officer may break the door to effectuate is demurrer. This is a civil process, but the very command of the court is to direct him to take possession & deliver it to the plaintiff. It is otherwise when it is the prisoner that is sought to be arrested. He may be found out of the house. If the court does not command an officer to break the house to arrest the person. 5 Co. 93.
Sherriffs and Gaolers.

And the outer door of an out house may clearly be broken or a civil process so the privilege is now construed very strictly. I believe myself that a door adjoyning the house may be broken, this is not in the rule. I know it is considered as part of the house in house as to Prson Banglo, but it is not so as to this case. 1 Saq. 116. 1 Mell 698.

132.

And if in attempting to execute civil process, the bailiff or follower of the sheriff is locked up confined, the sheriff may break the house to release him, and if the sheriff should be locked up, he may as doubt break out himself. Psal. 52. brod. 055.

And if a person having been arrested escapes into his house, the sheriff may break open windows he to retake him, for this is an escape, he has a right to the person of his prisoner, when he has once taken him. Rott. 12. 158. Psal. 54. 6 Med. 178.

But if a person illegally arrested by break any doors or dale in custody is afterwards arrested be another officer or another process, the last arrest is good provided there was no collusion between the officer and the party, if there was collusion, it is not good. 213. 423. Est. 64. 605.

At c. s. process might illegally have been executed on Sunday, but by Stat. 29. Cap. 17: it can not be done in any civil suit and the law is the same in both. If an arrest is here made on Sunday, it is void: it the officer who makes it equally
Sheriffs and Gaols.

If false imprisonment, or personal property, be seized, or guilty of a trespass, Selk. 7 & 8, 6 Bar. 665, 686.

But in case of an escape, it is otherwise. If the escape be on Sunday or on any other day, he may be retained on Sunday. This is a continuation of the officers custody. Upon the same principle that a Sheriff or Gaoler may retain one who has made his escape by force, so he is allowed to retain him in prison on that day. Selk. 626. 6 M. 598. 2 Bac. 245. 5 Term. 23. 3 Bay. 1028.

I have already observed that, if a man is arrested on Sunday the officer is liable. I have further to observe that the officer may discharge him in a summary way, as in the case of illegal arrest by breaking open doors, Selk. 595. 5 H. 95.

On the Law of arrest it is founded the Law of Escapes. An Escape is also a person under unlawful arrest, restrained of his liberty either violently, by force, or secretly evades such restraint, and goes at large, before he is liberated by due course of Law - it essential to an escape that there shall have been a lawful arrest. The evasion must have been before he was discharged by due course of Law. The evasion of an illegal arrest then is not an escape. Esp. 607. 3 G. Barr. notes 259. 2 Bac. 232. Comp. 65.

It becomes then necessary to consider...
Sheriffs and Gaolers.

What arrests are lawful and what unlawful.

Every arrest must have been made in pursuance of lawful authority. A lawful arrest may be made without warrant or writ, but it must be made by lawful authority. 4 Breech 35, 567.

Now it is a rule of C. L. that when the arrest is made by virtue of a Writ or Warrant, the b. under whose authority it issues has jurisdiction of the subject matter of the process, it is a lawful arrest. Of course, if the person arrested under these circumstances to go at large before he is arraigned by due course of Law, it is an escape, and it makes no difference whether the proceeding erroneous or not, if it is not void. There is a great difference between erroneous Writs and processes. The former is good, the latter arises by due course of Law, by proceedings in the nature of a revision by appeal in a court of Error. Void process is a nullity from the beginning, there is nothing lawful which is done under a void writ. 2 Breech 334. 3 Breech 441. 5 Breech 64. 509. Exp. 333 391 exp. 659.

Now write observes that this rule is general, the most universal, as I will show by the fact, so the other hand, of the b. under whose authority the writ issues, has no jurisdiction of the subject matter the process is void. If there be an arrest made in pursuance of that writ the person who parts go at large, it cannot be considered an escape, for the writ is void. Exp. 333 391 exp. 659.
Sheriffs and Gaolers.

But this is a general rule that if the bailee, who has authority, the process issues has just
competent jurisdiction of the arrest is good, yet
the process may be void on account of irregular-
ity. Irregular process is generally void. This must
mean, process does not return, but its return
whether there was sufficient time between the
date and the time day, it is void. The rule of
court is that means process shall always be re-
turned to the next time of the lot, from which it
issues, if there is sufficient time. For if it were
permitted to go over one term, it might not be
beyond the second, it as the case might be the
left; held to bail or a cause of action to be tried
10 years hence. Considering such a process erroneous
merely it cannot answer the purpose. For the error
to be found only on trial, it tells that comes the
bailee, is put to the hardship of procuring bail
for 10 years to come, or be confined in prison.
It is well considered void, they, when the lot
will immediately discharge him. There can be
no escape in such case. Having arrested and
on such a writ, it is the Sheriff's duty to discharge
him. Otherwise he may be made liable. And for do-
ing this the Sheriff cannot be subjected in an lia
to $341. l Root 315, En 2 324, l Root 605.9, Court 140.3-8

But this general rule of distinction between
a legal and a void process will not apply in
cases to the practice of law. The general rule is
Sheriffs or Gaolers.

That is, unless procures the 6d. on which a writ is returnable, does not issue the writ, then you take the rule of town, as to return procures the 6d. on case of prison process as before state viz. that, if the process is issued by competent authority, it is returnable to a 6d. that has jurisdiction of the subject matter, the arrest made under it is lawful, and of course if the party go, before he is lawfully discharged, it is an escape. On the other hand, if it is not issued by competent authority, the arrest is void, as well as unlawful, otherwise can be re-scape. Thus, no difference between this and the principle of the 6d.

These are the general distinctions between erroneous, void, or valid process. A 6d. an officer having made an arrest on prison process, cannot delegate the power over to a 3d. person to keep him in his absence — if the prisoner gets away, the sheriff is guilty of a voluntary escape. It is otherwise as to prison process. Yet I think the rule ought to apply as well to prison as final process, so far as regards to the sheriff's power of delegating his authority, for a person in the keeping of the sheriff is under his protection, it is ought not to be allowed to deliver him to a Stranger. This is contrary to the rule of Conn. Post. 12 Jul. 29.

The first rule as to escapes is that there must be an arrest made by authority of law. The second is that there must have been an
actual arrest. And here observe that born words never make an arrest there must be an active
touching of the body or in what is tantamount to it. A power of immediately arresting him and a submission on the part of the person. The rule
this is, that if the Off. has a writ. It says, "Arrest you," you run away, it is no arrest; but when he has a power to arrest, if the person submits it follows
the rule. So he does not touch him, yet it is an arrest. If he goes at large, the Off. is guilty of
an escape. 4 Bac. 236, Esp. 1609, Sail. 29,508, Sail. 30, 22.

If a person is arrested at the suit of A.
while in the custody of the Off. he has a writ
to the same person in favor of B. the Off. is ipso
facto in judgment of A. as arrested. So there needs
be no further touching him in a formal manner
and if he suffers him to go at large after the deliv-
ery of the second writ to him, before he is legally
discharged. He is guilty of two escapes, one at
the suit of B. 1 the other at the suit of A. 26089.
Sail. 239.

I doubt whether this rule, on account of
our practice, will obtain in Conv. Our phrase is to the person of the estate. The party may pre-
fer taking the estate rather than the person; if
this rule did obtain here the Off. we have no instruc-
tion to take the property a person of the estate as
he certainly in have a right to it in all cases.
As the Engl. Law Contemplates a capias, all the
Sheriff and Gaolers.

Office can do is to take the person, but not to
in Court.

The arrest then to be good must be actual
truly made - if it be not, there can be no
and be no escape. In all civil cases the arrest
be made on a legal writ or warrant. But if there
be no escape. There are certain crimina-
al cases, in which the Sheriff may make an arrest
without warrant, but alter in civil cases.

Thus the arrest in a civil case must be
made by authority of the officer to whom the writ
or warrant is directed. There may be a lawful
warrant, directed to A. to arrest B. But this can
be no authority under which B. can arrest A.

It is necessary then that it give authority to the per-
on arresting - not that the Sheriff must do it him-
self, he may do it by Deputy, for in this case "he
is agent for Attorney for B." And same which
applies. If the person to whom the writ is directed
has following, they may make the arrest in his pre-
sence, but if not thus made it is not good. And
not now speaking of the officers deputies. It is said
the arrest must have been made in his presence,
it need not be in his sight, in his actual pres-
ce. it is sufficient when it is made that he is
near the person of the same object. As where
one goes to the back door and the officer goes to
front door, the person attempts to escape the

Sheriffs and Constables.

back door when the following takes him, the arrest is good, in the offices was made of in pursuit of the same object. Comp. 60. 666. 211. 138. 211. 68. 684.

An arrest on Sunday being prohibited by law, nor our laws is void of costs to the public. If it goes at large, it is no escape, Nott. 95. 211. 78.

And in the case of making an arrest by breaking an outer door or window of a man's house, the arrest is unlawful, thus can be no escape, comp. 138. 68. 684.

If the officer having an opportunity to make an arrest does not make it, or refuses to the party evades the arrest, the officer is liable to a penalty in an action of trespass. But as there is no actual arrest, he is not liable to a penalty for an escape. 2. Mod. 2377. 2. 25. 25. 128. 95. 10. Mod. 50. 253.

Thus far having considered the law of arrest, now come to treat of particulars of Escapes.

Escapes are of two kinds. Voluntary and Negligent. These are all the escapes known to law. 313. 415. 3665.

I would here observe, that every person committed to prison is to be kept in close custody, thus the law requires of the sheriff. If the person committed is suffered by the sheriff or constables to leave the limits of the prison, even for a moment, the sheriff is guilty of an escape. Plow. 36. 2. No. 44.

Note. 806. 313. 415.
Sheriffs and Gaolers.

A voluntary escape is one, which takes place with consent of the Jfl. or Gaoler, or other officer having the prisoner in custody. A negligent escape is one, which happens without his knowledge or consent. The word knowledge in this definition, Mr. E. thinks should be left out as superfluous. 3 Bl. 946.

1st. As to voluntary escapes. If the Jfl. permits a person to Bail, who is not bailable, the Jfl. is guilty of an escape. The law does not permit it. So if the Jfl. permits a person to go out of the limits of the jail yard even for a moment, the under the case of a tuner, he is guilty of a voluntary escape. The reason is obvious. If the Jfl. permits the prisoner to go 10 fur. over the limits for one moment, he would have equal authority to permit him to go an indefinite distance, for an indefinite length of time. I think the Conviction intended by this law will be defeats. 1 Boll. 366. 3 C. 44. 2 Bache 205. 235. 4 C. 57.

The rule is the same, where a person is arrested on false process, the not committed to prison, is permitted for any time he go at leisure, no matter how short a space of time. It is otherwise when arrested on true process, 2 C. 65. 2 Bost. 36.

Persons committed on criminal process are confined here, as I presume they are in Eng. secure within the walls of the prison. Those committed on civil process are permitted, by procuring security to save the Jfl. from criticism cases of
Sheriffs and Gaolers.

Escape, to the liberties of the prison yard. This is considered as the prison wall, in judgment of law. But if he grants this privilege to a criminal, he is guilty of a voluntary escape.

It has been determined in Eng. that if a person commits the theft or like process, it rests upon Westminster Hall, in habeas corpus ad testificandum, the thief is guilty of a voluntary escape. This is certainly not law. It would be monstrous to say he was guilty of a voluntary escape, for as the case might be, the same lot, who made this decision, commanded him to bring the prisoner before them, if on refusal, he is liable to contempt of Court, might be imprisoned. I am happy to find the case decided to be correct. (Sedg. 13. 136. 4. P. 72. 1 Woot. 72. Kirby 107. 3 Bac. 333.)

But if an officer, who brings out a person in habeas corpus, grants him any unnecessary or unreasonable liberty, as going abroad, he is guilty of a voluntary escape. Thus, when the sheriff, who was commanded to bring a prisoner from one county into another, took him a circuit of 60 miles, for the purpose of giving him an airing, as is said, he was held as guilty of a voluntary escape. The rule then is, that when a prisoner is brought by habeas corpus, the officer must bring him on a reasonable time; it must bring him in the most convenient road. 3 H. 88. 2 Raw. 113. 399. 368. 6 Mad. 73. 206. 14.

This law also requires that an officer having
Sheriffs and Goalers.

made an arrest on final process, must commit the party arrested to prison, or convenient places of safety, if he does not or he is guilty of a voluntary escape. The rule is the same (as that I mentioned) if he permits him to go out with a servant, or an officer making an arrest cannot delegate to another person an authority to keep the prisoners in his absence. 1 Bos. & Pal. 29. 2 T. R. 176.

If the Shiff marry a woman committed to prison, he is guilty of a voluntary escape of she is discharged. The reason is that he cannot detain his wife in prison. Plow. 3. 17.

And if the Shiff appoints one of the prisoners a turn-key to the gaol, he is guilty of a voluntary escape. So by appointing him to this office, he gives him an opportunity to escape when he pleases; he therefore cannot be deemed the Shiff's prisoner. The rule is the same. Even the the prisoners never leaves the prison, with the same reason. Esp. 3d. 508. 3d. N. B. 311.

If a person having the privilege of the Gaol-yard, goes over the demi-walls, the Shiff is guilty of a negligent escape, not a voluntary one. But if the person having the privilege of the gate, has manifest ill intention to escape, or by attempting at a former time to escape, or it to the Shiff's duty to confine him within the walls, if he neglects to do it, the person afterwards goes out of the limits, the Shiff is not present at the time, or even gave his presence, he is guilty of a voluntary escape. 2 T. R. 187. 1 Bois. 10. 812.
Sheriffs and Gaolers.

Sec. 7. It is ordained at present that a sheriff is not bound to grant the privileges of the said house or all others than be a sufficient bond of indemnity signed by him. The prisoner cannot claim the use of the house, nothing being granted the privileges of the house of course may put an end to the enjoyment of it. Likewise, it is in his opinion the most proper. (Footnotes: Sect. 151, Act 16, 106, 123.)

Sec. 8. Negligent Escapes are such as happen without the consent of the sheriff or officer holding him. Thus, if the party avoids his restraint and makes his escape by violence or by fleeing from the officer, it is a negligent escape. If also if he escape by breaking his hold, or if he be rescued, or by any other means without the consent of the officer he is a negligent escape. (Footnotes: Sect. 415, 6, 604, 419, 612, 38, 136.)

I would here observe that it is an action to

the sheriff for an escape, the officers' endorsement on the back of the warrant is sufficient to show that the warrant was delivered to him. (Footnotes: 63.)

I am to consider the difference between escapes on made and those on final process.

I have observed herebefore that if a person is arrested on final process it permits the officer for one moment to go at large, the officer is liable for an escape, even though he was none committed to prison. The reason is that the confinement on final process is the coercive means of compelling payment, and as such duties at the time of the arrest made. If the officer might suffer him to go at large...
large for an hour, he might for any length of time, unless the object of the Sum should be fulfilled. 2 T.R. 171. 3 Bl. 415. Esp. 36. 665.

But on the other hand, a person arrested on a process, does not commit to prison, may be suffered to be at large without subjecting the officer, if the prisoner is forthcoming, e.g. will surrender himself up at the return of the Writ. The reason is that this process is not a coercive means of obtaining payment, for the debt has not been liquidated by due course of law. A further object of the process is merely to compel the attendance of the Debtor in Court, as a security for the debt which the Debtor may eventually recover. The Officer is guilty of no escape if he avails of the avoidance of the Writ by the Debtor. as if he does not appear at the time of the return of the Writ, then the Debtor is liable for an escape.

There is a difference between the C.L. process. In C.L., the Officer is not guilty if an escape if the Debtor is forthcoming at the time in the life of the process, or till a non est inventory is returned by

It may be asked when the Officer may make a return of non est inventory? It has been now established a definite rule as to the time, it cannot be before a reasonable time 12. to allow.

But if the party thus arrest on summa,
Sheriffs and Gaolers.

process is not forth coming at the returns of the
request according to the rule of C.C. and in con-
ning the life of the action, the officer in both cases
is guilty of an escape, and it is a negligent one,
the books do not declare it to be such. But
it must be a negligent escape for the officer
has a right to let him go at large till the re-
tion of the court, on the supers. cit. 622, 622, 628

Esp. 52, 599.

But if the person arrested in messu process
is committed to prison, the gaoler or officeruffering
him afterwards to go at large is guilty of a countern
escape, and after return does not lose the
action of the officer. The reason is that having
committed him to prison, he has no other duty
to perform than to keep him in close custody
today, it is not now to be set at liberty but by
due course. J. Mar. 2 Henry 294; Bulk. 271, Esp. 905,
610; 1 Raw. 867; Stat. Com. 272.

And in this case, as I observe, a return
of the person after being permitted to go away does
not bar the plaintiff's action of the officer, nor does
the plaintiff by proceeding to the first suit receive
this right to him. 2 Wend. 295; Bulk. 271.

There is also a difference in the remedy
to which the plaintiff in the process is entitled in the
case of an escape on merit or personal process.
If the arrested on merit process escapes,
the plaintiff's only remedy at law is the officer, in the a
action of trespass on the Case. When the damages are presumptive, the action cannot be supported until the plaintiff proves a legal claim to the property injured. 2 T.R. 129. 2 T.B. 145. 6 S. & T. 475 in 4 Co. 679. 2 S. & T. 875.

I will further observe that in the above case an acknowledgment out of Court of the party escaping that he owed the debt to the plaintiff is good evidence in the action as to the defendant. This is contrary to the general rule - the reason is that as the acknowledgment of the debt is a matter of good evidence in itself, as the defendant, after payment, obtained of the party escaping would have been liable for that payment rendered for the debt he was not complainant. 1 C.D. Eliz. 159. Ch. 129. 65.

For an escape or final procures the plaintiff may have his election of two actions, viz. trespass on the Case, or by Stat. Absbt. 2. 6 & 7 Rich. 2 he may sue the officer in debt. 2 T.R. 129. 132. 2 T.B. 145. 112. 2 T.R. 1045. P. 180.

The rule holds on final procures whether the escape was before commitment or not. It makes no difference to maintain an action for debt which is the most eligible action, as there may be no material difference as to the rule of damages. If the action be to the plaintiff is Case, whether the escape is on escape or final procures the jury may give what damages they please with or without the debtor or part of the debt, with special damage.
Sheriffs and Gaolers.

yes. if this be your only special damages - not the whole

debt, the plaintiff may still proceed to recover on an ac- 

cion of debt. 3 C. 616. 4 Co. 225. 3 Vent. 129.

But if the plaintiff on final process being served

on the officers, the jury are bound by law to give

him the whole sum, for which the original debt

was liable together with costs. This is not found

strictly on the form of the action, but on the

Shiffs liability. 2 Vent. 120. 2 B. C. 1045. 3 C. 616.

Our State Law of Conv. on one 2d part seems

to have furnished a new rule of damages, for

whether the form of action may be, or whether

the escape be on some or on final process, the

officer is liable for all the damages to the plaintiff.

shall recove the whole sum - this is in a vol-

untary escape - the rule of this State is the same

as that at C. L. for negligent escapes. Stat. 363. 6. 16.

If a person arrested on some process

before he is committed to prison is rescued by the of-

ficer who made the arrest is excused - but if after

an arrest on final process time is excessive, the

officer is liable - the reason given is that he had

time to might have raised the police constables to as-

sist him. The reason does not appear to me a

substantial one - for the officer must take him

the first place in which he meets him. The might

not have had time to have gathered assistance.

I can see no reason at all for the distinction.

3 Vent. 419. 620. 573 Co. 419. 3 C. 616.

Sec.
Sheriffs as Gaolers.

But after a person arrested on process has been committed to prison, a rescue is not a case for the sheriff or other officer, unless it was made by public enemies—a rescue by rebels, traitors or insurgents is no excuse. Nothing but public enemies are supposed to have powers equal to that of the sheriff. This presumption cannot be rebutted, 1 Ed. 807, 1608
211. 482. Estp 8i 410.

The rule is the same when a prisoner, who is arrested on process, is rescued, though he is not actually committed. In case of an escape effectually rescued where the sheriff is liable the plaintiff may maintain his action either against the sheriff or against the rescuer. But by bringing his action against the rescuer he waives his remedy against the sheriff, it is said. The rule seems to me a reasonable one. I believe it to be law, that I can find no authorities to the point except in pamphlets. By bringing the action against the rescuer the sheriff surrenders himself to the charge it takes no care to secure himself to the rescuer, who had been sued originally by the plaintiff, he cannot have had a remedy over them, Estp 8i. 487, 489, 610, 611, 643.

When the plaintiff sues the rescuer, I should on principle sue on trespass on the case. But if it laid down in 764 that he may bring either trespass, or trespass on the case. Now I conceive this is not law. Trespass is not a cause to the plaintiff to bring this case, if the action of trespass is considered as the

judges.
Sheriffs and Guider.

proportion, the D. J., must be considered as playing in the perpetration of the theft, but this cannot be. The damages too are consequential. this proves the action ok be case. And further I know no in

plan in whose trespass and case are concerned. bro. 436. see rule in flccst. 180.

In an action of rescuers, the jury may give the whole or only a part of the original damages as demand, if they give only a part he may then bring his action on the original debt, in order to recover the whole sum. bro. 211. cap. 52. 657 659.

but the the jury may give less than the whole damages, yet they will seldom do it. rescuers are entitled to no indulgences, they should be made to prove for transgressing the law.

In an action to an officer, for an escape on movne process, his return of rescue is at law. conclusive evidence that the prisoner has escaped from him by rescue - the plff. cannot refute it. But if it be a false return, the plff. is not to be remedied - he may still have a new action on him for a false return. bro. 2.781. comb. 295. rev. ex. 224. 2 cent. 175.

I will here observe that the above rule of

the C. J. has been complained of, that the officer might defeat the plff.'s action by a false return, since the plff. may turn about, if bring a new action for the false return. I think the rule of law

is correct, the reason for it is that the law will not.
Sheriffs and Gaols.

not allow the official act of an officer to be contradicted in the first action because the falsity is not put in issue, and it is not to be supposed that the officer is always in a situation to prove the truth of all his official acts or returns, therefore it is there must be a new action. In some however we have permitted the sheriff's return to be contradicted. It may then be doubted whether the above rule is not in

... In the sheriff is liable in certain cases of rescue, so he may also have an action on the case to the rescuer. But this can only happen when he is liable over to the sheriff. It cannot happen otherwise when the rescue is made on main process. It is only on a rescue on main process his right of action is founded on his liability to the sheriff. Cropp, p. 100, Wilson 186, Horiton 72, 4 Star 399.

As a sheriff is liable for a rescue, after the prisoner has been committed, it is evident that no cause for a rescue when he is bringing out a prisoner on the basis of force. Rescue in such case is no excuse for the sheriff for his acts here have been sufficient force, Burn 482, Sup 61, 62.

You will remark that after a person is arrested on main process and after his commitment is either main or main process, nothing but the act of God or of public enemies will excuse the sheriff for an escape. Hence it has been action in these cases to the binding of the sheriff by common law not by writs.
Sheriffs and Gaolers.

by which the prisoner escapes was no excuse for it.

You will find it laid down in Bacon that if the prison takes fire, whereby the prisoner escapes this will be a sufficient excuse for the sheriff and he may plead it. So Southworth says all the cases must mean fires by lightning. Thus in the tremendous fire which raged in London about the Year 1666 which consumed many thousand houses & several jails, the sheriff was held not liable for the escape of the prisoners, and in the case of the famous riot of Lord Gordon, who broke open the gaols for the prisoners several thousand prisoners, Parliament was obliged to pass a special act to excuse the sheriff or he & all have been liable. 2 Mc. 247 42 84. 156 C. 308 6 7 8 9 2 76 36 110.

And I believe the same rule was established in the State of N. York, when the Boughkeeper's shed took fire & the prisoners fled, the sheriff was held liable.

There are some difficulties to be observed between the Consequences of voluntary & neglect escapes.

It was formerly held to be clear that in case of a voluntary escape on his own accord, the prisoner was absolutely discharged from the sheriff's demand, the liability was transferred to the sheriff and the sheriff came in the party who was permitted to escape. But this is not now considered as clear, nor stands the sheriff may either have a new action or the party escaping, i.e. an action of Debt or Fines, to him, or to the prisoner.
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Due in Sec. 37, on a great execution, he may take either of these remedies. You will observe, that if the
being 37. he may arrest the party, he cannot arrest on a Sec. 37. Hob. 60. 20. 1 Dec. 338. 12 Sent. 420. 2 Sent. 430.
And now by the Stat. 8 & 9 Vict. 3. a new execution may issue in a summary way without a
Sec. 37. or the he may relat. his on the origina-
Sec. 37. this latter he may do at 6. 1. 1383. 2 Bk. 241.
3 Bl. 418. 3 Bk. 558. 332. 2 Bk. 69.

And if a person committed on non-bail, and if permitted to escape, the 37. may relat. his a non-
escape warrant, i.e. when the escape is voluntary.
3 Bk. 32. 2 Bk. 295. Esp. 52. 69.

But in case of a voluntary escape, neither the 37. nor 37. can relat. the prisoner, as the main
laid any action at him. for he is not a except for
it is an unlawful act. but after suffering the
prisoner to escape he relat. him as guilty of
Jails, imprisonment, yet the 37. is not deprev.
of his remedy. 313. 416. 3052. 163. 330. 2 Bk. 176.
12 Sent. 269.

I have observed, that a 37. permitted a voluntary escape is guilty of a crime. Hence it follows
that the power by the 37. is bare. And hastily,
in case of a voluntary escape, it with the power of
obvious. it is contrary to law to prevent a voluntary

I observed that if a voluntary escape is
by the 37. the cannot relat. the Escaper but the 37.
...
Sheriffs and Gaolers.

This latter rule is not a rule of law in local. Here the issuing of a warranted is a known public officer. The process is usually directed to him - and as he is bound to the officer, he must be entitled to know when the party escaping. It has been determined in Court, that if a person escapes from one State into another, he may be taken on an escape warrant in the latter State - it is not the escape warrant that takes the man to do this - it merely shows his right.

In Ex parte, you will remember, that the party may have either a new action of debt or judgment of the party escaping on him may issue self for a new 2d on, or by a later State, he may issue new escape in a summary way with a 1st for, or he may be relation of the original execution. But this will not do unless he leaves this State, he goes into another; the usual mode is to relate him on an escape warrant. See case of Nicholas Rogers, 12 Johnson R., see also 3 Doug. 495.

A person escaping under Criminal Proof, is guilty of a misdemeanor at 1st, if subjects him to fine - imprisonment & if he escape he becoming prison, after principles of 1st, he is guilty of felony, this does not run to the case of Court.

If an officer after having made an arrest of a felon, supposes a neglect to escape, he is punishable by fine - if he permits or voluntarily escapes he is punishable in the same manner as the offenses.
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wont have been. He is considered as acquitted after the fact. However high the offence may be in case of a negligent escape, he is only punishable by fine. But when he is guilty of a voluntary escape, when the prisoner is committed for felony, he cannot be punished till sentence has been passed on the party escaping, for it is a general rule of curso, an accessory cannot be tried till the principal is convicted. Otherwise the officer might be punished for breach of a felony, the officer was arrested. Escaped might turn out an innocent person.

GBE 100 1764 739 2 March 1804.

But the he is not subject to sentence till after the escape is convicted, yet he may be fined in prison, for the the party 3d. exceed himself altogether, he is guilty of a great misdemeanor, I may therefore be punished for it. It is especia by C. D. that the principal sine 2d. be convicted before the accessory can be, but there is no inpropriety in punishing the officer for a misdemeanor.

If a Thieves for negligent escape has been subjected to paid the debt of the Escaper, he may maintain an action of indeb. against at the Escaper, for the money paid at the expenses. This is on the common principle, that has been determined by it, that when the debtor had permitted a voluntary escape, he had had been subject to pay the debt, that the Thieves might maintain this action of indeb. as to the party escaping.

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But these decisions were afterwards reversed by Lord Kenyon, Esp. 55, 612, Cal. 15, 242, 308. 116.

I now confess I think the two former decisions correct; but it is clear that if the Sheriff has permitted the escape, he cannot recover. It is not a criminal crime, but here it is not his own act - he is supposed not to be privy to the escape. The official acts of the Deputy are the Sheriff's own act, in civil cases. But he is not liable for the torts of his deputy, i.e. he is liable for the acts of his deputy civil, but not criminal. He then is the view of the crime. Said he is not guilty. A measure, so why he ought not to recover the escape.

If after a negligent escape the Sheriff treats the prisoner as fresh pursuit, before action brought, as himself, his liability to the sheriff is discharged. When we say reliving the prisoner on fresh pursuit, we mean reliving him at any time before action brought. See 90, 3 Co. 44, 52, 18 Vict, 21, 27, 2 T. R. 126, 6 Co. 1859, 1 Hock 106.

I2 Co. 126. At 6 Co. 1859, 1 Hock 106.

At 6 Co. 1859, Sheriff relies on this excuse, excuse or fresh pursuit, he must plead it specially - he cannot give it in evidence under the general issue. In Co. 1859, it creates no difference whether the application of the plea arises or not. Under the general issue the Sheriff may have given in evidence whatever he pleases. See 2 Ed. 126.
SHERIFFS AND GUARDIANS.

But if the suit is brought before escape, a subsequent reception does not discharge his liability to the plaintiff. The reason is that having lost an action he has a right to pursue it by force and by violence. Co. 2, 657, 658. 373, 667, 323, 49, 32.

But in case of a voluntary escape, before action, a voluntary return, or a voluntary return of the escapee, for a voluntary return in lieu of a reception, it makes no difference how he comes back, so that he has him in custody when he is wanted, and before an action is brought. 2 P. 328. 2 P. 350. 10 Bost. Rec. 410. Com. 2354.

But in case of a voluntary escape, a voluntary return before action, or a voluntary return, does not discharge the sheriff. He has the right to re-enclose him, or to imprison him in case he voluntarily returns; if he does it is false imprisonment in the opinion of 3 Co. 52. 2 Stat. 229. Exp. 22. 31. 31.

Nor is the rule in question, with a subsequent arrest of the plaintiff in the breach, to change away the sheriff's liability, in case of a voluntary escape. I do not know what is meant by this subsequent arrest. Lord Holt says an arrest before escape discharges the sheriff, but one after a, not. Here, in an arrest before escape the plaintiff contests it, therefore by permitting it no liability attaches to the sheriff. The reason why a subsequent arrest will not discharge the liability of a prisoner was this, that after a
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A right of action has accrued, no subsequent period being allowed to destroy that right. Suppose the subsequent period be made in writing?


On the other hand in case of a negligent escape the sheriff may retake the prisoner after an action but he is permitted to do this for his own security, being liable over to the plff.

It has been determined in Eng. that the sheriff has no right to discharge a prisoner committed to execution even upon payment of the costs of such execution but in Cour I believe the sheriff of Gaolers frequently does this. The reason I think of this rule is, that the sheriff has no right to take the money after he has committed the prisoner. He may receive the money on the issue of discharge of prisoner proving to commitment, but afterwards it is to keep him in order of suffer custodia, he then has no right to receive the money more than a stranger desires the issue or object of the plff. When he does this then you he is guilty of a voluntary escape. Bro 3 104.

I Meb 194. 5 Meb 225. 336. 2 13 ac 245.

I have observed that after a negligent escape the officer from whom the escape is made may retake him. But if after a negligent escape the sheriff discharges him the officer cannot retake him even for his fees - yet of the sheriff receives all his debts costs while he is in custody the officer may retain him for his fees. I suppose the reason of the
Sheriff's Certificates.

The difference to be noted is, that the Sheriff's Certificate is supposed, in a negligent escape, to be the negligent act of the faulty person, thereby suffering the person who is a lien, a pledge in his hands to go away, he never shall recover it, while it is a general rule of law, that if a person has a lien, he loses it for one moment, he loses it altogether; therefore when he loses it, the negligent, (as a civil wrong) he can never retake it. If he is not yet discharged, he may retain him for his fees, for once he has not given up his lien. This will show that the two rules are consistent. Thor. 40. Esp. 348.

An escape by a prisoner having the privilege of the Gaol yard, being a negligent escape, or reception on a voluntary return, if the prisoner has given notice, or action has not discharged the Sheriff's liability. And if in such case he has taken a bond of indemnity, he may maintain an action upon it, for the bond is to indemnify him in case of escape, and if he goes away only for a moment, indemnifies the most, still the condition of the bond is broken if he may recover, but he will in general recover, no more than nominal damages, having suffered nothing by the breach of the bond. 1 Mer. 1067. 127.

But if after such an escape, from the privilege of the Gaol yard, the pillow action to the Sheriff is barred by the Statute of Limitations, which in this State is two years from the time the right of action accrues, the Sheriff cannot recover on the bond for the escape, for
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This is no consideration, he is now safe. The old debt is due to the jury, unanswerable if they endeavor to give only nominal damages. If Judge had been recovered in the Bond, it the Statute of Limitations to bar the Officer claim, the Debt might obtain relief on the Process. 1625, p. 181.

It is very important to be understood in pleading, which seems to confuse the distinction between negligent and voluntary escape. E.g. that under a Court at Law the Sheriff for a voluntary escape, the plaintiff being in evidence of a negligent escape. It follows that in an action for Counting or a voluntary escape, the defendant may plead a relitigation without action but, without contradicting or traversing the Court of voluntary escape. This is a clear rule of pleading.

It can be asked how a plaintiff is to avoid himself of the difference between a voluntary and negligent escape? He is to do it in his replication, which is to be done in the nature of a novel assignment. If the Sheriff pleads a replication as first fact that plaintiff intends to plead on voluntary escape, he must do it in a novel assignment, and the fault of the debt to his defense to say it was a was not voluntary. In Eng. the plaintiff generally counts on was caper only in the voluntary non-negligent. 248, 1037, 211, 276, 126.

There arises that, for a voluntary escape by the Under Sheriff, he himself is personally liable, but for a negligent escape he is only so liable. It seems then that if the party of case of
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voluntary escape brings an action to the master, Sheriff, or Gaoler; the Sheriff is discharged. There is no authority for this but dependence. In general, it is not defined as a crime alone. But the rule is a reasonable one. If the Sheriff had thought he was made liable, he would have taken means to have secured himself as the Deputy, and now it may be too late. Esq. bi 413.

If after an action is brought to the Sheriff for an escape, no final process is found, the plea is taken at the original judge, and the escape is reversed, the Sheriff may plead that the record, which will be a sufficient plea to discharge him, for after a plea is reversed, it is unavailable.

But if after judge has been obtained to the Sheriff, the original judge is reversed, the Judge of the Sheriff is good - it is impossible now for the Sheriff to avoid himself of the reversal - indeed you will find the rule is after the plaintiff he cannot avail himself - but according to the rule of modern practice, allowing an alteration of plea he may be allowed to plead not true record. 3 Co. 142, 14, 15, 209.

3 Mo 325, 2 Mac 29.

But it will occur as a result not unreasonable, that after judge to the Sheriff the original judge is reversed, but the Sheriff is bound to pay according to the judge obtained to him. According to the principles of justice, the Judge shall not be permitted to reverse its own - the Sheriff may be released by an and the Decease, the he cannot by plea.
Sheriffs and Gaols.

Section 6. If a sheriff or other officer makes a false return, he is liable in an action of trespass with damages to the party aggrieved by the falsity. The sheriff in Eng. has no action. The rule there is of the sheriff making a false return, the sheriff cannot plead in abatement or contradiction to it, but must join the sheriff in an action in the case for the false return. 166 336; 336; 615.

But in Conv. the sheriff may plead the falsity of the return or statement. This defeats the plea therein. The, being the party injured, may have an action at the suit of the sheriff. 166 336; 336; 616. The sheriff cannot have an action at the suit of the sheriff for a false return, unless the return (false) were not in violation of such false return be made, he is entitled to an action for it as the party injured. But for such returns the sheriff can have no action, for it is no injury to him. 166 722; 166 639; 616.

If a prisoner in Conv. escapes from the insufficiency of the jail, the county is not the sheriff liable in Eng. for such escape, the sheriff is liable for he himself has the building of it. In Conv. every county builds its own jail, therefore they are very justly made liable for the sufficiency of it. 166 650; 166 657.

The sheriff in Conv. is by petition to the Ct. of Common Pr. [Common Pr.], praying that the county Treasurer be required to pay the damages to which the county had become liable. The Stat. does not allow
Sheriff and Judges.

allow an action. If the County Court do not allow the petition, the person may apply to the True Court, i.e., by way of appeal. See supra. Kirby 318. Vt. Rev. Stat. 116, 125, 155, 170, 171, 240, 270, 337, 350, 360.

In general according to the decision of our late Chief Justice, the liability of the County is nominal. If it has been held, if the escape is a responsible man, liable to pay, the person must come on him. If he has not property the County pays. If the County is not liable, he must seek redress against his employer. The State is not responsible; he would have gotten nothing by keeping the work, if the County judge, for the state was to be made as much for as in. And in case any person opposes him to escape, he must come upon this instrument for his damages. This decision of our late Chief Justice is a very strange one, for it renders the State, altogether negligible, it is also an imperious rule, for so long as this doctrine prevails the County has no inducement to keep a good work. See supra. Kirby 318. Vt. Rev. Stat. 116, 125, 155, 170, 240, 270, 337, 350, 360.

Thus it appears one class of cases where the liability of the County is substantial, where the person escapes is at the time of the escape, able to pay the debt or and thus by escaping makes the payment. Here the party may come on County to recover the whole debt.

If the escape was facilitated by negligence of the Chief or Judge, so the work was sufficient, then the Chief is liable, as if he was negligent to make the necessary repairs. Where is
Sheriffs and Quoters.

consequential escape, or if he knows the prisoner has implements to effect an escape & does not take them from him, he is liable.

Miscellaneous Rules.

If a bondman voluntarily escapes from his body a debtor taken in Exec. whilst committed or not, the Exec. & Judge are discharged forever, he4 reverse not the debtor. The reason is that the body of the debtor is deemed a sufficient satisfaction for the debt, and hence it is that when a person has the body of the prisoner confined, he cannot pursue any other remedy to him. Now if he gives up the body his remedy is lost. 7 B. N. 425, 8 T. R. 525. 8 T. R. 123, 3 Mass. 2482, 4 B. N. 102.

And tho' he discharges him in consideration of a new promise to pay the debt, if this promise is broken, the rule is the same. The Exec. & Judge are discharged, he cannot release the prisoner. But he may maintain an action on his promise, and if the prisoner refuses to be committed, he in the old Execution if he does not pay the debt by such a time, still the Creditor can not release him so that Exec. & Judge may maintain an action on his grounded on the new promise. 4 B. N. 383. 12 B. N. 587. 8 T. R. 525. 2 T. R. 620, 2 Bee 574.

And so far had this rule been extended that if the new contract made with the Prisoner was in equity for in formality not the Judge remains discharged. 4 T. R. 587. 6 T. R. 325. The case here is this way.
Shiriffs and Gaolers.

And further. If the Prisoner on being discharged on giving a Bond conditioned for again rendering himself a Fugitive, i.e. that he will surrender himself to the justice within a certain time, that bond is void if the Judge does not condemn it, and if the Judge subsequently finds afterwards he is guilty of felony in imprisonment, for the rule is that when he voluntarily discharges the prisoner he gives up all claims. 1 Bla. 145, 2 East 243.

If two joint debtors are taken in execution of the body of one of them by the Sheriff, release of the whole debt, if the other is of course discharged. And I suppose it is the same if they were joint or several debtors, one is discharged. Do not find any precise rule as to this point, but I should think it a discharge of both, as in the last case, for they are both joined in the judge, why it was made joint debtors. 1 T. 75, 2 T. 574, 1 Chit. 690, 6th Ed. 551. Chitty 192, 2nd Ed. 55, 5th Ed. 611.

But in the application of this rule, it is necessary to distinguish between a joint indorsement of a common liability, i.e. if under the same indorse, the holder of a Bill of Exchange or promissory note discharges one endorser, he does not at the same time discharge another endorser, on the ground that it is not a joint indorse. Each endorser is bound independently of the other. Hence they may all be proceeding to the same time, or any one of them at once, if they are all drawn into
in Exc. 16. a discharge of one does not discharge any of the rest. 2 B. & C. 1235. 6 T.R. 825. 4 How. 431. Buller in BILLS OF EXC. 124. 181. 2.

It was formerly decided by Lord Thurlow, that if a sole debt, committed to prison at Exon, dies in prison, the debt was forever extinguished, for this reason, that as the sheriff had chosen his highest remedy, he never s有多么 be permitted to have any other. But this is a fallacious reason; if the debt in cannot now be considered as law, then are numerous decisions to the contrary. 10 c. & P. 32. But in 21. Jac. 1 St. was made enacting that the sheriff may sue out another W. & C. 10 S. 355. 2 Eliz. 6. 1 B. & C. 136. 145. B. 1182.

And if one of two joint debtors dies in prison, it was always held, (in dependence of the Stat.) that the other was not discharged. 5 Eliz. 6. 6 B. & C. 850. 6 Eliz. 6. 136. 145. 1182.

A bond to the gaoler condition is, that the obligation shall remain a true prisoner till the debt, fees, & boards are paid; is utterly void by Stat. 22 & c. 6, which Stat. was made to prevent extortions with the sheriff. Now under this Stat. a bond to remain till the bond is paid is void; and it seems that a further bond that the sheriff shall remain till the first one paid is void (the be may release the prisoner for his debt) for it may be said, that his loss is penalty. The sheriff has a right to take a Bond, for fear of a right.
Sheriffs and Gaolers.

Agent escapes, for remaining in prison, 10 to 100$ 1 21st 23d Rowl. 168. 1 Pown. 2 47. 46 Col. 4 2 Wils. 351. 6 Bar. 464. 10 Mdb. 169. 12 Mdb. 1 22d Aprs. 176.

What remains of this title is some of the provisions of the law concerning Gaolers. I.

I. Here promise that by the law all prisoners are bound to support themselves, except felons, traitors, whose property is forfeited, or who in times of war have no money; in other cases, the sheriff or the public is a criminal, prosecutor, are not obliged to find them in necessaries for their support. (Glover says they may live on the charity of the people, if they cannot get that, in the name of God let them die.) Rowl. 68. 1 Mdb. 192. 12 76 685 166.

Our State, provides that persons committed to prison for any offence must pay their own charges, as well as the expense of confinement, if they have the means to do it, and their estate is bound for this expense, and if they have no property, they may be assigned in service till they earn enough to pay the same. Stat. 188 3 223.

But their expenses in criminal cases are paid in the first instances out of the State or Town Treasurer, at the town or State has a remedy as the prisoner, if he be able to pay.

Our State provides that if the Gaoler receives from the prison for fees a greater sum than he is allowed by law, he is subject to pay double.

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Sheriffs and Gaolers.

to the prisoner, it a fine to be imposed by the county
clerk at their discretion. Stat. 356.

When a person is committed on any civil pro-
cess he is obliged to bear his own expenses and if he
is admitted to the poor man's oath - i.e., that he has no
estate, debt or personal, to the amount of $50 or suffi-
cient to pay the expenses. On taking the oath he is
discharged of course, unless the Jiff allows a weekly
sum for his maintenance, which is to be lodged with
the Gaoler. Observe this is only in civil cases.footnote
If then the Jiff continues him in Gaol, by
allowing him a weekly maintenance, he must
lodge the weekly sum with the Gaoler. But that
does not allow him this, he is of course dischag-
ged any property he may afterwards acquire will
be liable. If the Jiff may have a new instance.
footnote ftfootnote

The only use of this oath is to discharge the De-
bond of the Prisoner. Before the oath can be adminis-
tered to the Debtor, the Jiff must be only notified
(years previously) to allow at the Gaol, to the cause.
When such an oath should not be administered, of
no good reasons is shown, it is, it is to be adminis-
tered. The oath may be administered by any Justice of the

If the application for this oath proves un-
successful, the debtor cannot afterwards make
any application to any person but to the Sheriff
of the County, or Common Pleas, or any Justice of the Peace.
or to two justices of the Peace, one of whom shall be of the Quarter. On the oath being administered (in the first instance by one justice of the Peace) the plaintiff apply, if he sees cause to the Chief Jus. of the C. of C.O. or one justice of the Peace, or to two justices of the peace, unsung, to review said cause; if the creditor shall make it appear to the satisfaction of the triers that he is not entitled to the benefit of such oath, they have the power to join the allowance for his support to cease, and afterwards the debtor shall be held in prison in the same manner as tho' the oath had never been administered. Stat. C. 365.

But when the creditor allows this sum, the charge ultimately is to be paid by the prisoner, if the creditor chooses to continue him in prison, he cannot procure his enlargement without paying this expense of the original debt. Stat. C. 365.

When a County is without a Gaol, any person or liable to be committed to prison, may be committed to the Gaol, in an adjoining county. Here.

Felonst debtors are not to be lodged in the same room. If they are the Gaoler will be liable for taxable damage.

Our County Cts. have a right to ordain close confinement all persons committed for debt fine, damages or cost, except he was committed on an open, joined by the Superior Ct. and the Supreme Ct. may give the same order. You will note that the Chief may grant them, the liberties of the Prison yard, but the
Sheriff and Gaolers.

let any man know he is confined within the walls. And if the Sheriff does not obey, he is guilty of a voluntary escape. He is liable for the debt to for which the Prisoner was committed. Stat. p. 865.

This authority however of the Sheriff does not extend to cases where the person is committed for a sum less than $50. If it is under this sum they cannot remand him within the walls.
Executors & Administrators.

Primary & General Observations.

This title will include all the Law respecting Executors & Administrators, the payment of debts, the payment of Legacies, the manner of distribution, and the Law respecting Wills.

When a man dies after having made a will, it appoints an Executor, the will at C.S. is in force with a legal title to his property, but not to his real property. If no will be made, i.e. if person dies intestate, then the Law has provided how the property is to be disposed of; the person appointed by the C.S. to perform this duty is called Administrator. There can be no Legacies where a man dies intestate; the C.S. has the charge of paying all debts. Execut & Administrators are the Representatives of deceased persons; they are under the direction of the C.S. If a will is made, this is the Law to the C.S.; their duties very much resemble each other.

The C.S. has established the mode of paying debts. The person's property is legally vested in them, but they have not the beneficial trust. They are Trustees in the first place for creditors, then for Legatees finally to those entitled under the will of distributions; this trust they must fulfill. Legatees cannot take without the consent of
Nous Admis.

If the testator for this purpose is liable to creditors, who in case their debts exhaust his personal funds the legatee loses nothing. If the testator will not suffer one, who is entitled to a specific legacy to take it, it is a want of duty; the testator trusted him to pay it over, and in case the testator does not, the specific legatee may sue him to recover damages, but he cannot recover the thing itself. If he consents to let the legatee have it, that moment it rests in him.

In considering this title, there are several general maxims to be observed and kept in mind:

One, without any exception, is that creditors must be preferred to volunteers. A man must be just because he can be generous. But it does not follow that the testator or donee must pay all the debts of deceased, etc.; he is liable only as far as he has ability.

Assets are goods and chattels of the deceased which may be converted into ready money; from the French word "assets" sufficient. An executor or donee must never pay volunteers, unless debts are paid.

The estate is liable in a testament for wasting assets. My object will be to point out to you the rules of the C.D. and then understand you can easily discover the variations from it introduced by Statutes in your several states.

By the C.D., executors or administrators have nothing to do with real property, but then the parties must have the debts of the deceased to be paid provided there is not a sufficient or equitable. Suppose m
man dies leaving personal property sufficient to pay half of his debts, real property to be considered, and how are you to obtain property to pay the remaining half of the deceased's debts? There is a defect in the C.S. as to this particular, but it is in some measure remedied by a 67. of Ch. The Real Property able in the hands of the Heir, in a 67. specially bonded creditors by these I mean when the Ancestor has bonded his Estate by writing under Seal, or by Judge. But suppose there are no bonds bonded, but they are all debts due by simple Contract, how is there a deficiency of assets at S.E. there is none by - they cannot collect them out of it. Real Property.

I have observed the Heir was liable to pay such debts (46. only in C.S.) if his Ancestor as were due by specially. But this specially creditors are not bound to come on the heir, they are bound to come on the heir. He has property may leave the personal estate for the benefit of the simple contract creditors: but if they are otherwise disposed they may come on the personal property. But in excluding that fund, entirely deprives the Simple Contract creditors of any recovery at law. But his Ch. will interfere & let in the Simple Contract creditors upon the Heir, as far as the specially creditors. And does here given upon the personal property, e.g. supposed 67. dies possessed of personal property, to amount of $5000, and Real Property, by amount of $20000, which goes into the hands of the Heir, is on the specially creditors
Creditors will not go upon the heir, but in hand the £5000 & the personal fund. But they were let in the simple contract. Creditors upon the fund to compel the heir to pay them as much as the creditors to have taken out of the personal profit. Suppose the specialty creditors had debts amounting to £3000 this they had taken from the personal property (by £2000). Why is the heir compelled to have paid to the amount of £2000 to the simple contract creditor, as he was liable to pay the specialty creditor thus much. Had they instead of going up on the personal fund come upon him. But suppose there are no specialty creditors, then there is not sufficient personal profit to pay the simple contract debt. Then the creditors have no remedy they lose them. The principle of Equity is, that they will lie in the simple contract creditors upon the heir for that amount due more than the specialty creditors might have recovered from him. Of course the heir if there are no specialty creditors (or if there is, but they do not go upon personal profit) is not liable to pay the simple contract creditors one cent.

The Laws in the different States in U.S. generally remedy this. E.g. debtor, is not in all the creditors upon him, in case there is not a sufficient fund to pay their debts. Some statutes met the £500 or such case with proviso to say, 'Estate yes can compelling him to sell it, if he has not which sufficient to pay all debts.' In some States
Excursus et Memoriam.

States the creditor is permitted to sue the heir. But in some other States they have nothing to do with the debt unless until there is a deficiency of assets. You will then remember the oft-mentioned rule that the specialty creditors are never obliged to go upon the heir, but in case they do not the remedy is by marshalling the assets.

Assets are of 2 kinds. 1st. Personal assets which go to the estate, and 2nd. Real assets which go to the heir. There is also another distinction. Real assets are Equitable assets. Real assets are.

This is certain property which was owned by the deceased. This is called equitable. Equitable assets are governed by different rules. The Law is this? Can you get at this property without going to court? If you cannot, then they are equitable assets. If you can, then they are legal. This frequently happens as where the executor refuses to sell real property to pay debts, as directed by the Testator. Suppose A. S. died owing $10,000 to leave property sufficient to pay all his debts, viz. $5000. Legal assets, and owes his farm to be sold to pay the remaining $5000. But the heir refuses to sell - now there is no power by Law which can compel him to do it, but they can compel him for they can lay him under a heavy penalty to do.
be preferred in case of non-performance. But then
if the proceeds of the sale of the land is not suffi-
cient to pay the debts, no species of creditor
be preferred to another; debts are paid by autho-
rity of a Ct. If they are not to be paid equally, each
proportionable. Suppose there is the above case: there are
5000 £ debts. & the land sells for 9000: now if the
C.L. rule of precedence was to be observed, the spe-
cially Contract Creditors paid first, they take all
the Simple Contract Creditors lose all their debts.
but they direct th. debts to be paid pari passu,
allowing none to have a preference. The rule is
that if you must go to Ct. to obtain your debts,
the money there obtained is equitable. offsets. So if
this rule leaving no property except as Equity
of Resumption. Now at this it is not worth any
thing but if application is made to Ct. by the
creditors they will own it so. & if of the amount
of the sale is sufficient to pay all the debts, they
will all be paid; but if not, the Ct. will, strikes
an average, to pay an equal proportion of each
one's debt either done by specially or simple contract.
thus you see what a lot if Equity may do to aid
in deficieny of the C.L.

Now notice to you the great duties of

Excurs Admire. The Admire is to pay the debts, &
then pay the residuum or surplus of the property
according to Pa's. The Excus Libratores of to pay the
debt. I then the legacies. One suppose then is

Simple
surplus, if no residuary Legatee appointed by the
Will, to whom does it go? Why the Executor has the legal
title to this residue, no one has an equitable title, of course he
having the best title will have it. The Testator directs how his
property should be distributed, so that the Executor pay it away
in a certain manner, but said nothing about this
residue, and therefore at C.E. the Executor is entitled
to it. But an Administrator is not entitled to any residue;
indeed this can be none, as the Testator directed how he should pay it over. I said above
that at C.E. the Executor is entitled to the residue, but
where there is a legacy left him, this legacy interferes
by the Executor to divide the residue left him to
pay it over to such person or persons, as
I have been entitled to it provided the
Testator had died intestate. But if the
Testator has no legacy left him, then the
Executor will, not interfere, but he
will be entitled to it as his compensation for his services. So by the
English Law an Executor is allowed
nothing for performing the duties of his office. Sup
pose a specific legacy is given him, this does not
cut him out of the residue, but if a legacy
of a sum of money is left him, this lega
pose was intended to be out the compensation the
Testator intended to make him for his trouble.
Probable proof however is admissible to show the in
vention of the Testator— that he had declared in
his life time, if there should be a residue. Tho' he
should have it, notwithstanding the legacy he had
left him. In such case this will allow him to
retain it. But you ask, is it not contrary to the
known principles of Evidence, to admit this proof?
No, the rule is as well established that you
may introduce parcel proof to rebut an equitable
presumption or claim, as it is that you cannot
introduce it to rebut a legal presumption or claim.

Originally the office of an Exorcism was unknown:
On the death of a person, his
property devolved to the King as parent patriae—
he had the legal title. What was done with the
property? Why there were certain rules by which
it was to be distributed—a part of it was to pay
debts—a part of it was to go to the poor.
devoted to their use. And a part was to be applied to pious uses.
As the king or not personally attached to this office,
his power was delegated to the Ecclesiastics—tho’
being the most pious, were considered the best
keepers of the King’s conscience. Therefore
it was the distribution of these debts devolved
was put into their hands. This was a source of
much mischief. They abused their trust a part
was applied by them for the endowment of their
monasteries another part to pray the spirit of
the deceased out of the grave. And so they
knew that if they but set off 24 him in his duties,
they might pray to see eternity without an inter-
lude.
Exors & Admrs.

...eal of estate, a part was frequently embellished or applied to private purposes, and no part was often left to the widows, children, or other relations. In acts was then passed, directing the Bishops to pay the debts distributive, the property. This was troublesome to the ecclesiastics, they applied to have persons appointed, and they themselves were constellated the ecclesiastical etc. When a man was estate and appointed as Exor, he had the same authority as an Admin, who is the Deputy of the Ecc. of pct. or of Probate here. 1st the Stat directs the Exor to appoint the most friends of the deceased as Admin, under this vague term. Th. 2d generally appointed the near relations as Admin, but not being confined to appoint the near relations, they abused their trust, and another Stat. was made in the 31 Eliz. 3d which is now absolute. The 4th Stat. 21. Hen. 8th, 5th, 6th, and 7th, pray made directing the Widdor or next of kin, to be appointed Admin. Now the may be the proper persons, in their may be several in a equal degree, all claiming to be next of kin, and case the Exor in their discretion may appoint whom they please. This term "next of kin" is not considered so strictly a person collectively. When there are more than one who are in equal degree, the Exor may appoint one, or all, to be Admin or Admin. 8th part of kin is a proper person, if not disabled, and qualified they must appoint him. Ex. [name omitted], not a part of kin. All our Statutes are copied from the Stat. 21. Hen. 8th, and in all cases where there is no...
disqualification the issue of heir, must be approved.

The great mode of computing is according to the civil law, to find the issue of heir. Some say, we should oppose according to the civil mode of computation, but Judge, it is clearly of opinion that it is more according to the civil law it is correct. This it was thus established: the civil law always computed according to the civil law, they had a greatascension to the civil law. But why did they adopt it here? The reason is plain: we make a Statute to stand on theirs, and this an implied Legislative power is given to compute as they do, according to the civil mode.

Suppose a Statute says a man may bring an action of Trespass to another who shall so do, so does he not know what action is, but we can find out by looking into the civil authorities, and then see we do consider it according to their idea of it. If we follow this mode of computation, you shall be thrown into utter confusion. The married man who ascertains the issue of heir in the line of law, or who the law intends shall administer the estate, is very easy. The intestate by the civil law is the terminus from whom the several degrees are removed. By custom the descending line is always to be preferred to the ascending line, or issue of heir in a collateral line. Say A is the terminus, he has 2 sons, 4 grandchildren, and 2 great grandchildren, here his sons are to be equally entitled at the first place, after them his grandchildren after them his great grandchildren.
Exeunt Adonirs.

But suppose he had no descendants at the time of his death, then you must take the ascendants line, it is likewise easy to ascertain who is entitled. Now suppose all in the ascending line are dead then we come to the collateral line, a thousand who is entitled you must count up to the common ancestor, then down to the collateral line.

Suppose I, I have an uncle George, and also a nephew Peter, his brother. There is now the uncle and nephew are related to equal degrees and about may appoint which they please, or both. They may say, George is a stupid old fellow, and Peter is a smart active young man, we will therefore appoint point him in they may say Peter is a young fine fellow, George is a steady man we will then appoint George Adonirs.

Here observations continued. Sect. 2. 2.

When you have found the rest of him, there is no trouble in distributing. But the Act says more of him, *Legatees Representatives*. In some of the Acts the words Legatees Reps have been omitted in their Place. The word Legatees Reps are understood to be some of the rest of him are alive, a some that leaving children. The children are Legatees Reps for these words never come in where all the 3 stocks are dead. This is very important. The distribution among the children is per capita, not as by parts their parents in have taken. Suppose part of that stock are sum and leaving children and part of the
Exodus & Admirs.

To stocks are remaining they thus take fir stripes.

The children take the parts that their parents w
have taken. When part of die they take precepts
day; when they take as part of night they take precepts.

This is the part.

I have observed that after Admirs, were
first appointed the creditors there had a right to an
action; but even then there was no provision made
for the widow & children out of the residue, after pay-
ing debts. The widow & the childless receive no com-
passion in the breasts of the Bishops; the other prov-
ised however that this be done; but there was
no remedy. Fo administrators were appointed by
the Bp. and the Geo? were held in subjection to
the Clergy under the spiritual power of the Pope.

When the taxes were appointed they were
obliged to follow the same course and the evils of
this unjust method of proceeding becoming so enorm-
ous, that when the Bp. was raised to the (9th a
bible) determined there was no remedy. Then the Stat
22/2 was made by it. The rights of the widow
children were established. This Stat. is generally a
adopted in all the States. So that now by the thorough
understanding of it no person will be at a loss to
distribute personal property.

I observe that volunteers take nothing
what Creditors are paid; no matter on what from they
appear; for if they are volunteers they must be post
fixed. E.g. Suppose J. S before his death entered to


Exors & Admrs

with his son John, without any consideration, that payment of this debt must be postponed till debts are paid, but is to be paid before other volunteers. The remaining volunteers are to be paid all alike.

Legacies are vested in the hands of the first place, but not in the Legatees. It is not so with Real Property, it vests in the Devisee, or in the Devisee's co-instante, that the devisee dies, and he may maintain an action of ejectment for any person who commits a trespass upon it. If there is no will, the real estate vests in the heir. Real estate if in the Admrs.

With respect to lands devised to be sold to pay debts, they vest in the heir, unless specially vested in the Executor. When lands are devised to be sold by the Executor, they cannot compel him to sell without his pleasure to accept of the trust, but if he does accept, they can compel him to perform the trust.

There is one case where a Legatee need not come upon the Executor for his Legacy. Suppose a man devises his Real Estate, charging the land with the payment of Legacies. Now if the Devisee accepts this devise he must pay the Legatees. In all other cases, a Legatee must pay the Executor in Ch. of Inns

The Exors liability is to the extent of assets in his hands, this is not to the amount of the personal property left in his hands, but to the amount for which this personal property sells. Suppose the
Exors' Actions.

Property is worth £3,000, but it only sells for £2,000; now this latter amount is the estate.

Suppose the Exor has been guilty of fraud or negligence, then he is liable to pay the full amount of debt, and is liable to an action of Trepass call
Die, Deas et alivit, in favor of Creditors. He is not liable for slight negligency, nor for his misspelling of words as if refused a price offered, on the supposition that it would rise in value, but instead of this it falls. He is liable for gross negligenc
Exor's liability depends on his personal conduct. The body of the Exor is not liable, nor is he liable for costs.

There is a proposition in some books that if a Testator leaves a debt, his Exor, this discharges the debt. The reason was then rendered literally, for it was considered absurd to an Exor to sue himself, and as other person could sue for debt, due the Testator. Therefore the debt was distinguished that the Creditors may sue him for this as aside on his hands and as may the Exors. But if he has paid all the debt and Exors, but no one remains unsatisfied, the debt is extinguished, on the ground that he is entitled to the residuary.

There is a distinction between pecuniary and specific legacies. By pecuniary legacies, money, such as are to be paid in ready cash. A specific legacy is one consisting of a specific action as
Exors & Administrors.

As a house a carriage a watch or, suppose I give my son A B a bag of guineas in the copper
air! now this is a specific legacy a personal one is a legacy which can't be identified as a Legacy
or $500. This is to be made up out of certain property
but you cannot identify it. Specific legacies are
to be paid before prosecution. If A B says "I give
my horse & $15", A B will take the horse the three
do not a cent left to the other legatees.

If there is not property sufficient to pay all
the necessary legacies, the estate is proportioned
of the specific legacy is destroyed, it is lost to the
Legatee as if the horse & so. He cannot claim
an equivalent in anything else.

Legacies are also divided into two kinds. Here
a lost legacy is explained by explaining a lost
legacy. A legacy may be lost in two ways;
when the Legatee dies before the Testator or
they goes to the residuary. But there may be
a lost legacy the this Legatee contains the Testator.
as if the legacy is given to A B if the
Testator, as when he arrives at 21 years of age. Now if he die before that
age it is lost. But if if be given to him to be paid
when he arrives at age, it is a lost legacy. And if
the Legatee dies before that age his person A B will receive it.

A donation causa mortis is a specific pres-
cent made by a person in contemplation of death.
It is always conditional. So if the donor recovers
the
Executors & Administrators.

The donee is not entitled to this property. This is no part of the testate, nor has the testator anything to do with it. This gift is never good, or binding, if it be required to satisfy debts. Who it is good for the Dones Representative & Testator. This will be fully explained hereafter.

Having now finished my preliminary observations, I hasten to proceed to the general title.

Executors & Administrators are the Representatives of deceased persons, i.e. as to their personal estate, therein duties which effect it. Co. Litt. 209. 210.

439. Non ob. 159.

The executor is a representative as above mentioned appointed by the testate of the deceased in the last will. But this is his duty to create this last will.

We are told that the appointment of an executor is absolutely necessary to constitute a will, but this is not so, says Judge Coke. Co. Litt. 111. 112.

At. 200 a testamentary disposition, being without naming an executor was called a will, but such a disposition of chattels was then called a Testament. Co. Litt. 110. 111. 497.

There may be a will without an executor named. While I am saying this, I would remark that I shall not observe the technical differences between a will, a Testament, but shall call them all wills. If there is no one named, the testator (who appoints the Executor) must appoint me, even testaments annexed to gifts.
differs but little from an Ex'or. he is as much bound by the will as an Ex'or appointed by the Testator would be.


To constitute an Ex'or it is not necessary that any technical words be used, as to say, I nominate an appoint. A my Ex'or. If the words be used, I commit all my goods to the disposition of wh. it would be sufficient. The intention of the testator to make it his Ex'or is sufficient, if that intention is apparent. A liberal technical words must always give way to the intention of the testator. If that intention be not inconsistent with the rules of law, then the intention regulates the will. Suppose a man by his will gives an estate to A. his issue; now a free simple will pass under these words, but if such words were used in a deed it is only create a life estate, in A., but not descend to his representatives.

Again saw the word "heirs" is indispensable to pass a free simple. Again suppose the testator says, I give my share. I am worth. now this carries all his lands, but if such an expression were used in a deed the lands wou. not pass by it. Therefore you see this intention is to govern. But if the testator were to give J.S. his estates in free simple on condition that he never at will sell it, how the condition is void. this intention is not to be regarded, for it is inconsistent with the rules of law, that J.S. doe not be at will able to sell a free simple estate. Con. 234. Cove. 77. Dyn. 90. En. 312. Bow. 281. Co. 321. 3 D. 329. Gor. 82. 2 Hil.
Exors & Admins

A disposition of personal property is called a Testament and is to govern in the disposition of the personal property of the deceased. In some of the States it is called a Codicil. Thus there may be a will without a Testament, as in verse 3.

Ex. 26, 29; Deut. 4:6. 1 Sam. 9:1. 2 Sam. 7:22.

Naming a man as Exor. is by implication a gift to him of the goods of the deceased, he being bound to pay debt, and so naming an Exor makes a will. 2 Sam. 3:22. 2 Tim. 3:23.

Adms' like Exors are the representatives of deceased persons, but Adms' are appointed by law, tho' its proper organ-they are appointed in cases where there is a Testament, without appointing as Exor.

1. Where there is a Testament, without appointing an Exor?

2. Where the person appointed as Exor cannot act, for some reason, as if he were only 10 yrs old?

3. Where he cannot act as such?

4. Where there is no will, i.e. where the person dies intestate. 1 Cor. 237. 2 Tim. 507.

Exors & Admins are considered in Oly as Trustees, to those who are entitled to the personal goods of the deceased. Hence the jurisdiction of Oly in cases of more personally between Exors & Admins, the next of kin. Ex. 18:20-23; 3 Ath. 326, 3 Bac 22.

You see then what are Exors & Admins. As their is the person appointed by Law to succeed to the estate in the death of a ancestor. 2 Tim. 204. An Exor is a person appointed by will to take the Testate property. 3 Bac 466.
Ex'ors v. Ad'm'rs.

An executors is no entitled to personal property by testamentary appointment. Decesee, and executors are frequently used synonymously in old Books, S. 274.

The power of Executor Ance on personal estate is merely that of Trustees, except so far as they themselves are interested; i.e., are entitled to it. Over Real estate they have no control as Trustees. An executors over Real estate was not originally testamentary. An executors however may have the disposing of Real estate like any other person, by reprobation of the Executor. An executors can only act over real estate by appointment; it does not follow that he has any more right than another individual, because he is named executors. To of and estate is left for the payment of debts, the executors is considered as the proper person to sit, no other being expressly empowered. 3 Jac. 3d, 169; 2 S. 4, 21, 28; 1 Chit. 420.

But an Ad'm'rs, as such, has in no case any such power. Neither of them has any right to the Real estate, as Real estate in any case.

An executors receives his legacy through the executors, but a Decesee takes possession without the intervention of the executors. 2 S. 25; 3 Bac. 68; 20 Wis. 289; 42 C. 254.

There is no law so that. Kindly to the C. E. neither with respect to the executors liability in the dispersion of the Decesee's estate, taking of personal property.

Remember this principle. That the personal property is by now chargeable with all the debts of the deceased. That the Executor shall otherwise direct.
to see his hands to pay his debts yet if that is not suffi-
sient the personal property is liable. The real pro-
erty is liable by NO. only for debts of the said P
specifically. Of course the law has no disposition of the
property, why he has it by appointment under the will.
If the testator leaves his lands to be sold, no person
is mentioned as a appointee by the testator to sell, it is the
duty of the trustees, and it is the same if the lands
are directed to be sold for the payment of debts. The follow-
ing construction has been put upon a case or a 1:
in this manner, if the testator directs lands for the payment of debts,
the lands is only as ancillary to be sold in case the per-
sonal property should fail short. In many other similar
states it has been determined that the lands should be sold
to pay the debts, or in the first instance. And we may natu-
rally suppose this was the testator's intention. 1702 40

At 82. or rather since 9. Stat. 1st term 3d. Judg-
ment debts, which are debts of the court, bound real estate
from the first day of the term in which judgment was re-
dicted. 1 goods & chattles from the day of the execution.
But now by the Stat. 29. Car 2. they bind the persons
of bona fide purchasers in, from the day on which
judgment was signed & goods & chattles unto from the
delivery of the execution to the person. According to the
old Law judgments bound lands on the hands of the
sheriff, from the time of the original suit purchased.

Specially Fredericks may resort to the Real or
Exors & Admins.

person or property, as they please, i.e., the personal property or lands in the hands of the estate, or to the real estate in the possession of the devisee. If they come upon the personal property, but is not sufficient to pay all the debts, the simple contract creditors are liable to lose all their demands as the case may be, without any remedy at law, since they cannot take real estate, it is postponed to specially creditors. Term 93 216 C. 316.

Specially to be sure may apply by their personal creditors may be paid out of the personal property, but if the specially creditors come in on personal property, they may realize the simple contract creditors by selling them in upon the real estate, for so much as they specially creditors have taken of the personal property. Hall. En." 56, 16. Bus. ab 44. 2 Ch. 45.

And how the simple contract creditors stand in lieu of the specially creditors as to so much of the real estate. You ask how the remedy is given? Why it is this. A Ct. of Equity will order a sale of the real property in the hands of the trustee to that amount and the same in delinquency is given to general Legates. If the proceeds of the sale are insufficient an assignee is to be made. Salt 416.

I have assumed that creditors are perfect according to their ranks, but this is not the case. There are 4 Debtors in Equal degree, one be who first obtains his judgment & the other is entitled to the whole demand, to the exclusion of all others. This is
Exors & Admirs.

when prevented in Courts in some other States by Statutes that can be no voluntary payment in this case, the Exor.
who is liable. 3 P. 606. 401.

If there are 2 Creditors in equal degree, they
will in the Exor. may pay which he pleases, but if
one of them has bred a suit against him at Law, or both
are Suits v. Chas. as the rule now is, the Exor. cannot defray
the claims by voluntarily paying the other. If he
pays the other, he is personally liable, but where
one of them gets judgment against him, it comes on him, he
must pay him. Tabb. 217, Bro. Phil. 247. 297. He may pay
himself in preference to others in Equal degree.

If lands are devised to an Exor. to pay debts
he cannot, for that reason be sold at Law, by
a creditor as having a suit. Nor is it in the power of
a lit. if laws to compel him to make sales, and
not being considered as a suit in his hands. But the
will interpose to compel him to sell, what the
 devisors were to no particular person, but merely
directs to be sold to pay debts. In this case, then they
are equitable assets of he pays all Creditors alike.
But by law, he might pay any Creditors, i.e. when their
debts are of equal degree; no suit is common to the
this Exor. did not come to him by a legal course.
2 P. 147. 416. 22 Enn. 106. 1 Con. 406. 1 More 239. 1 All. 479.

of Assets.

Assets are all which property of the deceased's
real or personal, representing debts, which may be,
Convents into ready money, for the purpose of enabling him to discharge those debts which devolve on him as a Representative of the deceased. If bonds there are several kinds, as 1st. Real in such his estate to be heir, for such debts of the deceased claims upon him as binds his real estate, and 2nd. Personal, is such property of the deceased, as comes to the Executor as such, and makes him liable to Creditors &c. Executors, Secs. 48, 121. 31d. 32d. 3. Mod. 284. 3. Sec. 286. 2. 171. 127.

Again, assets are either Legal or Equitable. Legal assets are such as go in a course of administration, e. g. according to the order or priority of debts. Equitable assets are such as are distributed among all Creditors, they are paid part pass all alike, whether of high or low degree. P. 125. 129. 19. 31d. 32d. 480. 31d. 341. 29. 124. 2b. 412.

An Equity of Redemtion of a Mortgage in fee is equitable assets, for at Boys, the whole estate is forfeited. To an Equity of Redemtion in case if any mortgage, whether in fee or not, is equitable assets, but in case if a mortgage in fee, the mortgage has no other than an equitable interest, because there is no reversion after a fee simple. Remember this Rule, that whenever you have to go to this to obtain your demands, it is equitable assets. 3d. 341. 28d. 33d. P. 31d. 32d. 124. 19, 21, 31d. 411.

But of Funds in fee in mortgage for Years, the reversion in the mortgage is Legal as sets, and the Creditors may have judgment with heir of
Exors Adm's.

If the Mortgagor of assets quoad accidentem is to be sold, there is a play of Exequation. The proceeds comes into its possession. Now Mort. 123, Phila. 410, Salk. 532, &c. Atk. 294.

There is a controversy in the authorities as to the quality of assets arising from the sale of lands, devised to be sold the note repayable for the payment of debts, whether they be legal or equitable. The difference is this: formerly if lands were devised to be sold by an Exec. to pay debts, it was legal assets, but when devised to be sold by any other person they were equitable assets. But this is not now the case. They are now equitable assets in both cases. Authority:

1) Rev. 244, Hus. Rev. 405, Penn. 65, 21 Will. 141, 2 Rev. 133, 2 Atk. 5.
2) New rule at supra. Sec. 119 Rev. 414, 2 Ed. 112, 2 Atk. 5.

Money raised (as above) by Trustees is equitable assets, by reason of the exclusive jurisdiction of the Trustees over their proper trustees. 2 Atk. 414, 2 Rev. 133, 2 Atk. 50.

But still remember that when lands, the interest charged with payment of debts become into hands of the heir by descent, it are not devised, i.e. when the interest does not pass by the devise, they are legal assets for the statute of frauds fraudulent devises have given the specially creditors an action of debt at law to the heir of the obligor. Therefore the specially creditors can obtain their debts without going to law, as they are legal assets to pay them. It's where a person died, his specially creditors might come in the heir and take the land in such time as would pay the debt. As they could not take it in fees. But in cases they were
Exors & Admirs.

decree, the former, pure not liable, in the hands of
the Administrators. But now be that of
they are more
liable, being taken, therefore they are legacies.
3 Bar. 33. 2. 22. 213. 156. 8 B. 173. 15. 122.
12. 174. 132. 2. 112. 4. 16.

In conformity with the above rule, it has
been held, viz. that money arising from the sale of
lands, under a lane power to sell for the payment
of debts, shall be begian apid is, because the land
descends, the descent not being broken, but it is the
resource of the inferior goods by the devise. 15th 1746.
3 B. 33. 6. 112. 14. 1436.

This distinction is explained in another
rule by 2nd Thurlough, who held that the descent
was broken by a power to sell, as much as by a
devise to sell, carrying the interest by express words.
3 Pro. Ch. 133. 135. 142. canell 112. 113. 2. 173. 133.

If lands on the Testator's death, descend to the
heir, other lands go to a Devisee, these lands do
becoming to the heir are to be applied to the payent
of those debts, before those specifically devised can
be taken. If lands are devised for the payment of debt
it is otherwise, the rule is reversed. 3 Sithe 556.

If the Testator in his article does not direct
his lands to be a Do, but charges a debt on his heir, the
heir is bound to pay it at the instance of the Testa.
But suppose the successor will not come on his heir,
but wants to go personal to pay, or heath that
feud now what he is to be done? Why the Testa must
Exors. & Amin.

comes upon the heir to the amount taken by the Exors. or to, when the Testator's intention was that the personal goods should not be diminished. The Exors obtains this by going to Chy. This only obtains when the Exors has not a sufficiency of effects. 3 Bac. 25. Pro 1959. Stc. 605. 1 Sold. 45.

This rule is distinct from the former one, when the personal goods is exhausted by both creditors, the simple Creditors are allowed to resort to the heir, a rule which obtains where there is insufficiency of personal effects. The heir, as before mentioned, is liable for specially debts to the amount of his effects, yet the obligor of hitherto may sue the heir: Plow. 441. 3 Co. 12. 2 P. 365. 3 Bac 25. 3 Bar. 805. 1 Co. 36. 453. 3 Living 189.

So the obligor may sue the heir for a part, or the Exors for the remaining part, but if he recovers judgment on both, it obtains a satisfaction from one of the others may be remitted by an accedit querelle: 3 Bac. 25. 3 P. 303. 305.

Exors. or Amin. are bound by the Contracts of deceased, the next named, as far as they have assets, unless when from the nature of the contracts they must be performed, if at all, by the testator in person. The heir is not bound even on the special contracts of the testator unless expressly named, because, according to the old French law, no other party than goods chattels or the annual profits of lands of the testator, nor the testator, are liable in an action on a personal contract (by law 3 Bac. 94. Co. 137. Co. 533. Dig. 14. Bac. 147. Stc. 163. 2136. --)
The body of a debtor was not originally liable to execution. Plan 44, 45, 46.

The land is appraised to the creditor, not in fee, but the interest & profits shall have discharge of the debts. The land is liable in the hands of the heir, because otherwise the action of debt, allowed at 82, 83, the heir, to be his life. Nov. 439, 441, 2 Bae 329, 3 Eliz. 25.

This is the only instance in which lands may be taken in execution, found in personal actions, at C. C. in behalf of the subject. But Chidding may always take lands in execution in behalf of personal estate. The lands of the debtor, while in his own hands were first made liable (i.e. one half of them) to execute for debts, &c. by Stat. 13 Edw. 1st, 3 Gorst. 24. 3 Bae 324.

This Stat. grants the title called Eligibil. The same year the Stat. de mercatoriaibus was passed, enabling a creditor to pledge all his lands by a recognizance in the nature of a vicarium radicis.

The person of the debtor was first subject to execution for debts, by Stat. 2 Edw. 3rd, which gave...
Exors. & Admrs. 

re oppress ad satisfaciendum. 3 Bac. 329. 3 B. C.

There was a great defect at Ch. 2d 2d in

blane, etc. (hands were liable in the hands of the heir

for the specialty debts, in the debts there, by alienation

before action brought. But if he alienated after the debt

was obtained, the debt filed in P.R. the land was liable

in the hands of the purchaser, the judgment having

relation to the times of purchasing, the original title

a filing of the debt. So a judgment to the heir bound

the land by retrospect, but it is otherwise in case

of judgment to the ancestor. But 1560 by 1st 3 & 4

Wm. 2d any the heir in Case of such alienation, before

action, is personally liable, but also the estate is liable

to the value of the debt. So if the land sold is not

liable in the hands of a bona fide purchaser. 3 B. C.


C. 2d 103. 2d 465. 2d 163. 253.

In case the heir aliened after action, but it is a De. whether the rule stands as at 329. 3 B. C.

Exors & Admrs are liable only to the sum

of the debts. They are not liable themselves, when said

in the Contracts of the deceased, the action is not as them

but to the progeny, as it must be to the extent of the debt, because they are liable only in respect to the

private laws for others, but in their own right, which

they do not themselves owe. If the debt, the debt is

the heir's debt after action done.)
Exors & Admrs.

But it has been held that charging a debt
of delinquent, is now cared for by statute, and a Stat. 16, ch. 12.

To the above rule there is an universal exception. An exception may in certain cases be such as relate to the debt as delinquent. It is where he is personally liable, to become thus liable since the testator's death.

Suppose A. S. had a lease for years, he had paid annually in his life time the rent due; the term is not expired at his death, but comes into the hands of the executors or trustees. He is thus bound to pay the rent, it may be said in the debt only as bonds hereinafter: or to make a plain case of it, say the testator or intestate had not paid the last years rent. Then you may sue him on the debt, but if it were not payable till after his death, sue in both. 2 B. & C. 179. 1 Stark 279. Moore 602. Leach 91. 1 Mod. 56. Co. 1. 411, 546. Co. 2. 235. 1 Mod. 126.

Another exception when he is sued in the debt, as well as delinquent, is in case of a devastavit, when he has wasted the estate, i.e., after judgment, it is a bond to the bonds testamentis, for he cannot be charged with a devastavit on a mere surmise. If after obtaining judgment of bonds testamentis, they cannot recover out of the testamentary goods, because the heirs has wasted then, they may sue the executors for a devestavit. 2 B. & C. 179. 1 Term. 348. 3 B. & C. 12. 1 Term. 315.

In their last always be sued in the debt, delinquent, because he has agents in his own right, by it in accord with 4, 3 B. & C. 12. 1 Term. 315.

Judge V. thinks this is now matter of law. 2 B. & C. 12. 3 B. & C. 58. Co. 1. 42. 4th. 440. 44. 1st. 344. 1 Dec. 133.
Exciss & Admis.

Charging heir in the delict not only is cured by verdict under Slat. 16047, Car 2.

There is a rule that the Evin cannot be bound for any thing for which the testator was not bound. This requires some explanation: it does not mean that the Evin is not bound for a debt accruing after testator's death for he is bound. Suppose the testator covenant that his heir shall pay $70, no action unto it within for this sum. The Evin is bound. Or if a man binds his heir in a bond that at his death he shall leave his wife $700, which bond he intnds into before marriage. Now this bond from the very condition of it was not to be paid by the testator but the Evin is bound to pay it. So that it is meant by the rule is, that the Evin is not bound to pay a debt which the testator did not owe, does not bind or ought to pay. The Evin cannot be bound to pay a debt without consideration which the testator did not owe, so the testator might bind himself without consideration. 210ce 4, 41, 42, 2392, 172, 173, 1357.

Formerly lands in the hands of a devisee were not liable to be taken by bond creditors, they were the bond creditor had no remedy either at law or in equity. 310ce 27, 84, 19, 19, 240, 2190.

But now by Slat. 3 st. 17, if any devisees of lands are sued as to bond creditors, the same have 30 days either with the devisee, devisors, or 60 days jointly by 310ce 27, 84, 2198.

It is a & whether a devisee can be
Exors & Admirs.

said, unless the Title be joined. A devise for the payment of debts is to raise a portion for younger children, but however within the Stat. Such devises are good as they direct cannot defeat them. The is paid only like other estates purpure. 31 Bac 21, 266 2 Eliz Cat 175, 1565 2nd, Bye 396.

The heirs of an heir is liable for the bond debts of the ancestor. But the second heir is liable in no case. Mr. Pratt supposes, further than the first has ascertained, and not so far as apprehends, unless the same amount of assets descends within the prov. An Exor in Nomine of an heir clearly is not liable as such for the bond debts of the heir. The heir himself is not liable, unless in his own joint with the last, his person not being charged. But of the heir in the sense the same to defeat the creditor, equity even follows it in the hands of the Exoro heir.

31 Bac 28, 266 2 Eliz Cat 232 3 Eliz 2 Jan 135, 2 1st 372, 1 Cor 372.

Who may be an Exor.

Almost every character may be an Exor. The persons who may make titles to many others besides. He devine his authority from the estate, who places confidence in him. In general, one person deprived of the privileges of society for their crimes may entitled, but they may be removed as we shall see hereafter. One man may be a capable person at his death, one in a foreigner becomes a very improper person, as for instance, by becumor in habitually drunk.
Exors. P. Adams.

drunkard. Formerly it was stipulated that there was no provision for the bastardy, perjury, and other bilious diseases. Do not let it be thought that this was not permitted in their own times. In this respect, an infant under the age of two may be left. But the infant must be brought to some one else, who the infant attains the age of 7 years. John 15: 2 BAC. 72-1, Con. 235. Co. Sec. 124. Sect. 29. 30.

Here is a curious case in the Books, where an infant in ventro in utero was appointed to be, and the mother was delivered of twins, nor both were males, but the Case is to be the owner of their two half a dozen. (For help, P. Adams.) 2 BAC. 337 Con. 162. Sect. 213.

An Infant is a person under the age of two.

by one, as he attains the age of two, it must be appointed to be, during which time he must be reared to mature minority. The infant must be reared to manage his estate, to the other, as he cannot do himself. This is very desirable. The whole business of managing estates, rose from the Sovereign's office, and at 7 years of age, considered a person at age in this purpose, and almost all the States in the U.S. have adopted the Civil Law's cases of this kind, also in some other cases, as when an infant may consent to marriage. I mention this here, says Judge C. Because the different States in the United States have adopted different modes, it might appear strange to any one to see the difference in the States. John 15: 2 BAC. 121, 2 BAC. 337. Con. 286. 281. 3 Sec. 29. 1 Cor. 7: 10. Sect. 210. 220. 102. (Co. Sec. 211.)
Excerts Admiss.

The acts of an Infant under 17 are not binding. In fact he cannot act at all. With respect to an infant acting at 17, it is not the same as if done by an infant under 17. He may without being paid the consideration. His contract would be void without being paid the consideration. His acts, though under 17, are not void. He cannot sell the testamentary 6 year or more, to pay debts.

1. [Handwritten text not legible]
2. [Handwritten text not legible]
3. [Handwritten text not legible]
4. [Handwritten text not legible]
5. [Handwritten text not legible]

There are cases that show that a minor may sell goods to pay debts. But this is not done now. The rule is that it is void and this will be whole. If the age of 17 years is taken to be 17, the infant acts of an infant 6 years or more to pay debts.
not bind him. And so if he refers to a 33 year for in those cases of bonds it is subject him to an action for a debt, but in which no infant could be subjected as he may subject any act which 32 subject him. So if he gives a release for more than he receives it is not binding as to the surplus and if a bond be perfected with part this release is on receiving the principle only the release becomes the law for an action on the penalty. Rom 277, 1 Sam 18, 1 Cor 5, 5, Col 2, Dec 70, Coll 172, Joel 2, 1 Pet 2, 1 Pet 3, 1 Cor 146, 1 Pet 125, 1 Sam 328, 1 Cor 171.

An infant tie of the age of 13 when he is to appear by Guardians like other infants in the proceedings will be treasonable for he cannot appoint an agent the reason of which is that he has no remedy to the agent for misbehaving as it is done for neglect but of Guardians he has no remedy. But if an infant die as Ex 13, 1 Pet 177, 1 Pet 23, it is treasonable, it is not treasonable for the reason is under dictat is another right the judgment is for his benefit. But if an infant appear once by 1 Pet 177, it is treasonable, the the judgment be for him. The distinction must be found in this that the former is an act done not but the latter is an act done not but the latter is an act done not only for himself but for another in the infant interest as for himself. Mod 272, 270, 1 Cor 172, 1 Pet 206, 1 Pet 129, 1 Pet 177.
Eccles. & Admiris.

But if they be sins, the infant must appear
by Guardian, for an infant Def. 20-29 be made liable.
for costs of both parties by mischiefs, for which
he is not capable to his father, the late has 27 y. Guar-
dian. As infant, he is not liable for costs.


With respect to a former work being 590. Ob. of
Sec. 7 cls. of Equity ruling in opposition that the
author, this are contradictory. cls. of Law, say she may act with
the consent of her husband. The Spiritual, cls. say she
may act without his consent. She is capable of taking
the office upon her, she is considered as a free sole a
fable of giving taking back. The true rule is that of
the husband does not contradict, she may according to
the law of the Spiritual. cls. go on to act. But the
Cl. D. says she cannot be tried without the husband's
consent. She cannot do any thing to affect his marital
rights, therefore she cannot be convicted to jail also
cannot use on her own. Extracts, she first looks
the coercion of the husband. But there may be cases
where there is no warrant of coercion from the husband,
then his marital rights are not affected as when the
is bound by him he has nothing to do with her free
she may as well as any other. But suppose the
cl. D. coming a devastated why the husband is
liable, his marital rights are affected then from the
principles of the Cl. D. She cannot be tried without his
consent. But the Dec. 25th how do the Spirituals?
get along with their propositions is contrary to the C.S.? Why if we owe objects to his being ever she goes into act. But if there is any fear of her doing wrong the C.S. she contrives this will not suffer her to act as she is. If the husband acts, remember she cannot act. Attempts have been made by the wife, etc. when the husband deems it necessary to act after she has accepted a prohibition, is then granted. This rule obtains as the few. Observe clearly where his marital rights are affected as e.g. he may refuse to let her make a contract about his separate property if thereby his marital rights are defeated but if he has nothing to do with it, Breaches were to issue of this property it is good, and it is a case where this marital right are not affected. He might dispose of it by letters. Now this right under stock is what enables one to recognize the difference in the books. 2 Dec. 104. 263. 110. 162. 255, 260. 262. 263. 294. 2 Dec. 117.

You will observe by the way that your wife's consent is necessary. After being appointed she cannot be compelled to act as to the Executorship, upon him, the her Husb. 23? Consent 265. 116. 2 Dec. 263.

But if the Husb. actually administers she is bound by his acts during Escrow, she cannot plead no defect. Hence,

If the wife goes to acts without his consent it is good as to what she has done, if on account of her taking the acts they cannot plead that she acted.
EXORS & ADMINRS.

was Exor, but the husband may prohibit her acting further. She cannot act after being forbidden.

If a joint stock is appointed Exor. He accepts
the trust, i.e. the property, the husband cannot control her
performance, for he takes her own money, i.e. must perform
her duties. But if she has not accepted the trust
before marriage, i.e. if she married before she inter-
mixed with the estate, she cannot act without his
consent, and if she goes on to alienate both he dies
and she cannot afterwards refuse it. This
supposes that the wife has not defended. If she has, the
trust is void.

There is a difference of opinion in the Books
whether a joint Court may make a will or rather
a Testament of such Goods as she has as Exor with
out the husband's consent. But it is now clearly
settled that she may, because it does not affect his
marital rights, for of negative point. See 1 Bac. 49. Nott 603.
M62 71, 12. for a particular. 3 Bac 373. 2 Bo. 110. Unal. 195. 199.

As it is not disputed that she as Exor may make
an Exor of the Testator's goods, it is no more strange
as making a Testament. For the Exor as such will have y.
disposition of the goods. 2 A 229. 1 M67 72. 436. Nott 638. 912. 2 1 Bac. 49.

The Exor may be an Exor, but he may nominate
others to take after the termination of her trust.

They may be set as y. Representatives of the Decedent.
1 Con 235. 3 Bac 374. 2 Con 322. 1 Con 383. 233.

A Corporation Aggregate can issue to any.
Exors & Admirs.

Exors because it is a body formed for special purposes the Corporation to be. Some may say the first but this does not qualify it to be an Epire and it would be sufficient without Scion's reason that an Epire is liable to be excommunicated for some act, and as a Corporation has no soul it cannot be excommunicated. It cannot take an oath to make proof of the truth. This latter Mr. Coop thinks is the substantial reason for a Scion Corporation can be an Epire because it can take an oath. But Judge K. says he does not know how a suit in equity can be an Epire in his corporate capacity. It is evident the person composing the Scion Corporation might be an Epire in his private capacity like any other individuals, but how can he be in his corporate capacity? 1st. Nov. 2rd. May 3rd. 3rd. Dec. 3rd. April 17th. 23. 1st Oct. 9th.

According to the Unitarian Staats. Those states, federal, state, & federal, which are alluded to by the late Mr. Scion. But it seems that all these States have an Epire for their act in the States' rights, he appointed in their confidence in the State. We have no concern with their honesty. The 2d. Dec. 23rd. is not a very common title. They cannot be an Epire. It is, in their own right, but being appointed by another, they may not be under the law. So justice that it is secured in disbursements by the Exors. Thus from being an Epire for public funds to the Civil Laws. 23rd. Dec. 23rd. Co. 3rd. 12th. 1st Nov. 9th. April 17th.

All these some persons cannot make Worlds.
Exercis De Advers.

The reason is they have no property which is all for fees. Nov. 261, 2 De.

It seems then that almost every person may bear Exercs. who then may not be an Exerc? Why is Engr. persons excommunicated cannot be. The reason then is that being excluded from the Church, they cannot dispose of the goods of the deceased in pious uses. S. 85. This is the only instance under the

Eng. Law arising as delito.

In Abbeys may be Exercs. as Abbeys. They may have administration, i.e., the disposition of leases as well as of moveables, because he holds in another

abode. Non 355, bre. 28 g. locut. 1742.

But it is otherwise in the Civics Law except in military testaments, which are governed by the

insignia, 475 6. locut. 457.

It is a Law whether an Alien Enemy in time of war may maintain an action of debt as Exerc. It is conceded he may hold the goods, if according to the weight of authorities he may sue. The reason advanced why an alien Enemy cannot sue is, that he withdraws the property into the Enemies Country.

But this is not the case when he suits as Exerc. in

t heir acts in civil abroad. 2 5 6. 6. 142 653,

1 5 3 1 7. 5 7 4 5.

Sedees & Dignities are incapable of being

Exercs for they cannot execute the laws. addin the whole to undertake it. If they are appointed to, who removes them. So if we exercise become now
non compos, the cl may remove him, or grant administration to another. 2 Bac 376. PZ 623. 1 Talh 36.

The cl having the management of this business, can never refuse granting letters testamentary or probate than they because he is poor a insolvent, for he derives his authority from this latter. The cl. then arises, what is to be done? he is insolvent, unable to manage his own affairs, think how can he take care of another's property? There is no remedy at C.L. for he at C.L. an Ex is not bound to give bonds. The testator requires no security other spirituals cl. cannot demand it. But a cl. of cl. have taken up this business, and compel him by giving bonds, they consider him as a trustee, if they have a right to compel the faithful performance of all trusts, 4 Kay. 361. 1 PWR 25. 2 Dac 376. 4th. 437. 8 Talh 36. 299. 1 Shew 299.

And on the same principle cl. may compel as cl. who the not insolvent is wanting the effects, to give security. 2 Wheat 249. 2 Dac 377. cl. Cas. 79. 171.

So on a suggestion of insolvency in the cl. cl. will order the debts of the deceased not to pay him, to cl. 2 Dac 377. cl. Cas. 79.

Who may be Administrators.

All persons who are not legally disqualified may be Administrators. They are appointed by certain cl. and duties are generally the same as Exs. They are not entitled to a residuum after paying debts, but
must distribute it according to Law. You have seen that an Admino may do an act at 17 (the law for minors) if he may be appointed at any age. But an Admino cannot act till 21. If he be under age, that age t is the person enabled to it, as to any Admino, must be granted to some one else.

The reason assigned why a person cannot administer; it is that he be of the age of 21 is that he cannot give bonds to the ordinary, which every Admino is bound to do. But judge O. thinks this is not the proper reason, for if he could not give sufficient bonds himself he might procure other persons to do it for him. Which is certainly as equally as well. The same reason or the affidavit is, that till that age he is not supposed to have discretion. As Counsel not only things but affairs also must give bonds. But the C. S. does not oblig. them to give bonds; the in some cases (at 18) they may be Comp'd by a St. of Chy. 3 Mod. 395, 12 Mod. 192, 506, 1 Stat. 39, 2 Bae. 281, 5 Bae. 121, Love & Leith 446, 35 Raip. 333.

It would seem proper to say that as in law cannot be administered to it when he arrives at the age of 21, for no one is Admino till then. is granted by the ordinary. The case of a person under 17 re-admission is different, for he is appointed under by the Ordinary. 2 Bae 381, 5 Co. 29.

We have seen that a female cannot marry in

Ex. 2 to likewise with the consent of her husband. The
Excuses Admins.

may be I don't of she be more of her. The husband
difficult to it, for his mortality, rights may be affected
by it. 1 Coen. 202. 249. 2 Boc. 412.

It is not common to appoint some County
when there are others in equal degree for the last
will not for him, she is not contented to the lands
of person who is to be taken. He does not respect him
as the Law requires.

If a woman's provisions to the marriage,
which is after the marriage his husband can
not put a period to it; he takes his own once.
He will be liable during Countenance board committees
even to a deviation before Countenance. 1 Boc 293. Boc. 293.

At least the debt is only bound during Countenance
for the debt of Contracts of his wife. But in this case Equi
by goes further. If the wife agar has a considerable sum
of money, as true other dies, this comes into his hands.
Allah is not liable to pay her debt, yet as this comes
into his hands as Trustee, not as a, in fact. Upon
his dies with her, thy intestates are in Equity, the Credit
of men follows these assets the last, into the hands of
the last. After his death after the death of the last
his hands of his bar. You do not follow that the quantity
in own right into his hands after his death, but observe in
so as put these, as assets of this viewing them as his debts
as in the hands of a Trustor have cognizance on them
1 Boc 293. Roe 180. Boc 309. 2 Boc 67. 118. The other wise,
may not the Estate of at the common assets also, in Equity.
Excuses in Admonition.

I observed that corporations aggregate do not exist, neither can they be Admonished. It is that says judge, no corporation as such can be either Excus or Admonition, as they may like all other persons act as such in their individual capacity. An Excommunicate cannot be an Admonition, for the same reason given in case of an Excommunicate being excluded from the Church, he cannot dispose of his goods in pieces cases. 363, 375, 393, 394.

But an Outlaw may be an Admonition, for he acts in another right, therefore may sue, 363, 375, 393, 394.

Cor. 128.

So a Felon may be Admonition as well as Excommunicate, and the same as a Judge in a case of a Judge of the Court of King for he may sue in another right. 364, 374, 375, Court 17.

An Alien may be Admonition as well as Excommunicate, in case of alien enemies as in the writer, 242, 383.

Idols & Gentiles cannot be Admonition, 363, 383.

The origin of Administrators.

It seems that at 363 a man might make a Testament, therefore as Ex has an officer known to the C.E., he was then to be Admonition to the extent of judge, but judge were not the same as they were as, only a reasonable persons was a judge. In what manner the subject of children came to their Admonition parties is allied with some contradiction, in the late E. A. It is
Exors & Admins.

is contended by Salad that it was the duty of the Lord of the manor to see that they were paid their rations les pâtes. 1 Cor. 257.

But if a man died intestate, some say that these belong to originally to the Ecclesiastics. But Joseph A. thinks differently. 1 Lev. 188. 9. 1887. 2 Bacc. 347.

Other Books say that the duty was intimated in the 73 Do to seize upon the goods of an intestate as done by them as parents patriae; General Trustee. It is certain that the income of children were entitled to their rations les pâtes, as case galle. But to them they were originally to look for it seems uncertain. 9. 33. 18 Bac 397. 1802.

But in process of time this business was devolved over to the Ecclesiastics. Their jurisdiction both in Testamentary matters, & those of others is said to have commenced in the times of Richard. It is said at the rations of paes was to be given to widows & children, which took 3 of the property, but what became of the other 15? what was done with this rest now? 1 Cor. 257. 2 Bob 397.

Afterwards it seems the Crown invested the prelates, with this branch of the prerogative only so far as he had previously grants it as a new time to some Lords of Manns. 1 Cor. 257. 3 Bacc. 408. 8. 186. 2 Bacc. 215. 418.

The Bishops in exercising this power it not consider that they were obliged to pay debt, but only
Exempts Admissibles

Appropriation the goods of the intestate to said purposes is the thought proper to charitable institutions. As to such superstitious uses as the mistake years of the times had denominated prior, see 27, 276, 409.

As was the ordinance that thus the disposition of the intestate affects the probate of wills, i.e., that it was not just a natural that the will of the deceased should be forced to the satisfaction of the prelate whose right of distributing his charity for the goods of his soul was absolutely superseded thereby. The goods of the intestate being thus vested in the ordinary, upon the most solemn convictions trust the revered prelates were not accountable to any one, but to God, their own consciences. Some of the property as mentioned before was applied to pray morts souls out of purgatory, homes to labor their monasteries for monastic privation use. In doing this too very frequently come into all the property be frauded the Widow & Children. If this was no Widow nor any Children, they kept all, and no one said they took to themselves (under the name of the Church & Poor), the whole remittance of the deceased's estate, after the partaking abilities in two thirds of the wife & Children were deducted, with one penny over his truest debts or other charge. Therefore, during the sixty persons of the feudal system in Eng. in every having a lord, children court likewise were the heirs of his goods which
E. v. A. Morris.

Act 128. did not go no further. If he had not the
liaison he could bequeath the whole residue.
was conclusive with his right of disposal. The
will observes that the will ordinary was not bound
to pay the debts of the intestate after he was
made the testator was always bound to pay the
debts of the intestate to the benefit of effect. Act 3.
128. 236. 495. case 495.

The first thing given to that ordinary
was the testator of the ordinary was the Testator 3d. 13. Edw. 7. Act.
by this Act. the ordinary was bound to pay the debts
of the intestate to the extent of a testator in the same man-
er that testator was bound. In case the testator made a will. It has been said that this is a matter of the
manner of the Testator but it is not so. let it be used in the
manner of what testator? But this Act does not number
any thing about the 10 183. 13. Edw. 7, and if it is of no
importance in case the ordinary did not make a will. Test.
direct, there was an action given in him. 1 Edw. 7
Wilm. Comb. 38. 21 Bac 378. 1800 395. 23 Sec. 413. 4 13. 3 32.

But the that were now made liable to pay
the intestate for the first lawful demand
the residuum after payment of debts remained,
still in their hands, to be applied to whatever
was the conscience of the ordinary should determine.
The principal objects of this remaining
power reside in the Legislature again to enter
pose in order to prevent the ordinaries from acting.
Errors & Admirs.

...any longer the admrs. in their own hands, or those of their immediate dependants, o’thenceforth the Stat. 31 Vic. 3. 211 provides, that in case of intestacy, the ordinary shall appoint the nearest & most lawful friends of the deceased to administer his goods, which Admrs. are put upon the same footing, with no paid to suits & accounting, as those appointed by will. This is the origin of Admirs as they at present stand, who are only the officers of the Ordinary, appointed by him in pursuance of this Stat., which singles out the nearest & most lawful friend of the intestate; who is interpreted to be the next of blood that is under no legal disabilities. Those who see at 2 Tac. 414. Com. 258. Deov. 2. Ray. 493. 76. 12. 679. 111. 12. 105. 106. 5 Co. 82. 20.

Before this Stat. ordinaries had been to appear others to act in their stead, but they did not sue nor were they sued, being mere servants or attorneys to the ordinary. 2 Bac. 419. Co. Litt. 133. 40. 926. Ray. 497. 8. 150. 145. 5.

This Stat. enables Admrs. appointed under it, to sue for the recovery of debts due to the decease, as others might; and subjects them to actions by Creditors as others were before subjects; and as an ordinary, was by Stat. West. 2. 13. 1 Edw. 1. But it did not obligate them to pay over the surplus after paying debts. It says nothing about it. 2 Bac. 494. 235. 496.
Extra Admiss.

States of the U.S. by Statutes, Art. 132. The law of 1854, page 166, has been held that in one or two of the states there is no provision made that he supposed any person may take the State as it is joined herein as. B. 402. Part 63. Parker 91.

An Intestate or donee, is a neighboring State, in which the intestate dwells. Is entitled to sue here, to wear on his effects being 2nd.

It is otherwise in Eng. But Mr. Parker is not the Court rule agreeable to principles. See 2 N.B. 590.

36. 164. 677. 684. 690. And 23. 2 303. 35.

Who are entitled to Administer:

The whole of him may be an improper person of both he should appoint some one else. The Stat. 1637, 3rd. It was the first Statute that bound the ancestors to grant a sum to the next of most lawful friends of the intestate. This was a vague term, they generally granted it to the near relations. The Stat. was in Latin. The words they used were 'proviso consanguineous' which have been construed to mean 'near of blood' and in legal disability, but it does not mean 'friend.' The most of kin were generally appointed, but there was a deviation in this. They appointed the husband to his wife, and the terms of 'next friend' of the same noted, or a wife was appointed from the husband when he died in intestate. 2 N. B. 919. 361. 470. 561. Decr. 2. Nov. 261. 627. Reg. 49.

If there were several next friends, i.e., friends in equal degree, the Court might select the most suitable of them. Reg. 497.
Exodus 17:13

The power of the Ordinary was regulated by the Stat. 21 & 22, that permits him to grant annates either to the widow or the next of him, or to both either at his own discretion, or where it is necessary in the same degree of necessity; it gives the ordinary his election to accept which he pleases. (Rom. 4:9-10, 11:8.

Some writers have considered these words as synonymous with "next of kin" as by a single word, Judge. Never the hell that it is not the case. Under this Stat., a practice has continued of appointing the eldest among of the body, that the he did proper of separate property, the his body gave no such power as it said. (S. 142, 142) to the widow as next of him. The Stat. seems to have been considered as explanatory in some measure of the Stat. 3: that it gave the power of having the next of him preferred to the widow, or of joining them.

It was 3: next of him was explanatory that the husband might be considered as next of him, therefore he might be appointed. Adam, or the wife, but this is not the case, the Stat. the practice continued. These two States are the foundation of this branch of the law. During this early period it seems extraordinary what they were to do with the statute, were they liable to distribute it? There is some controversy in the books. But the Bishops did as the Bishops had done before. He did as the practice continued. What then was a Solomon's decision by the 3: if they determined, that there,
Exors. Administr.

was no remedy. Therefore, the Administrators returned
the Estate. Love 2. 16 Wils. 821. 18 Geo. 2. 17 Wils. 444 & 427
8 Co. 135. 1 Lewes 233 Eq. 253.

Soon after this, the Civil Communities were
made, and nothing was done further, till a Statute
was made called the Statute of Distributions 22 & 23
Car. 2d. which is the basis of all our Law on this
subject. It obliged Administrators to distribute
the Testate's assets to their Wives, as well as others,
and to a certain extent, to retain the whole
of the Estate of the Testator. Love 2. 3. 1st 526. 13 H. 4 331. 201

I mention this, because it may be very
important in settling the Law in the U.S. Some of
the States say they may retain all the Wife's property,
and others have done nothing about it. Judge P. thinks
that after he has paid debts, he ought in principle
to retain the residue over to the next of kin. Most States,
however, which belong to the Church, he is obliged to pay over
to the next of kin after her death, unless he wishes them
to retain it as her property. If the Judge
is right, it seems clear that he has no right to
receive it, but the Statute 22 Car. 2d. legalized the same
reason is that he is considered in the nature of
Excursus ad Annexos.

Residuary Legatee. Hence of the husb. die before his tenor out, his representative, viz. Ex. 10th is entitled to the 1/3rd of his estate, to the exclusion of the rest of his heirs in Equity, the ordinary 3d part says, is compulsable to grant it. Lore.
The husb. is even called part of him in two cases. Deo 2 Pt 391.

If a wife Ex’s die, 1/3rd of the goods, which she has not in her goes not to the husb. but to the rest of him to her testator. Deo 2 Pt 21.

By 1st 30. Eno 34. 1 Thess 21. the ordinary is compulsable to grant 1/3rd of the husb. effect, viz. widow or part of him. but he may grant to either, his election, or to both. When the intestate leaves no wife, 1/3rd goes to the rest of him, and so vice versa. Amongkindred those in the nearest degrees are preferred. But when there are several of the same degree, the ordinary may take which he pleases. Deo 1 Cor 28. 1 Thess 36. 1 Pt 36. 1 Pt 35. 1 Cor 35. 1 Pet 36. 1 Thess 40.

Admitting grants to two or more may be joint or several, but it is usually joint. Two or more may be granted to separate parts of the goods. Thus a 1/3rd of one part may be granted to the husb., another part to the rest of his heirs. But in case of an entire thing, as a lot, for a certain sum, then it admits not cannot be granted. If two or more parts of one must be joint. Deo 35. 1 Thess 40. 1 Pet 35.

1 Thess 36. 1 Thess 40.
In construction of the Line. There may be persons of the same degree; yet are they not to be preferred to the other. The descending line is preferred to the ascending, i.e., children are preferred to parents. For according to the civil law, according to the degrees of kindness are computed, this descends from the deceased as less than a quarter does not ascent among the claimants, but in defect of children. If the children are not capable, parents are to be appointed.


There is no preference in Line given to males over females in the same degree. In computing the degree not quantity of blood, but proximity to parent; therefore the half blood is usually entitled with the whole in the same degree. Thus is an instance of brothers of the whole blood the sister of the half blood, i.e., he was appointed as the most suitable person. supra & sub. p. 1. vol. 316. 329. 425.

There has been some contention (the judge? I think) that there is no ground for it on the face of the Stat., whether the claims of the rest of his nearest friends, i.e., son & daughter, brother & sister, extend to their representatives, so that representatives as such will decline more distant kin that those their part, he entitled to the land. But it does not extend to them, the Stat. does not say to the next of kin others.
Exors & Admsrs.

ref. but to the rest of his only. There are contra
dictory authorities on this head. Req. 1405. 21 Brev. 414

If there be no person as trustee, next of kin, or
that will accept, or if they are in proper persons as
creditor may be appointed. This is by Custom, when
is no Stat. about it, the Ct. may exercise their dis-
ccretion. He is considered as next claimant. Dors
34, Talb 37, 38.

If an Exr. when appointed, should refuse to
act, or the act of die intestate, before he has finished
administering, admr. must be granted. But here the
Stat. 31 Edw. 3, c. 21, Then I do not obtain. They say if
a man die intestate, but here he did not die in-
testate, & therefore it is not in the words of the Stat.
The ordinary may appoint at his discre-
ion, cum testamento annexo. Then the Exr refus-
e to act, if he had administered in part, & died in-
testate, admr. must be granted, in the words cum
testamento annexo. Next 219, 15 Edw. 3, 2 Hae. 345.

But here there is a rule, not out of the
whether if there be a residuary legatee, he must be appointed
admin. when the Exr. refuses to act, or in other words,
whether the ordinary can appoint any other than
the residuary legatee, if he be qualified? This is a
doubtful point. It is the Custom to appoint here
if he be qualified. (Tha 356, 2 16 235).

A case has arisen, whether the Ct. must ap-
point the rest of his, to administer, when it made
a will of part of his estate. If died intestate, not the
Exeunt Amores.

not i.e. left it to be disposed of as the true director. He said that the rest of him must be appointed for it comes within the common rule, that as to this part he was intimated the case had nothing to do with what had not been entrusted to him. As to the part not the poss of by this rule, it cannot differ from the common cases of intestacy. 31 Bac. 370, 1 Dyer 371, 16 Thon. 256, 100 230.

You will observe that the Custom in cases of general intestacy is to appoint the Widow a part of his estate to such persons as the Creator by custom may be appointed or his refusal the ordinary legatees to be appointed, but if none of these persons accept the ordinary may grant estates to whom he pleases as he might have done before.

Nat. 31. Edw. 3. 2 Bac. 370. 2 Dyer 407. Dec. 5.

The person thus appointed may now it seems, in a proper admin, the before the Nat. 31. Edw. 3 he was only an Attorney or Servant to the Ordinary. In this case the ordinary may grant letters to such persons to collect the goods of the deceased. These letters do not make him a donee but a kind of Bailee. Trustee to gather & keep the goods safely. 2 Seil. 393. About 14.

Where Adm of donee minors estate is to be granted, as where the parent of him is an infant under 21 or in case of a will of the donee named as such. 17, you will observe he is not bound to the donee to appoint the rest of his goods as donee of an infant as donee to take care
Exors & Admors.

of the property, & has no interest or benefit, but in his right. The Stat. goes upon the general ground of his being able to act, though he is not, the ordinary appoints whom he pleased. 21 Bac. 381. Dowers. 76o 628, 734 652 244.

In order to know whether the Exor will accept or not, the Court must summon him to appear.

If he is a man of common good manners, he will give them an answer in person or by Letter. If he refuses, his refusal is to be entered on record. But suppose he takes no notice of the citation, because the Court to proceed? Why you will observe that it is the Spiritual Court that has this in charge if he refuses he is incommunicado. Other being considered as dead, they appoint another. In some of the States they appoint another at the he does not appear. In some, if he does not appear they fine him $50, not on account of his nonappearance, but because he will not attend according to the Citation. 2 Bac. 403, 405, 2 Shaw 252. West 36. Ged. 50, 140.

of transmitting the trust of Exors & Admors.

Suppose A. makes a will & appoints B. his Exor. This lies before B. & has passed into execution, A. appointed C. his Exor, now C. is the Exor of A. But if A. had died intestate, & B. was appointed. Adm or his Exor. C. cannot administer on the goods of A. the intestate. Adm or must be granted to as de bonis non. But the Exor of B. may be Exor of the first testator, if B. had proved the will, for the power of the Exor is founded


The appointment of the decedent's appointment is founded on a special confidence reposed in the Executor. The decedent's heir may transmit it to any one whom he has equal confidence in after he has proved the will. But an Executor cannot transmit the trust reposed in him to another, because he has no interest except what he derives from the ordinary, that joins the trust reposed in the Ordinary. Lev. 21:13, 18:32, 20:20, Deut. 34:9.

So if an Executor die intestate, he transmits his Estate. If Executor is not Executor to the first intestate, because there is no priority between the 2. Executor to first intestate. Therefore, Executor must be granted as executors of the first intestate. 1 Sam. 25:1. Acts 4:60. 1 Pet. 2:9. Ps. 179. 21:13.

Suppose A dies leaving two Exors. Act 13. A dies leaving C. his Executor is not Executor to A. for B is the surviving sole Executor. A not having any confidence in B as he did in A. This is always the case, but there be any number of Executors, the surviving takes. But suppose A's father also died & appoints B his Executor who is also Executor to A. So shall & 2 B. Both be Executors. And alone is Executor to A. So the Executor to the Survice is always the sole Executor of the first Intestate. 2 Sam. 21:24. 2 Tim. 1:5. 1 Cor. 15:25.

But the A's share of the Executor is not the represent. value of A, for they are strangers, there is no priority between them. 1 Cor. 15:20. Acts 18:5. 31:9. 2 Sam. 3:8. The Executor is comm. charged to administer.
Excus Admors.

...goods of A granted to those of B in the original deed for 600L on 30th March 1821.

Therefore A's de bonis non commisures to annul must be granted of which without... Dec. 30th, 1821.

In the event of a power to B, deceased or D, deceased, as the case may be, having proved this will, leaving C his devisee, C. is not the devisee of A. The rule is that. A's de bonis must be granted. Even if the devisee, judge's reasons being explained, the reason of this... for if B had proved this will, C his devisee, baring the name of A, Hutton in his devise, and B deceased, leaving C, his devisee, who is the devisee.

Which therefore the course of replacing, when from C to A to B, to be interfered by any one either, or else the devisee not administrated, they must be granted for, more uncertain. Note 302, 364, 223, 216.

In all these cases, where de bonis is just like an. admesgrant in case of the first substituting, it may be of certain specific parts of the effects not adminis-... the remainder, not being for women's children. Note 402, 1 Tal. 36, 236.

The manner of proving Wills.

The ordinary only by affidavit, or at the instance of any party interested, etc. In the case to prove the will, according to some, the testator may be cited at pleading.
of any case, that the latter may know whether he has a legacy left him, the testator may request the last wills proved or the will be proved. 2 Bac 403, 493, 21 Mars 403.

There are two modes of proving the Will. 21st in Common form, as where the testator presents the will, without citing the parties interested, makes an oath, declaring that it is the true, the whole, and last will of the testator, according to the best of his knowledge, belief, and recollection, as when there is no dispute, saying the will is true, or that it is revoked by a later one, which cannot now be found. Then the two next a part of the estate is settled by the present. Some of if they do not was the judge proves it, of course, 2 Bac 403, 493, 21 Mars 403. If there is any dispute, saying the will is true, or that it is revoked by a later one, which cannot now be found, then the two next a part of the estate is settled by the present. Some of if they do not was the judge proves it, of course, 2 Bac 403, 493, 21 Mars 403.

If it may sometimes be uncertain whether the testator be alive or dead, whether the time fixed by the testator is past, if he has not been heard of for that length of time, or if he has been in foreign parts, the Common law is that he is dead, and the presumption is that the will is to be proved. There have been instances where the presumption has been almost inadmissible, and of a man's death he saw his day.
Exors & Admors.

It is the first Indies. He was mistaken. The man after returned. Here the probate is void. All acts of the ordinary having no authority or jurisdiction. The Act being granted, only on prescription, it may be set up. An analogy to this is the case of a theft which is allowed to stand again if the theft has been abstractly proved at first hand of it is presumed he is dead. 23 Ed 3. 2 Dec 403. 2 Dec 612.

In Eng. it seems there is no precise time in which the will ought to be proved. Some state in 46. 3, it is settled, same page 4 nd. Some say 5, Where it is not settled, it is left at the discretion of the ordinary. 2 15 Ed 403. 2 Dec 81.

Executors refused.

The office of Executor being a private one, it being appointed by the Testator not by Law, he may refuse to accept the office or he may refuse to accept the office, or not be subject to a penalty. Now for nonaccepting or nonperforming many offices there is a penalty, there being many acts which if a person ought to act, which are not very pleasant or profitable, yet it is necessary that some can undertake them, therefore they may be compelled. But the Executor is private, he may refuse other offices, must be granted from testament.

2 Dec 403. 2 15 Ed 252.

It is laid down in the Civil Law writers, that the ordinary may compel the Executor to prove the will if they make his election either to accept or refuse the Executorship, but he cannot compel him to accept. 2 Dec 67.
Exors v. Admirs.

The office of Exor is sedulous, I cannot be assigned. His labor is his trade, may fail for the best of his health. An Exor cannot refuse by any act or omission; as if he says, 'I will not accept,' this is not such an act of resistance as the Ct. will take action of, or which will alone bind him. It must be by some act which upholds the Ct. Can certainly determine, whether the declaration is made on Ct. The refusal must be entered on record in the Foreclosures, Ct. 13B 450.


In a case where the Exor refused, the record was only that they referred to accept. Yet this renunciation was held binding. But where the Exor refused to his trust, he never afterwards can prove his will, otherwise, as Exor. A Ct. must be granted new Testament to answer. Baughn 1244. 2 Bac. 405.

2 Note 405.

But you must understand it in this way; if one is not granted he may waive his refusal. Then you will accept the trust.

Plow 231.

Suppose there are two Exors, the one around, the other may prove the will as a last testament any time. One the one who refused may come on at any time to administer after the death of his Co-Exor, for the Exorship survives he is put to any Exor of his Co-Exor, for as the will is proved, the ordinary has no authority to take the refusal.
Eccurs & Admors.

During the life of him who proved the will, the same afterwards. See 3 Will. 36. 1 B. 52. 2 B. 102. 1 Ch. 162. 2 B. 406. 3 B. 28.

But according to the civil law, the renunciation is personal and irrevocable. 1 B. 103. 3 B. 102. 1 B. 28. 3 B. 28.

So the executor in the last case, may refuse to act due to the testator. 3 B. 28.

Remember that in all actions both by executors, where the has refused the suit, or in the name ofboth, or as many as there are, Judge Reeves says, "he knows no reason for this. Usage has always led to it." But when suits are both by executors, they must be as the acting one only, for the holder is supposed not to know that any other person has sued. 1 B. 28. 3 B. 28. 4 T. 568.

After an executor has once administered, he cannot renounce for by the act of administering he accepts the trust, which determines his right of electing to make him liable to suits. 2 B. 406. 2 B. 28. 1 B. 303. 1 B. 28. 1 B. 182. 1 B. 38. 2 Jones 72.

It is a general rule, that whatever the executor does with the effects of the testator, before probate, manifests his intention or that to accept the office, amounting to an acceptance, so that he cannot afterwards renounce it. 1 B. 168. 2 B. 406. 1 B. 407.

There is a case, where a man took the goods of another supporting the belonging to the testator, it was decided, not to be an acceptance. 2 B. 406.
Exors & Heirs.

The law takes them on these conditions of trust, if he takes them on any other way, it is not an acceptance.

As suppose, the trustee's cattle are in danger of starving. He takes care of them in winter, & the cause to be the same, where the property is disposed of, though claiming it as his own, this is not an acceptance. (Matt 19. 2 Mac 406.)

Any act which makes one an Exor or done without consent of the other takes possession of a specific article belonging to him by the testator, this is an administering of a Legacy, cannot take his Legacy without the Consent of the Exor. (2 Mac 406. Matt 20. Anderson.)

So also of these, the two Exors, done without consent of the other, takes possession of a specific article belonging to him by the testator, this is an administering of a Legacy, cannot take his Legacy without the Consent of the Exor. (2 Mac 406. Matt 20. Anderson.)

Yet in all these cases, if he has done these things is wished to excuse himself, he can not renounce the Leg. may accept his refusal if they pass. (Pryant & co. to another, & then the Exor can act afterwards presume the Exor. (Roll 97.)

Yet if after Exor's granted, only because the Exor did not appear or summons to prove, it is with state of the Exor chooses to accept, we suppose he may do it, & Exor must be repeated. Artifial in the Exor has refused to Exor is granted to another.
it appears to the judge that the Exor has administered before refusal, he supposes the judge may compel the donor to oblige the Exor to accept. 2 Bac.405. Note 704.

But if the Exor appeared it has proved the will, he cannot afterwards renounce, for he has accepted by taking the oath that he 3 discharge the trust faithfully. nor can the Ct. accept of his refusal. of the ordinary does refuse him. a mandamus liss. 5 Bay. 263, 483. 100at 335. 2 Bac.405.

The manner of granting Administror.
When it must be granted as well as the different kinds.

When granted it must be in writing, signed by under the seal of the Ct. It cannot be granted by parole. Dyn. 294. Note 408.

1st. It is to be granted where one dies intestate.

Hence the person entitled by the deceased to the same has a general authority; he has the legal right, said for himself, not for any other, as no one has a superior power over him. All the Exors are not obliged to give bonds at 2 C. & E. yet all the States in Eng. require that Admins shall give bonds, even Admins can test. unmero, for the faithful discharge of their duty. It may be granted jointly to 2 or more before die the office survives. it differs from a Common delegate his authority, for in such case if one die, the authority ceases. some may be granted to several, part to one and part to another, i.e. it's distinct things, but not of one entire thing as 1804. 1005. 2 Bac. 238, 293, 405. 92, 39. 1807. 31 Bac. 375. 1805. 32. Bac. 416, 497. 2 Barn. 19. 394. 1800. 462. 1 Salk. 36. Note. 42. PO. 78.
Exercis Admoons.

If a person be made Exam without any constitution or restriction, he cannot sustain any part in the cause; no, not so much as for the want of means or time for the cause or not at all. And the same may be noted. Mr. T. supposes the cause of some grants generally. 2 Balc 374, Salk 374. Nble 103.

2. Admow may be grants where the Exam is out of the realm. (This is now settled.) 3. Adw for the same reason, where the rightfull. Admow is out of the realm another Admow may be obtained. 3 Salk 23, 6 Nble 304.

4. If the Exam is out of the realm, another Exam may be obtained. 3 Salk 23, 6 Nble 304, 20. 141. Salk 192, 2 Ray 671. 2 Balc 415, 1 Cor 260.

So a temporary Admow may be granted, while the rightfull. Admow is outlawed or in prison. See titles in abatement, 2 Balc 375, Cast 128.

But, why sh. it be granted in the case of outlawry when an outlaw may be said as Exam as Admow? This kind of adw. ceases, when the absence or imprisonment t. of the Exam a rightfull. Admow is removed.

4. To Admow may be granted pendente lite of a will, it may be necessary to settle the estate, before the suit is determined, but remember it ceases when it is decided. 2 Shaw 69. 20. Nble 50.

1 Cor 263, Earth 253. Shaw 917.

And the case w. be the same when the right of Admow is in dispute. Cor 2 Earth 917.

These temporary admos are capable of an unstable being used, while their authority continues, even Admow pendente lite. Cor. Shaw. This 591.

2. Ray 671. 2 Balc 415.
Exors & Admors.

6th. If the Exor. refused, adm. must be granted cum testamento annexo. 7th. If the Exor. die before probate, the rule is the same. 8th. Ass. if you have part administered, & die before probate, adm. is granted cum testamento annexo, because he did for the undertook the execution of the will. 9th. Ass. if a will is made naming no Exor., adm. is to be granted. Cum testamento?

2 Bae 4:15. 1 Salk. 304. 5. 2 Bae 386. q.C. 37. 1 Rel. 964. 1

If the Exor. has prove the will, gone to administer, & dies in his place, then, Adm. de bonis non. Cum testamento. c. is to be granted. Yet if an Adm. dies leaving Goods unadministered, adm. is granted only de bonis non. Idem.

There is no provision made by C. 25. where the original, Adm. or Exor. has tried an action in tanta lex. thus without taking out execution, then the Adm. de bonis non, c. not await himself of that. Yet for it was in favor of a man now dead, she was not privy to it. But now the Stat. 17. Cap. 2. 1. Stat. give the Adm. de bonis non a right to sue out a scire facias on the judge when it is read due on a bondict. But this was long before the migration of our ancestors, therefore they were not adopted here. In court, a scire facias may be issued without any Stat. directing it.

2 Bae 4:15. 386. 1 Salk. 304. 5. 1 Falk. 33. 83. Falk. 166. 1 Bae 29. 6. Mack 290. Salk. 322. 3. 5. 1 Bok. 1072.

When the Exor. in this case dies intestate.
the testator is said to die intestate. 1 Rob. 397.

Adonias de longis propr., have the same right to the personal property of the deceased which remains as the other Adonias had, i.e., which is not administered in specie, as terms household furniture: it comes by the original. Every right by itself for it can be identified. Look also does the original testator. But if the original, Adonias had not recovered the money, but had taken a new note for it, in his own name, as Evis, it is such a change of the property that it must be considered as money in his hands, if you come on his Representatives for it; it does not vest in the Adonias de longis non jure. It thinks this could not be supported on principle, it ought to be considered as vesting. In the name of the Evis as such, and on principle this is the same as if it were in the name of the testator. If it had been in his own name, not as Evis, it w. then undoubtedly be a change but must be paid by his representatives. But the authorities are so that it must be considered as vested in the hands of his Representatives. 1 T. & C. 386. 1 East. 306. 7 Ser. 439. 21 East. 382. 1 Pett. 386.

10. If the Evis is under the age of 17, Adonias, de minor's estate, must be granted to continue till he attains the age of 17. And it is the same, if he is entitled to Adonias is under. Adonias, de minor's estate, must be granted to him being full age. 1 Cor. 250. 3 Esp. 27. 16 Cor. 492. 3 Esp. 382. 21 Pet. 402. 21 Esp. 280. 16 Cor. 380. 3 Esp. 27. 16 Cor. 492. 3 Esp. 382. 21 Pet. 402. 21 Esp. 280.
EXORS & ADMSRS.

for the Infant, the ordinary may appoint to that of
fice whom he pleases. 2 Baco 38. 5. 66. 1306. 1 Cor. 250. 2. 262. 150,
Salth 29. Love 192.

It is sometimes laid down that Adult is

to during the minority of the infant Esxor in the
age of 17 determines in his managing a person of full
are 2 Baco 38. 166. 250. This 155. Donc. 166. 250.
5 Co 29. 13. 70b. 3. 49.

If an Infant or a person of full age be appoint
a Esxor, Adult is not granted durant, to a third
persons for the one of full age can execute jointly.
Love 193.

But it is said that the Esxor of full age may
take administration durant, minor, estate, and
declare as such on us Esxor 2 Baco 38. 1256. 240. 13. 1546.

If two Infants be Esxors, one of the age of 17 and
the other under, the former may execute at his, Adult,
durant, it is not to be granted. Love 193.

In this I conclude, this other Esxor can take
administration durant, minor, estate, for no per
but no adult can be Esxor.

If A. die leaving A his Esxor 1256. 1 die leav
ning B an infant his Esxor 1256 to be appointed
administrators durant, minor, estate of B is not
the Representative of John Pals though he relates
B who is the Esxor of John Pals. Then must be an
Administrator durant minor estate. Bar 38.
Em. C. 211. 22b. 233.
Exors v. Admirs.

The authority of an Admin during minority of an Infant Exors. Admin.

It is said by Comyns, who however gives no authority that the Admin during the minority of one entitled to the same, has, for the time, all the power of an absolute Admin. Mr. Coke here seems to question Comyns, viz., as not being a good authority of itself, but it is laid down by Sir Matthew Hale, Judge Coke is of the same opinion, that Comyns is a good authority, viz., by 3 East 30, 107, & 112, 131, 156.

But it seems to be settled, that an Admin during the minority of an infant, has not such a general power as the power of an infant, as an absolute. Admin has. 2 Bac. 381. 5 Co. 29. 107. C. 718. 2 Com. 227. 2 East 103.

This authority is generally given him, ad commodum et proficiendum Excorii or that he is in the nature of a Guardian to the Infant Exors. Admin. These authorities relate to the case of an Admin during the minority of an infant, entitled to Admin. The authority of an Admin during the minority of an infant, is generally granted for the advantage of the infant, & the estate of the deceased. Thus he may, as such, have the power of an Admin, for the administration of the estate, & the benefit of the infant. 2 Bac. 381. 5 Co. 29. 372 East. 288.

An Admin may act under any circumstances, as the act of justice. 2 Bac. 490. 3 Bac. 457.

So an Admin during the minority of an infant, may act. 2 Bac. 381. 382. 1 Com. 286. 5 Co. 67.
Ours V. Adams.

If Courts to repeat adms. interesting, a perhaps not fully settled. The old decisions held that the court did not repeat the
adm. as they granted, and it seems now settled by modern
decisions that admin. may be revoked on various causes.
1st. When fraudulently obtained. If admin. be granted on a basis of
supposed intestacy, where a valid will is afterwards
found, the adm. must be revoked on probate of will.
2nd. When in case of actual intestacy adm. is granted to
one not legally entitled, as if the person appointed proves
not to be the heir of kind. 3rd. When obtained by a false
suggestion, whether made fraudulently or not. In short,
when it is obtained through any false apprehension it
may be revoked, as when it was granted to an uncle
not knowing there was a brother. Love 18, 47 1 Linn 203. 1Ball.
38. 1Mont 128. Strong 2 Marx 410. S. Salk 22. 1Cr. 409, 179, 370.

Admin. daily obtained may be revoked for matter
of pos. fact, as if the Adm. be became a Suitable or otherwise
incapable of administering. Or suppose the person enti-
led is not qualified at the intestates death, adm. for
this reason be granted to another, this adm. may be
revoked when the person entitled becomes capable.
1Chin 263. Love 18, 19. 1 Dec. 370. Levin 133. Burns Ed.
Dec. 236. 1 Rall. 354.

Adm. may be revoked without a bill of
revoctions, as by granting upon admin-
istration, which is of itself a revocation of the former.
The consequences of repeating Adm.

I have mentioned (says Judge X) already that the Act of 1858, may work it if they please, but if they do not, the party aggrieved may repel the difference. In case of an appeal, it is that I suppose, a man has gone in a part to the home of many other things, I thin adm. is repeated. Now is what it has done paid or paid done? There are a number of cases agreeing that it is quite done, the number pay it is void. 29th June 4th, 46 a, 46, 5 6 3. 13th 1858 444

I shall state the authorities to my opinion on this subject. There is one general rule that this case is great to a wrong person, but regularity grants discretion by the same 6th 5th all. The intermediate acts are lawful i. e. all the authorities agree in this. He is not answerable for what he has done of dollars have, for how many they cannot after wards be committed to pay it over again. The Adm. is only liable for what is left in his hand, which he must pay over. It is in the same if Adm. were grants, it then is after wards a mistake found. Observe that it is not only by the same let that grants it, remember this.

In this case if the first Adm. was a creditor to the intestate (Mr. X says) he might retain credit and other right. Adm. to satisfy his debt, 1 Bath 38 2, 5th Dec 4th 5 5 4 5 4, 1 Con 96.

But the last of an Adm. when letters are repeated by citation, notice, or gift of the Testator's goods by other than the first Adm. to satisfy his debt, Bath 38 2, 5th Dec 4th 5 5 4 5 4, 1 Con 96.

But he shall if an Adm. when letters are repeated by citation, notice, or gift of the Testator's goods by others than the first Adm. to satisfy his debt, Bath 15 9 18 18. Love 50.
Exors vs Advisors.

Now suppose the act be not made in the name of the Superior or if the act be not made in the name of an honest person, yet they may grant an appeal to the Superior or if they may revoke it if they please. If they do raise the issue is it an act? Now can any one assign a particular reason why all the acts done in the

first degree should be void? Not all the authorities say so, but there are modern authorities, see 5 T. T. 128) that say the elementary rules mean that all the intermediate acts of the Advisor between the appeal and the subject are void. Yet the ancient authorities say all the acts done is void. 25c.

Now you may take this as the rule that the acts are not void unless the appeal is void. And this is repeated and done after the appeal is void. So this seems soundest on the best reason. Every thing done under the authority of the 60 is right as long as they have jurisdiction of it and in the case put an appeal from the time of it, the judge is suspended, back done after this one void. Perhaps on a citation is only a request of the former letters of demand? It does not affect the original sentence, but a counter sentence as on an appeal acts directly on the sentence against from, which is suspended by the appeal itself. A former appeal is considered as if it were void. 18.

Rev. 62; 66, 35; 59, 204, 2 Rev. 90, 9 T. T. 122; 16 Rev. 224.

And the cases in 60, 18; 224 are where the appeal was after an advertisement or Citation. But if the first Advisor in the case case had
Exors & Admins.

obtained in 1838, the Debtor of the deceased before the
year, the debt may be relieved 48 it by an independent
receipt. Comb. 264. 1 Pinc. 192, 1 Mils. 62, 1816, 21, 1819.

So to the Debtor to take an Expiration on the
Injunction to bring in the discharge on motion. See Ch. 47,
3 Benc. 412. 4 Lend. 83.

You will see a case in 3 F. R. 135, a refusal of a
reservation before the same court, that where a will was
founded upon the testator's will, but was afterwards
voided, the Probate was not granted, all the language
acts done under the will, i.e. such as a rightful execu-
might do, were continued good. And a Debtor who
had the supposed Exec. was not obliged to pay the
rightful. Admits the same, but why? because the
person acting as Exec. had authority from the will, and
whenever a person does any act regularly vested in
the direction of a &c. having competent authori-

The difficulties are here the course of the
Act says, if a person dies without an Executor
posing that is no will, grant adms. of the Exec. after
waits proves the will. If so, if revoked, all y. acts
done by the admr is null. So the is a trespass for

The reason given for the former decision is that the Debtor was
interested in the Estate, a wrong occurrence. But this will it was
was in trespasser. That even the ordinary cannot de- 
prive him of this interest. And another reason that the 
bishop has jurisdiction to grant a false report, is this 
word: Ancient auth. 2 Mac. 11. 17. 24. v. 41. 1 Cor. 233, 264. 2 Pet. 
277 2 Eves. 183, 194, 303.

But Justice Buller and Justice Grefe says above 
is false doctrine. If the Ecclesiastical be (says Buller) 
have jurisdiction of the subject, matter the sentence 
long as it stands unrevocable shall prevail in all 
their places. If the be have unquestionably juris- 
diction, the testator being Confess. St. - he does not 
say of a man grants admit when he has no right 
le to it that it is good - but he says that the be has 
jurisdiction to appoint an aden, if there had been no 
will, that here what the aden does is valid good. 
Judge St. agrees with the late decisions. Another case 
where the opinions of Buller & Grefe are given. The 
deceased life 2 wills, the test. of the first got it proved 
then the second admitted, proved the will, consequent 
ly the first was evicted. it was contended that all done 
under the first was void. that the be had no authority 
to grant latters on the first. They both set a case in 20s 
as in point 24 May the acts done under the first were all 
right, because the be has jurisdiction. 3 Th 150, 124, 196 
Law 47, 177. 1 Mol. 914. 2 Dan. 120. 1 1st Rep. 1 Eves. 158 
2 Eves. 22, Eves 182.

It is set down also, that the former breach not in 
every case account for what is has left in his hands. So 
2 Pi. 182 a 182. 1 Eves. 266, 2 Mac 612.
Exors v. Admirs.

If afterwards another suit it therein appeals to his Exor. It has probate of the first will granted to him by virtue of which a debtor to the testator pays him a debt, without notice of a second will, there is no relief from him, yet upon proving the 2d will, instead of the probate of the first, he may compel the debtor to pay the money over again, for though this be a particular hardship, yet the inconvenience would be much greater, to allow the ordinary to make any other Exor than whom the testator has nominated.

Judge B. says this last is disputable. (vide ante.) 1 B. & C. 198. 2 B. & C. 266.

What acts an Exor may do before Probate.

On the death of the Testator the Estate is said to vest in the Exor. But it is not considered so said as vesting in the person who has the right to inherit on the death of an intestate, as there may be many persons equally entitled; if the appointment made, it is not in one who will be Admin. As the Exor derives all his interest from the will, the property is vested in him before Probate. Proving the will is called a necessary ceremony; it is properly a necessary evidence of the Exor's right. Before the Probate an Exor may pay debts, legacies, devisees, and others by way of interest. But he cannot bring an action for an injury done to the Testator's property, for if Dr. B. pleads that he was not Exor, it is not necessary for him to produce the probate. He pleads that the Exor has not proved the will. 3 B. & C. The will is not raised by the prov. 3 B. & C. 412. 1 B. & C. 205. 3 B. & C. 725. 1 B. & C. 326. 3 B. & C. 977. 3 B. & C. 96. 1 B. & C. 396. 3 B. & C. 338.
This evidence of the Evisor's right was Probate is necessary. It is paid, because on the Probate, there is no intervention, and the acts to be done, which are for the benefit of Creditors & Inhabitants. 1 Tulk 308. 2 Bac. 412. 3 Tulk 30.

But as an Admn. can do no valid act, until letters of admn. are granted, for he derives the whole of his authority from the ordinary. By acts, acts are meant acts effecting the objects of the rights of the parties. Their indifferent acts are such as any person may do. The Evisor may e.g. take possession of the Testator's goods, in probate, he may enter the house, take possession of securities belonging to the testator, but he cannot break an inner door or chest for the purpose. So that he may do almost any act but he cannot, see as Americana above. 2 Bac 412. 1 Com. 238. 3 Tulk 172. 3 Com. 172.

What then is the difference between Evisor & Admn. in this respect? If the admn. gets out letters & is the person legally entitled, will not his acts done before admn. grants him to act? There are cases which say that if a person entitled to admn. shoots to recover debts, he was released to do so; but, it seems he did not afterwards that he might again become these debts paid, for the right of action was not in him. Judge. It remarks that these cases do not correspond with the most of cases you will find. 3 Com. 172, 126. 5 Com. 281.

There will be this difference - if a bond is given to be paid at a certain day, what comes after, is does not
Excres Admiss.

deadth, before probate, the person must come in and
pay the tax by the day appointed, or by 6.2. the penalty is
forfeited. But on the other hand, if the bonds were made by
the testator, the 2½% must pay by the day, the before pro-
bate, or the penalty is forfeited. To be sure, by the Stat.
for penalties may be charged down in instal-
ments on payment of all of the principal interest & costs. But
it is otherwise with an Admine, because he has no au-
thority. 4.31. authority is in favor of the person indebted.

After the person named as Ex. in an, may do
almost any act, it is said to be a complication as to many
purposes, yet he cannot bring actions before probate.
this is a general rule. 1. Mo 213. 2. Mo 146. 2. Mo 177. 3. Mo 301.

But it does not apply to all cases. He can
bring no action of debt, or actions on the testator's cont-
tents, or any other actions committed in the testator's life
time. But he may bring an action to maintain his
passage, or actions for injuries done to the estate
after the testator's death. For in this he has as if the goods
were his own. If no one can maintain a better right,
he may recover on the ground of his own possession. He
may maintain the action without describing himself
as Ex. of course a protest of letters testamentary is
necessary. He must not prove the will. 2. Bar 413. 461.

So in 79, 20, 18 some States have, when they
A debt can never be forgiven when the survivor of a term for years comes to him from the testator, after the testator's death, for the debt accrued after the testator's death is not the testator's, but the creditor's. But he cannot maintain an action before probate. He has sold the goods of the testator. He may sue for them before probate for the contract, but not the testator.

1 Cor. 15:55. Luke 17:4. 2 Sam. 30:3. 1 Pet. 3:8. 47. 31:2. 48. 1 Thes. 41:5. 26.

Perhaps the proposition is too broad to say that the debt cannot be forgiven. An action on the contract is not a personal action, but a corporate action. He certainly may commence an action, but he cannot maintain it. Yet previous to probate the debt may be tested, if he produces his last testamentary at the time of declaring what he must make perfect, it is sufficient. Those remove the imprisonment at Act. 5:29. 10:27. 911. 31:30. 4:30. 1 Cor. 2:23. 8:1. 13:24. 1 Pet. 1:2. 48. 8:1.

There is one glaring case among these, that is, if a person pay the one who is entitled to him, a debt when his hands person has declared. He may compel the debtor to pay it to him again. Judge Reeves thinks that, on every principle of policy, justice, the debt might be stopped from recovering it again.
Excuses and Admits
Of Co-Exors.

If there be several Exors they are deemed in Excors
but as one person respecting the Testator. Their interest is
joint entire indivisible. Therefore it is a general rule
that the act of one is the act of all. Hence the possession
of one is the possession of all. A sale or gift of it after
the 18th March, it being regarded as the act of all, is
a release of one, and a cession of debt, sec. 22; Bac. 375.
1 Com. 39, 240; 1 Esp. 347; 10 Pott. 426; Dry. 235.
Sec. 134, infra. 95.

So if one grants all his interest in the Testator's
term for years, the whole paper, for each has an entire
and indivisible interest. So if one release his part of
a debt due to the testator, 2 Bac. 375; Dry. 235; Sec. 21.
Sec. 134, infra. 95.

The case of Co-tenants is different from that of
joint tenants: for each of the Exors is possessor of the
whole, their being no part or moiety in this possession. So if one grants his interest in the testator's
debt to his Co-Exors nothing passes by the grant for
each owns possession of the whole before Bac. 375; 10 Pott.
Sec. 134, infra. 95.

But Excors have a right to plead different pleas.
Therefore a tenant in 10 years to land passes to all is
not good, and the whole interest is set aside in action.
Sec. 153, 1 Bac. 200; 1 Esp. 347; Dry. 235; Sec. 153.

There is this difference between Excors and Co-

Exors & Admors.

One of two Admors cannot bid the other, he cannot make a valid release, nor convey any estate to stand bid the other, both must join for the authority of Admors is joint & entire. Judge B. says he can see no reason why there should be a distinction but as is the Law. Mr. T. says this was formerly doubted. 

[Text continues from the previous page]

There is an exception to this rule, where one Admor may sue in his own right. as a trespass. declaring on his own profession, & be he may release the action in such case. And 4801.

The case of Admors is in this respect the same as Esxs. if one dies the power survives to the remaining one, as well as many as three. For Admors see 2 Barn 514. Con 240. 1 Pbo. 9. For Esxs see 1 Con 263. Pbo 21. 2 Pbo 416. Falk 39.

It is said that an Exor may compel his Co. 

Exor to account with him in the for a moiety of the effects. Luke 2. 2 Pbo 396. Falk 33.

So of the Esx, he made residuary legatee, as may sue the other in the Trust with his moiety, for he is in the character of a Legatee. 2 Pbo 396. 2 Pbo 415. [Note: 139].

You will observe this point interest a joint 

Estates of Esxs. to take only as Joint of the whole rights, but it can be conveyed in a joint tract for the several of one or for an estate amounting to a 

Testamentary. For the reason is to be had to convey 

property 519. or not in the one who was not connected 

with the house who bought it as a property of the.
Excuses of Adm'rs.

Tellers, at any time in his hands. Keep in mind this, that their joint liability extends only as far as they have a right to what the property creates, not what it was worth. 2 Bac. 396. C. & C. 313. 1 Bak. 218. Br. 739, b. 208.

Not if both the Esquire join in giving a receipt for money actually received, by one only, all are liable at Law to Creditors as if all had received, i.e. each is liable for the whole (says Bac.) 2 Bac. 396, 560.

This rule however is different in Equity, the actual receiver only is liable, for recovery of the substance, joining in the receipt is matter of form only. As all the Esquires make, but one person in Law they are regularly all to be bound. 2 Bac. 57. 560, 2 Bac. 396. 208.

If an action be brought at one Esquire, a plea that another is Esquire, without averring that the latter has administered is bad. For if he had not administered the latter is not bound to know that he is an Esquire there is a better plea. not be Esquire all the Esquires also not at the action one only may be sued. One in the above case of the Esquire there was another Esquire who had actually acted, the plea will be good, but not so in the other. 2 Bac. 596, 218. 1 Sir 243.

But if one Esquire has alone it is not so, it is sufficient for the Esquire to plead that there is another Esquire and averring that he has administered, because it is not supposed to know that he has not administered. The Act requires the suit to be brought in the name of all the Esquires. 2 Bac. 596, 251. 208.
Exors & Admirs.

If an action be brought, as one of several executing the will, not to plead the mistake, in abatement, he losses the advantage of it. 3 Salk. 396, b. c., ch. 61.

In case of two executors, one refuses to accept or prosecute, yet he must be named as there must be six executors by law. 2 Salk. 274, 3 Dev. 37, 6 Salk. 124.

The effect of summons of sequestration is to take away his privy to the trust, to make him a party to it. But if a trustee be committed on the goods of the Testator, while in possession of one of several. Ex. 1210, he alone may sue for it, for now he is not one, as of the others, but in his own possession. 2 Bac. 397, note.

Bd. 134. Mat. 105.

This object of summons of sequestration is to prevent the trustee who does not act from releasing the trust. 2 Salk. 652, T. 126. 2 Bac. 396, T. 109.

Of contrary rule holden in some of places on the ground that the possession of one is the possession of all. 2 Bac. 397. 1 Salk. 482. 3 Salk. 209.

San Exor de Jén lort.

This answer is known in the E. D. There is a proviso in the without any authority from the court, the ordinary does such acts as belong to the office, you get, but you a decision, you precio from the definition, he is a trustee, he must be at least this conclusion must be an E. D. 222, 2 Salk. 171. 3 Dev. 206. 3 Salk. 33, 2 & R. 99.

In general any unauthorized meddling with the trust.
Exors & Administrors.

The value of what he does is not material,... since a man has been made an Exor de bon tort, for milking a Cow. Is not the milking of Cows necessary for their preservation? Deo. 397. 108. 108. Dyer 186.

To pay legacies out of effects, taking it from the Legatee without the Legatee's consent, or by pleading when the Legatee or any other person, then the Legatee, unless he be by any other plea be admitted himself to be in error. Deo. 265. 67. 297. 308. 31. 2. 108. 208. 174.

To the husband of the deceased becomes the de bon tort by taking more apparel than is customary to the deceased. Deo. 186. Dyer 186.

If a stranger takes possession of the effects, and delivers them over to another, who disposes of them, the latter is also de bon tort. Deo. 108. 208. 297.

By Stat. 23 Ed. 43 of goods of the Insolvent to be given by prejudice to a 3d person, or a release of a debt given by fraud, the damage or relief is also de bon tort. Dyer 387. 2 Deo. 235. 408. 210.

If of the insolvent letters he has given over goods to a 3d person, he that property in the hands of this...
...
Exors & Administr.

The above rules as to what acts make an Exor. de son tort, apply in their full extent only to cases where there is no rightful Exor. or Admin. acting, & those cases where there was no act at the time of intermediating. 2 Boc 388. 3 Co 35. 34. 31 Ta 310. 14. 1 Saun. 289. 388.

In all probates of this kind, after the Exor. has otherwise administered, or after comp. granted, common acts of intermediating, as taking a house, &c., will not make an Exor de son tort, for there is now a rightful Exor. & the goods taken after probate are vested in the rightful Exor. they having come to his hands. See the strong prov. is liable as a trustee to the Exor. 3 Sa 302. 307. 2 Boc 414. 441.

There are two Cases where a man is to be considered as Exor de son tort, viz. the acts are commit. to after probate. 1st. Where a fraudulent gift is made to a person by the testator. this property in the hands of the donee makes him an Exor de son tort. 2nd. Where tho' there has. in the hands of the intermed. in the hands of the intermed. by the intermed., but claims to be the real Exor in all matters as Exor de son tort. And it seems from Tal. 319 that this claim may be inferred so as to subject, from certain acts, such as receiving a paying order, tho' not from common acts of intermediating, &c., &c., &c., as on the nature of common trust of pros. 2 Boc 388. 363. 389. 319. 329. 449.

If the intermediating be before probate, it is a case of vesting before. Act not granted, the Strong prov.
Exors & Administrors.

intermediating in Eas de non lout, the trust is nothing more than taking possession, he is liable as such to creditors, unless he delivers the goods to the Eas before action brought. The grounds on which he is liable to creditors is that from his acts they have cause to presume that he is a legal Receiver. This own acts make him Eas de non lout, he has no right to disprove the presumption when his own wrongful acts have raised it. Hot 649, 2 Ed. 11. 99, 2 Cal. 297, 313, 5 Dab. 323, 5 Mcq. 334. 

Note 910, Cas. 2. 635. 12 Mcq. 911.

In short, an Eas de non lout is liable to all the trouble of Eas without having any of the profits or advantages of it. Thus he is liable to be sued as Eas, but he cannot sue as such. He cannot retain for a debt due to himself (as other Eas can do) even as creditors of an inferior degree. 1106. 1 Com. 266, 3 Dab. 390, 378. 9 Cas. 2. 630. 5 Cas. 30. 2 Mcq. 51. 12 Mcq 419. 471. 4 Mcq. 127.

But if he pay debts with his own money, he may return to the amount so paid. 2 Mcq. 1105. 76.

So if after intermediating he receives Letters of Igrant, he may return for his own debts as creditor in an equal degree. For the Letters of Igrant purge away the wrong, except that he is still liable to be sued under de non lout, i.e. by that name, he having however, after the Igrant granted, all the privileges of a rig of the grant. 266. 1106, 1104. 22 at 19. 3 Dab. 337. 4 Dab. 423.

It will appear to the Court, as to that an Eas de non lout after having taken Letters of Igrant may be charged as such de bond, for that de shall not.
Exors & Admins.

A party, himself, by any thing he does, or by any thing he does not do, by the law, means nothing more than that after what he does, or does not do, in every account abates the part, for as to this purpose the wrong is purged. 2 Bae 394. 2 Bae 394. Cre E. 10. 365. 375. 374. 2 Bae 394.

Creditors cannot come upon an Exor de bon tort, if he has paid out all. He is liable only as far as he has receipts, to the Creditors & Equities of the deceased, and to the estate, in an Admin. Love 51. Hob 79. Gallow 104. 560. 561. 2 Bae 394. 1 Cre 284. 266. 245.

But an Exor de bon tort is liable in a distinct security character to the rightful Exor or Admin. What paid by him, he is described as a common trespasser. Stranger, not as Exor. He is liable for the value of things taken; even if he has paid the money out, he is liable as a Trespasser, he must pay for what he does. But he is not liable, if he has put out all that was in his hands. 2 Bae 379. 383. 1 Cre 286.

But if the Exor or Admin be a Creditors to the deceased, he may bring debt 89 the Exor de bon tort, with the assurance, that none of the estates came to his hands. 2 Bae 379. 1 Cre 284. 99. 280. Bible 379.

In actions by Creditors, an Exor de bon tort, is named Exor generally. 5 271. 1 Mill 270.

It is general rule that an Exor de bon tort is liable only to the extent of his own estate, so if 25 Creditors, he is liable to all payments due to Creditors in an extent of a superior degree. Mill 284. 360. 280. 280. Mill 360. 280. 360. 280. 360. 280.
The money placed in the hands of the administrator is the general payment in evidence to support this issue. But as to the right the Executor in Admin he cannot by pleading such payment bar the action; therefore such plea is bad. 1 Mils., 263, 265. 2 Dall. 390, 1 302. 174.

Yet he may on the general issue recover, i.e. be allowed in mitigation of damages the amount of such payment, unless perhaps the right of the Executor in Admin. is accounted for deficiency of assets, is thereby proved to fraud or tricking or falsifying his own debts. Then the Executor acts however bind the property thus disposed of as the right of the Executor in Admin. 1 Mont. 345. 50. 2 156. 507.

The right to the general issue chargeable only to the amount of the assets, yet there is one case when he is liable for everything he has done, whether he has paid out a sum, i.e. he is liable for the whole amount, whether he has assets or not to that amount, this seems to be merely for lying. As when an action is brought on him by a creditor he pleads he dislikes to the right of the Executor in Admin. it is found by him, by this false plea he subjects himself to the payment of the whole debt, the creditor whose hands he has given to small value. Judge REY thinks the rule is soundly on policy to prohibit such pleas, for it lying on records. 1 Cow. 266. 2 Dall. 390. 3 492. 1 142. 1 Roll. 319. Day 53. Mont. 257.

It is said however, that in this case when the value of the assets received is very trifling, the Executor for such might be relieved in equity. (On two or more points, 147.) Judge REYNOLDS doubts the dictum as above.
that it be not contriv'd to melt the principles of civil law, which they cannot do. In the case, part of the debt, that "been administrat of", he would have been subject to, and as far as it was receiv'd. 1Com 266, Dyn 266, 2Bac 299.

If there be a right, the Executor, has no work for him. They may be sued jointly or severally, but it is otherwise with a right that Jordan, for an Administrate, cannot be joined in an action. 1Com 266, Bac 255.

At C.L. an Executor of the debt is only subject during his life, his Executor was not liable to Creditor, tho they were in equity, but this is remedied by that 20, BAC 2. By the Executor of an Estate, the Estate of a man, by it, liable to Creditors. This State was made long since we emigrated to this Country. 2MeB 293, Com 51, BAC 391, 2Com 265, 4Burns Com 191.

Making Debtor Executors

It used to be the Engt Law, that if a Debtor were made Executor it was a release of the Debt. It was not the case with an Administrator. Sec 69, Vol 2, Bac 295. Com 199.

The reason assigned in all of an Executor was that he was not the Creditor. This reason is applicable equally well to Administrators. The above is not now the rule in Eng. It has been holden that if a Debtor is made Executor it is to pay the debt to Creditors if they want it. The debt is to be considered as debts in his hands. So it may be taken to pay Executors if there is a deficiency of other assets. If there be other assets sufficient to pay all debts, the law imposes as well as Equities to this latter as

er was not under a dispensation. If there is no

...

...
Essays of Atmoe

Logically, a man, if he can, is not to be compelled to pay it over; he is himself in such case considered as discharging Logates. But, if you can urge it was not the testator's intention that the debt be discharged, he may be compelled to pay it over. (Sue. is not this remedy in this case? 25). Sec. 15. En. 4. 56. 53, 56. 38. 38. 5. 38. 38. 38. 38. 38. 38. 38.

There has: it is true, been no decision recognizing the principle that he is discharged only when he takes the residuum, but a clear proof that is a true principle is, that the debt of an heir, who is not entitled to the residuum, is never discharged by his appointment.

In Eng. the Testor as such is visionary Logates, unless there be something in the will clearly manifesting the Testator's intention that he should not lose his right to withhold his own debt to those claiming under the Test. distributions, is founded on the law that he is entitled to the residuum.


It may be a rule, 'whether if he have such Legacy as would bear his right to the residuum, he can return to such claimants.'
Debtors and Adiors

Of making Creditor Exors.

A debtor may make a creditor his Exor, but in such case the creditor has an advantage. He may retain as much as will satisfy the debt, and the effect of this latter. But this must be understood to mean his debt is in equal degree with others, for if he be a simple Contract Creditor, he cannot retain so as creditor by specialty, or any other of superior degree. 2 Bar 749. 1 How. 185. 1 Sm. 234. 10. Adm. & Prob. 172. 10. 128. 40. 31. 21. 115; 21. 135.

The same rule applies to Adiors; they may retain their debts under the same restrictions. This rule from the nature of the case, are perfectly just; it is analogous to the case of Creditor, where he also first commences a suit, gains priority to all others in equal degree; and as an Exor cannot sue himself, he must, unless allowed to retain his debt, be postponed to all others of an equal degree. But an Exor does not take cannot retain for his debt, as I mentioned before because this would be allowing him to take advantage of his own wrong. 2 D. 116. 171. 5 C. 32. 2 Dec. 159. 2 Dec. 509.

As Exor is not obliged to take on part, when there is not liquid enough to pay the whole debt, 20th Sect.

As to the Exors right to the Surplus. In Exor if an Executor is appointed it has been a Law to allow of surplus of personal property after payment of all debts, &c. 13th Sect. 3. 2 Sm. 279. 2 Dec. 120. 10. 240. 172. 128. 40. 176. 128. 40. 176.
As Residuary Legatee. But now if any considerable surplus, not appropriate to any particular purpose, be left to the Eex., or if a Legacy were given him, or if there can be collected from the whole an intention on the Testator that the Eex. is not taken as residuary Legatee, the lot of Eex. will take a distribution of it, as in case of Adm. But still someone of as such intention can be inferred from the residue, the Eex. will be considered as residuary Legatee. The rule at law is that if he has paid all claims, he is entitled to the residue, but this is not to prevent of the intention of testator, and therefore it is Ets. Of Eex. vice, afford relief, or at least that the Eex. is a Trustee, has such they may control him. 3 P. Wms. 36. ch 31. 104. K. 2 K. 47. 3 K. 26. 38. 19. 23. 34. 4. 5.

An Eex. in Eex.'s has no wages, if there be no Legacy is life him, it is supposed, he is entitled to the residue for his trouble. If he has a beneficial Legacy left him, such as a suit of mourning clothes, it is not cut him out from the residue. A Legacy bars the Eex.'s right to the residue, in those cases only, where it affords proof of an intention in the Testator that the Eex. should not take the residue. Therefore he may have a very large Legacy but not be bound to pay over the residue, if he proves that the Testator, said he should have it. Past proof is admitted to prove notwithstanding the Legacy left him, but it was the Testator's intention to leave to be residuary Legatee, but this rule does not hold, as...
In case of Adams there can be no recovery for after paying all debts he must pay over the rest according to law, he is paid for his trouble. Says Judge Co. I suppose it is. This case is the same case if an estate were paid for his trouble, he cannot take the remainder 2 cor. 46. 47. 73. Coxe 237.

Remember that in cases of this nature parol proof is admissible to rebut an Equity act, or implication, i.e., parol proof may be admitted to establish the Act legal except if it be on another instrument, which shall imports varies from the equitable construction. Yet such parol proof cannot in the case be admitted to establish the equitable, in contradiction to the Act legal Construction, but the former must be collated from the instrument itself, or in other words your power can change the legal channel by parol testimony, but on the other hand the legal channel may be restored from the Equity channel, by parol evidence. With 88, 92, 98. 3d. Wis. 41. 1020. 91. 1st. 313. 12th. 473. 1630. 2 ky. 1st. 120. 228. 1st. 228. 7tb 228. 240.
Exorc & Admo's.

D'Wills.

The instrument which the Law is to execute is called a will, sometimes a testament. It is either written or non-capitive. A will is the declaration of the intention of a person who shall be gone with his estate after his death. It is not a will till the death of the maker, it is revocable by him at any moment before he dies. In the language of Lawyers it says to be ambulatory till the death of the person making it. 1 Samuel 35.

It is said a will cannot be a perfect one without an executor is named in it, but it may be by appointing an executor to this testament among others that is as fit to execute it as an executor. This instrument without appointing an executor is technically called a testament, but Judges, take no notice of the technical difference between wills testament, he calls all "wills." 1 John 2.10, 17, J. 2.16, 20.

Generally, persons under the provision of disability may dispose of all his personal estate by will. The disability almost always arises from want of discretion; this may frequently be presumed. 20, 10, a boy of 10 years is supposed capable of making a will. But in all cases the presumption is that the person making a will was of sufficient discretion to dispose so that the case proved at law and law on that one who could contest the will.

2, 18, 318 11, 80, 30, 34 21.
Persons of the following descriptions cannot make Wills:

1st. Insane, 2nd. Incapable of understanding what is requisite to make a Will, unless of the insane have been before a Court and their case is deemed difficult to decide. In ordinary cases they may appear to have sense; yet not enough to make a Will, and those are persons who sometimes appear almost like judges, and yet they may make very good Wills. The law must use their discretion, and make their decision according to the circumstances and the particular case.

2. If a person is self-debilitated, or is in a state of insane condition, he is not in a condition to make a Will, and if the Court be enabled to prove that such a person, he is not in a condition to make a Will: the Court may admit proof to show that such persons knew the contents, but understanding sufficient to make a disposition, this may sometimes be known by persons present, with their signatures.

6. A man in a State of Insaneness cannot make a Will. In such cases, no circumstance being of any kind, cannot make a testament of deeds. Whether he has a will to them, or the Law does not allow him to have testament of his possessions.
become forfeited. An alien freight may dispose of his personal property by will, but it is void in alien hands. The reason given is that an alien may will not be permitted to draw property out of the country, but judges do say, if he finds no authority to support him, he cannot say, why an alien cannot dispose of personal property by will, in like manner to persons in the country. Persons may be capable of raising wills, but their wills may not be void, as if it be made under any restraint or fear, the books sometimes use the word tanta, but the will is not void if it be made any kind of restraint he tanta or fear, but shall, be said. In this case, the case of fear, whether real or imaginary ought not to be regarded. A person making a will, the effect of infirmity, or by fear, that he may be subjected to his intention is according to the dictate of some other person, is justly considered not to be his intention, therefore such will is not good. The execution of the will must depend upon the circumstances introduced in the future. But in this case, if the will is not void, it might be established, and a will may be set, according to his intention, as if the Tantara were the same year afterward, on the latter day, without, by silence having been implicitly put, that he knew the will is not at first, but there are cases where a person might be, because he did not have his mind's will to the other acts, and may take a will may be, if a person, may dispose of personal property by will, the disposal of personal property, to any other person, he cannot.
Excuses & Advice.

man, make a testament, is not settled. Some authorities say 14 in miles, others say 15. Lord Hardwicke says 17 or 18. Judge H. supposes this to be correct. For it is according to the Civil Law, which shows greater in this respect. There is a very ancient Statute limiting the age here at 17. Every thing that is personal can not be disposed of by will. A husband cannot dispose of his wife's choses in action unless he rendre a profession during his life. He cannot dispose of her chattels real as a tenant for years more than her personal estate. By statute he may make the joint life, or joint tenancy. Also a person by will dispose of property before in point of tenure, because the jus accrescendi enters into between the right of the landlord and of the devisee or Lessee. 4. Ref. 85.

The Law formerly was that a person did not dispose of a chattel interest for life, with an annuity; the reason was that it was considered impossible. An estate for life is greater than an estate for years, it is to be sure greater in this point of view that a life estate is a pageCount, but it is impossible for man to live more than 100 years. Therefore the reason is not fail. The Law is now altered a remainder of a chattel estate interest may, by way of Executory devise, be limited to a life after an estate for years life, provided the remainder men be all in life, at the time of the death of the devisee, that the contingency in which the remainder men is to occur happen neither a life or lives in being 1272 days, or 3 years, 275 days afterwards. See title Right Property, 4th page 15, 18, 17, 12, 13, 12, 7, 33, 22, 7, 20.
Excise Admonish.

You see then that you may create a life estate in a chattel personal or a remainder over. I have formally considered absurd it. It may not be present to be of no use as it is, and to give a floor of benefit to it with remainder over the remainder man court, never to part that these must come to him, for they are pensiable. They may die to prevent their dying the life man might sell them. But if a remainder after a life estate, was limited in a piece of plate or a library of books, the life man could not sell or dispose of them, for they are valuable inanimate articles not pensiable. The thing itself must be treated according to the nature of it. On this depends the remainder man's getting it or not. If the former be completed, the life estate man to give security, but this is now exploded. He is now obliged to lodge an inventory in the bill of sale of the property limited over that the remainder man may know what he is to receive. Suppose an one who had a life estate man in failing circumstances, would he compel him to give security that he would come? 27

An estate tail cannot be created in personal property, as it may in real property in Eng. and this the land is by proceedings his bite of justice, but personal property cannot be created in it, we have been before to given to the go, life tenancy over.
Excursus of Admirers.

Of personal property the power to acquire the heirs of his body, the absolute ownership rests in the first taker. The reason is advanced in this rule, why if possessors is than an Estate tail in personal property cannot be barred by devise or bequeath, because of it there is no power to exist; it would create a presumption which is the basis of this rule. But Judge B. says, why may not the true construction accord with the intention of the Testator be allowed? if the words had been to him this children it would be good in favor of the children why not in the former case in favor of the heirs of his body? The says that it appears to him that if this were a new Deed, to be delivered it is proper to let the remainder go over to the heirs. For the intention of the Testator is always to be complied with, if not contrary to the rules of Law. Now it is not contrary to the rules of Law; one to take an Estate tail after the life of another.

A will of personal property must be witnessed, and in particular circumstances, where it may be necessary, which I shall explain, and signed I published by the Testator. These are the three requisites of a will as to personal property; it is not necessary these be subscribed witness, as to a devise of real property. I have said it must be signed, now which is signing? We would naturally suppose he must be subscribed his name, as at the bottom of an instrument.
but here it is to be understood that if the Testator was
willing to himself appear in any part of the will it
was sufficient signing, as if he says, I do, or, if
it is sufficient. Cases might be conceived where
such might not be a sufficient signing, as of himself,
begin to write his will, but not like it, but then
the paper was to be entered again to begin another
will of the Testator, which make another will of
this paper be found, still with the circumstances
of the signing according to the above rule, it could not
be established as his will. There is a case in Law where
the Testator authorized another to sign
his name for him, it was held sufficient. So if
the Testator makes his marks it is good signing.
It has been said that a will written in the Testa-
tor's own hand, the it has another's name added to it, as witnesses present at its publication,
is good, provided it can be proved he did write it.
So the writing is another's hand, provided by the Testator, yet if proved to be according to his
instructions & approved by him, it has been held
as a good testament to the personal estate.

There is a rule handed down by our Eminent
Law Writers, more disputed by Eminent Lawyers in
England than all other authorities to help this out
that if a will be made of real & personal property
which has not the necessary requisites to make
a good will of real property, but is valid in its

as to personal property, it is said only as to the as to the goods as to the personal property. In support of the rule it is urged, that the intention of the Testator ought not to be unnecessarily defeated, as the will is good in part the intention as to this part ought to be carried into effect. But this reasoning is not satisfactory, if the will is established upon you will find it will, in many conceivable cases, lead as a poor justice, to the Testator's intentions. For one part of a will is always made with an eye to the other. E.g. Say in Eng. The Real property descends to the eldest son (as it does) to the father make his will devising his lands to his younger children, his personal property to the eldest, & the will never the necessary requisites by which to convey Real property. Now if the will is established according to rule, the eldest takes the property, the Children take nothing, the intention of the Testator is defeated. Say, besides taking all the personal property, those interested also descend to him. In this country he would take his distribution share of the Real Estate. This contrast, the well known rule, that the intention of the Testator is always to govern, if you know the intention, you have the construction.

At C.S. in confiscative wills might be made of personal property. But the restrictions imposed on these wills by the Stat. 29, 2d of 2d have almost abolished them.
The duty of Executors and Administrators.

We first state that Executors and Administrators are the Representatives of the deceased, that they are Trustees for the Estate of the deceased, and Administrators for the persons pointed out in the Will. Thus their great duties are to pay debts, Legacies, or those when the Testate has appointed to receive their distributions, shares. But the object of their first duty is to make out an inventory of all the Estate, which can be assessed in his hands, to have it appraised by judicious persons and not, when it is the property of the widow and the inventories prepared, he must account with the same court, he is not bound to pay the amount of the appraisers, but he accounts for what is raised by the property, if it be not for less than the appraiser's value, he is liable for the loss, until it were raised by his own error or negligence, in which case he is liable for a demandment, to an action on his bond, by Creditors. But if Creditors sue in common form for their debts they must ground the action merely on the inventory of the Estate, and not pay more than the appraiser's he gains nothing, but must account with the Estate for all interest. How say then the appraiser is no rule of what use is it? Why it shows what the value was at the time of the persons whose interest are thereby less to know why the property sold for. It is prima facie evidence of the value and Creditors or Legatees may look at the price. But now this point that there may be several instances where they throw
Exors & Admors.

The Exor might not to take it himself nor suffer him to take it at the appraised value; as when the Insurer left 380 bags of cotton, which was appraised at 10 cents per lb. it immediately rose in value to $5000, here it is to be dispensing the estate. If one man was permitted to take the cotton at its appraised value, the judge takes the true rule to be, that the Exor for any other man the judge, if Probate, ought not to reject an inventory of property, the title to which is disputed, for the decision cannot affect the right of buying the title.

On principles of U.S., no suit can be maintained. If no an Exor beyond assets in his hands, he may plead plinum administrant or in other words he is not liable to Execution if the assets are received by him, until he has made unreasonable delay. But suppose debts are one year hence, the judge may be grounded that the Exor will be played till they become due.

Law 23. 667, 47. 720. 47.

So fast as assets come to his hands his liability increases. Thus he may owe nothing tomorrow, be liable for much. If the Exor punt him an order of the Arbitrators award to him a certain sum which he is to pay he cannot afterwards over the value of assets to that amount. The "involuntary com

put as it" by statute, as such of money due from the Insurer, does not make it, it is in the personal estate, 7th. 1. 655, 8 Th. 61. 64. 1 Th. 1928. 1028. Th. 619.

The Power of Duty of an Exor is before any
Exors & Admors.

nearly the same. There are however some points in which they differ; they are both bound for the dis
tators Piedmont to debts to the extent of about only.

Cor. 2, 245, 2 Dec. 345, April 100.

These necessary duties being performed by
the testator, having given in an inventory, between
the bond that he will transact the business will
full. What is to be then to do what comes next? the

The Payment of Debts.

In the payment of debts, there is (at least) certain
order to be observed. It is as follows: 1st. The
executor pays the expenses of proving the will, with
interest. He takes all the property to hand is left to his
heirs, if any; if none, to the administrator of the
King or to the State. by the laws of the country. 3rd.
Debts due by the deceased, not by particular statutes, as
suicides, or last

Bickings Debts, the last seems founded on humanity.
the person to be poor - the Physician or nurse are
called in; they will not refuse their attendance, but
they are sure of their debts being paid previously to
many others. Nurses are generally Poor - they risk their
lives almost; labor, they are sure of being paid for
people labouring in their last sickens or well attended.

Several States are different States of the U.S. leave
out the word last, a day sickness alone. This brings up
the law whether it does not extend to other debts as
the words of the statute - are "sickens" will judge.

If says he thinks that word last was left out in this
purposes that these debts might be preferred. It is a copy of the Eng."'s trat. 4th. the next clause gives
ment debts or debts of record 5th. the next are temp-
certs. Debts, i.e. Debts due on special contracts and
9th. Temples contract debts without seal. 10th. It is
not sufficient to pay simple contract creditors out
of these debts, they have no remedy. J.P. No. 1403.
11th. 12th. 13th. 14th. 15th. 16th. 17th.
This part of the Eng."'s trat does not present
a very agreeable picture to the mind. It does it
evidence much equality. Temples contract creditors
whose claims are frequently the most meritorious,
are postponed to all others, it may be defeated by
their whole debts. Suppose he has gone con-
spiring all debts previous to bond creditors, he has
enough left to pay some of these, but not all of the
he pays which he pleases; for this reason, if creditors
in 15th. degree do own pay which he pleases pro-
vided some one of them has not gone on to declare
this means obtained a priority, it provided also that
he cannot prefer a debthair in present solution
in future, to those which are already payable; while
the latter are of an inferior degree. 17th. 18th.
19th. 20th. 21st.
But a creditor may gain a priority by cons-
idering a suit, or by what is called senior degree.
22nd. 23rd. 24th. 25th. 26th. 27th. 28th. 29th.
30th. 31st. 32nd. 33rd.


Exors Admors

If he be out of debt, then he may be required of the heirs to appear as bondsmen, or as by advertising, &c. It is said the heirs will know of recorded debts, &c. if he pays debts of a lower degree, he has not affords to pay there; but he is liable to bonds for debts previously, the reason being, as it is, that he has the means of ascertaining the existence of these debts by a reference to the records. But this is not correct, &c. &c. The heirs may be all over the State. He is not bound to search every record. 18 Ed. 692.

A voluntary debt due from the Testator to a person, the unknown, &c. is to be prosecuted to the last, but preferred to legacies; the obligee of such a loss must be paid all his debt, the heirs nothing for to pay the legatees. 14th Ed. 792. Dec. 36.

But how is the Testor to ascertain this? If it is a voluntary bond or note? If the bond is contested between the obligee & creditors, the Testor may file a suit on why entitle the parties to attend, &c. When brought there, he leaves them to litigate the Testor at their own expense. Afterwards make payments according to the decision there made. But you ask is not this contrary to the rules of law? Not an inquiry now always be made into the consideration of bonds that third parties are interested, but as between the parties this cannot be done, unless it were not a violation.

It is the duty of the Testor to release debts in his hands for the payment of debts in present, so...
Exors & Admirers.

In future, if the Exor. or having thus released is to become a Bankrupt before payment, it is somewhat doubtful whether the creditors can pursue the assets into the hands of the Regents & Divisors. (See title of "Proces of Chancery")

No time is limited by the Exor. Law. The distribution of claims to the Estate of the deceased by the Exor. has paid out the whole of the Estate, observing the priority of claims above mentioned, replies plene cessionem recipit.

Under the Law of Eng. all the States or U.S. the personal property is to go to the Exor or Bond, as Trustees but the Real goes to the heir. But in this County when the personal funds is exhausted the real is to be taken. This is more consistent with justice than the Eng. Law. Again in some of the States, often in any suspicion that the Estate will not pay all the Ex average the debts, all are paid pure paper, no preference being given to any but last sickness debts, public Real & Debts, Debts arising from financial expenses.
Exors & Administrs.

Of Legacies.

After the payment of debts the next duty of an Exor, is to pay the Legacies. A Legacy is defined to be a bequest of particular goods or chattels by Testament, 2 St. 412, 2 Bancr. 466, 238, 241.

The Person to whom the Legacy is given, is called the Legatee. If it were a life of real property, the donee is styled devisee. An Exor to whom a Legacy is given cannot prefer himself as in case of debts. (Aden infra, 2 Mass. 424.)

At the death of the testator, the indestructible right of the Legatee commences, the legal pro- ject of the Legacy, still resides in the Exor. Co. Sull. 298, 398, supra 190.

And he may dispose, even of a specific legacy to pay debts. He may dispose of a Legacy, not for the payment of debts, but that such disposition does not bar the Legatee's right to the Exor. The Exor cannot be obligated to pay the Legacy itself, but the value of it. A Legatee cannot take a Legacy without the consent of the Exor, he is a bearer of the legal property in the Legacy. (Aden infra, 428.)

Such is the nature of the property in the Exor's hands, that without his consent the Legatee cannot take it; if the Exor were not to give it up, he may be compelled to pay for it. Even in cases of intestacy, in certain cases to compel him to give up particular specific legacies, as a family picture, whose greatest value.

...
Exors & Adm'rs.

consists in its being an object of tender affection and remembrance. If however it be wanted to payable ship will not interfere.

Of Pecuniary & Specific Legacies.

Specific Legacies are bequests of things specific which can be identified. Pecuniary Legacies are bequests of sums of money in general terms, not identified in any particular parcel. It is not necessary that specific legacies should not be money. For if the Testator bequeath a bag of money it is certain it should.


There is this rule to be observed, with respect to Pecuniary & Specific Legacies. There may be a deficiency of assets to pay debts. The pecuniary legacies are first liable. They must be satisfied before the specific legacies can be touched. Both specific legacies are to be taken, if there be still a deficiency of assets. 32 City 60. 50. 20 Rep. 25.

When the Specific Legacies are thus necessary taken, the Ex'or is not liable if they are not sufficient & are taken, the Ex'or is liable. If the Specific Legacies are lost, those to whom they were given must bear the loss. They cannot recover from the Ex'or. The Ex'or cannot be held to do wrong by taking specific legacies, but he is liable for the value of them. 120 City 60. 20 Rep. 25.
You see, the specific legacies must be paid first, assume support these are all paid, there is not assets sufficient to pay all the pecuniary legacies, what is to be done? Why the Ekd must average their claims, I pay them out part paisible [£7,000] 450 a. g. 85, T. 771.

If there be not enough to pay specific legacies those who are first paid are always preferred and there shall be no average among them.

There is a Dee unsettled with respect to specific legacies, E.g. there was not assets enough to pay all to without taking some one of them one is taken what is to be done, must there be an average as in case of pecuniary legacies? must the other Legates make him an allowance? This is not fully settled the authorities are contradictory, com. 85. to Legacy in Claims.

It seems just reasonable that there should be an average in this case, as there is in case of pecuniary legacies, it is more difficult to be sure to make the average, but Judge Dower thinks that upon direction of a lot of legates whose parts are not taken, would be compellable to make a reasonable allowance to those whose legacies have been taken. But others say that if the legate were lost with the intervention of the Eked the Legatee would there be must bear the loss being in a worse situation than if it had been lost, yet still the other appears more equitable that debt they or compute it. Step 112.
There are certain cases where pecuniary legacies are preferred to specific ones. But this preference depends entirely on the wise solicitation of the Testator. As if I decide all his personal Estate at a particular place (which is a specific legacy) there is no personal Estate left; else where, without wards a pecuniary legacy is given to be paid out of the personal Estate the specific disposed at the later with the pecuniary legacy, there is no other personal fund from which it can be paid. [See 393-4 840, 113. (V. D. 393-4 is the closing principles under the rule of 'pecuniary to specific legacy' on this case mistake. V. D.)]
Of Lapsed and Satisfied Legacies.

There is a difference between a posthumous and a lapsed legacy. If a legacy is posthumous, it goes on the death of the Legatee to his Representation. If it is lapsed, it cannot be taken by the Legatee, but falls back into the residuary. There are two kinds of lapsed legacies.

First. If a Legatee dies before the testator, there is no remainder limited over, it is a Lapsed Legacy. This applies as well to Chatt. as Personal Estate. 1 Tho. co. et. 206.

The Legatee, who has the residuary of the bequest, is entitled to Satisfied Legacies, but of these we shall.


There are one or two Exceptions, or a distinction in the Force as to this rule. If the legacy depends on the life of the Legatee, during the life of this Testator, it goes to the next of kin, to the residuary Legatee, but of it lapsed after the death of the Testator, or failure of the condition on which it was given, it goes to the residuary Legatee. 2 barn. 374.

A second kind of Lapsed Legacy is, when the Legatee may survive the Testator, but it was never intended any Legacy should be given unless something happened. If it does not happen, the Legacy is lapsed. It then depends on a contingency. The most common of these is upon a Distinction more wise than wiser. They tell you, if a Legacy be granted,
Excuses, etc.

payable at a future day, it is a vested. But if given to
him at a certain age, it does not vest until he attains
that age, or if he die before the time specified
it becomes a contingent legacy. To explain what it
would
be a legacy be given to one, to be paid when he attains
the
age of 21 years it is a vested legacy; an interest which
commences in present, although it is solvend in
future; if the Legatee die before that age his Rep
resentation shall receive it out of the Testator's per
sonal estate. But if a contingent legacy be left be any
one, as e.g. when he attains, or if he attains the age of 21
the dies before that time it is a contingent legacy. Now
as it is remarked before, this distinction seems obvious.
The Testator is shown to ensure effect to his intentions
must not only be a Lawyer but must get the sub
by heart—very few making a will without one of
this distinction, therefore the testator's intention may
very frequently be the will. But so is the rule
1B.542, 217. 1Stir. 297 2D. 411 410. 2Ib. 537 230 2. 51. B. 2. 522. 2. 3. 342. 1017 2. 662. 1. 7. 1st. 293.
217. 312. 1. 1. 171.

The rules of distinction are not however with
out exceptions. If such legacies are charged on Real
property, the heir is to pay them if the Legatee dies
before the time at which they are payable in one
case it given in the other, the shall become a legacy
in what place they are given. This exception is taken
in favor of the heir who is always a successor in the
Right Land. 2D. 411 410. 2 661. 342 312.
There are also exceptions on the other hand; if a legacy may be given to be paid at a future time but is paid on interest, then the legatee dies before the time it is to be paid, the interest is paid to the next of kin, as the intention of the testator was that the legatee or his heirs should have it. The rule is the same where the legacy is to be paid out of certain stock or funds or which yields an annual income; it is in

...260. City Cas. 288, 375. See City 127, 14th 412, 510, 3d 645. 2
205. 262. 245, 673. 14th 662. Record 180.

...and the heir to pay a legacy charged on his land; yet if such legacy later, or if it be stated as a legacy, the legatee die before the day of payment, the heir will hold it to the exclusion of those who claim under the Test of distribution. The same favor is shown to devisees, as where devises legacies are charged. 2d 7, 76, 11th 522, 652, 6552.

The person who is entitled to a legacy may receive payment, immediately after the death of the first legatee, provided a year's time be paid, but no time be fixed by the testator. So says 2 Pet. 7, 765. Judge Browne says this: "It is said that where a legacy is charged upon your legatee, entitled to it, cannot take it till the time it would have vested if the contingency had happened, but I think the rule is not correct, when there is no time fixed by the testator, as the time was paid when it was to be paid it is to be otherwise." 2 Pet. 7, 765. 335.

The person entitled to a legacy when the legatee died is not be entitled to it, but the time the

...
Exeunt Admires.

Living. Remember that if a legacy is given generally by parturion at time of payment, not being first proroged, due till the end of a year from the testator’s death. Done 31. 2. 1750-51. 2. 1751-52.

A legacy may be more with a proviso, that if the Legatee dies before the testament be before the Legatee attains a certain age, it shall go to another. And limitation shall be good. 47. 2, 1752-53. 27. 52. 1814.

Conditional Legacies.

There are many legacies given in Conditions. These conditions are frequently considered as void, as the legacy is good; it matters not what the condition is, if it be illegal or in politic it is void, if the Legacy will take place. The most general condition is to restrain marriages; these may be others, as those a Legacy is given to one on condition that he never disturbs the World—here if the Legatee continues a suit disputing the will, the legacy is void. Probably causa litigandi, the Legacy is not forfeited so as to lose any illegitimate Condition. 47. 2. 1752-53. The Condition void. 27. 52. 1814.

Legacies are frequently given, or condition that the Legatee shall not take, provided be to the necessities without the consent of some certain person paid to out in the will, such restrictions are generally void; the Legatee takes the legacy independently this if not restraining the colterion of the legatee, for it is a general rule of law, that the conditions restrain
Eccles. and Admirers.

Every marriage is to be construed as strict bias
prejudicial to society, as they hinder the propagation
of the species. It is universally true that when Legacies
have an absolute condition annexed to them as
a restraint of marriage, these conditions are void:
the Legacies vest absolutely, as when a legacy is left to
a daughter, provided she never marries. But supposed
a legacy is given to a female in case she does not
marry a particular person, or one of a particular
profession or calling: in general these conditions are
void; the restraint is illegitimate; it bears the appearance
of mere whim, which should never be indulged or gratified.
Yet probably the Parent might know of a very
improvident match, which his daughter was in danger
of making; and it would be perfectly proper
in him to prohibit it. There would be sufficient
cause for imposing such a condition. 3 Bac. 479. Idol

But one may from these cases collect, that
where a person has a particular interest, in imposing
such a restraint, as of the father of a family of children
leaves his wife a legacy, on condition that she shall
not again marry; it is exempt from the above rules.
For the husband is supposed to have in view, the inter-
tests in, the nurture, & education of his children.
On this account the condition is allowed to be binding.

1693. 3o 2. No. 84. Do. 215.

Yet if there be no children, or if a legacy
be given by a stranger to a woman, on such condition
of
The condition must be reasonable; the Legacy must vest for life; the Chancellor observes, there is no good reason why a Widow should not be allowed to marry as well as a maid. God be

There may be conditions restrictive of marriage before a certain age, which are binding, but such restriction must be reasonable. There was a case where a father left his daughter a Legacy provided she did not marry till she arrived at the age of 25 years. This restriction was considered unreasonable, it was adjudged void if she took the Legacy. This is another case, where the Legacy was given provided she did not marry till she was 16; now this seemed a reasonable restriction, the condition was adjudged good. There has also been an instance where a Legacy was given to a female provided she would not marry at a certain place named in the will. Now this does not seem within the principles, yet it was adjudged to be a reasonable restriction, as it was so easy to go somewhere else to be married. So also restrictions have been considered binding, where the Legatee was not to take provisions the married a person of a particular creed or profession, but this is of no concern to us in this country. 1 Sh. 495, 1 Chit. 309, 185m. 20, Sim. 404, 836.

There is another set of cases, where a Legacy is given provided the Legatee marries with the consent of certain persons named in the will. The conditions are void if the Legatee is taken elsewhere.
Here a Legacy is well given.

1st. A last will being made when the Testator is presumed to be incap of reason, the Law regards the intention rather than the technical import of the words used to express the intention. Therefore words manifesting an intention to give or create a Legacy are sufficient. Indeed there are cases where a Legacy is given that there be nothing particular about it, as if a Testator expressed himself in these words, "I give it bequeath my silver watch besides my book to A and B." Here the words are implicitly given. You are told "the intention of the Testator must govern in all cases," but there is this restriction: "cause to be added proviso it is not contrary to Law." By this is not meant that technical words must be used in a will, without which another executioner might be void. The intention is to govern, unless that intention be to do or have done that which is illegal. The intention is the polar Star, which being found, the construction will fall, and if it be not contrary to Law, it is to be done.

2nd. In all description of persons who claim to Legatees, the intention of the Testator must be sought.
for; and it always has been adjudged, that if a man gives his estate to children, he had never, grandchild, to take under the description of children. But grand children are considered as children in no other case. 2 Bea 106, 2 B. & C. 206.

If a man devise legacies to all his children, grand children, this extends only to those who were in law at the time the devise was made. But Judge 106, thinks this must depend upon the intention of the testator if that can be ascertained. If a stranger devise to children it would certainly only go to those in law. But he thinks if a tenant dies in this case it would extend to those afterwards born. The rule however are contradictory. Suppose a man devise property to his grandchildren, & he had none at the time the devise was made, it could not vest at all, it could not go to those afterwards born. Dig. 177, 3 & 5; 3 Beav. 106, Peth. 40.

It is sometimes impossible to get at the intentions of the testator, as where he leaves property to be equally distributed among his relations, or his poor relations, or among his relations of a good character or. In such case it has been argued 106, the rule is now perfectly settled, that the property shall be distributed according to the statutes of distribution. The description is too general to have any efficacy. See 1 Ch. 40, 3 & 5 B. & C. 2 & 3 B. & C. 206, 177.

Property is sometimes given to children to be distributed according to the direction of some particular person named or the will, this will is good, if the de-
Exors & Admsrs.

distribution made by the person appoints will be binding unless it be manifest the unjust 1 intentions, in which case they will intervene, viewing him as a Trustee, and direct the distribution. 1 c. 421, s. 13.

3. It is said by Godolphin, 27 P. 2d, that in order to find out the testator's meaning, with respect to the things which he meant to give away, it is necessary to regard the times when the will was made, for it was presumed the testator's mind was not altered, unless it otherwise appeared by sufficient evidence.

In another place, however, he observes, that this rule must be understood as the testator makes use of the words in the present or future tense, that if it be doubtful whether they refer to the time past or to come, they shall be understood to relate to the time to come. But it is now settled that a gift by will of all the testator's personal property, operates on all he had at the time of his death, and more or less, whether the amount of the personal estate be increased or diminished after the time the will was made. The rule respecting that property is directly the reverse, you only what the testator had at the time of making the will, and not after it. But say you the intention of the testator is in a first case that very frequently be disputed. The answer is that personal property is so transitory, that it will be difficult to ascertain what he had at the time of making the will. The rule therefore is not that the nature of the case will not make all testators uns...
Excursus & Addenda.

above to make their wills are supposed to know the
rule. The reason however which governs in case of
personal property apparently ceases in case of real
property 1 therefore the rule is the other way. 1c. 237, 2 c. 623. 2st. 1418.

There are Contradictory views as to this point
viz. whether a bequest of all personal property
at a particular place, vests in all the occupants
wards have in that particular place. There is one
thing certain that if the bequest were of a specific
thing, as e.g. a Chair, at a certain place, this Chair
may be taken away or worn out &c. the other
is another of the same kind there, the latter will not
pass but the first one will pass whenever it can be
found, even tho' it were not in the specific place
at the time of the testator 2. The Contrariety in the
first case depends upon it may be settled by this rule
that if the roods are general all that he has at
the time of his death would pass, if he bequeathed
property at a particular place besides as above men-
tioned with respect to a thing specified. 2 &c. 688, 638.

Where a Legacy shall be a Satisfaction for a Debt or Duty.

The following rule once obtained, but 3. But.
supposes it does not hold now. It existed in these parts
wards of a Century. It was this: If a man gave a leg-
dy, a Legacy it to be considered as a satisfaction of
the debt, if it were equal in proportion in value to the
debt. This not otherwise. 3 P. W. 333. 2 St. 152. Bradby 260.
384. 12 C. 124. 2 Deen 177. 2 P. 183.
It was supposed this rule was supported both in the intention of the Testator and in the supposition it stood for a long time undisturbed. But succeeding Chancellors rejecting this supposition, sought to take particular cases out of the grasp of the rule, by laying hold of something in the will. And now by repeated adjudications it is virtually abolished. The first thing which gave a wound to the rule was that the Legacy in order to operate as an extinction of the debt should be justdem generis, i.e. as the debt was in money, no Legacy except a pecuniary one would discharge it. A Legacy in Goods would not do it.

Authority: In an exception that it must be justdem generis. 2 P. 730. 2 B. & C. 109. 636. 10 E. 62. 2 Wes. 409. 636. 3 Chitty 236. 30. P. 422, N. 1 Chitty 294.

To be turned up where the Legacy was used as the debt they were justdem generis but not to be paid at the same time. They declared the case out of the rule, for they said a debt must not only be justdem generis, but also payable at the same time or at least as soon as the debt, to be operated upon by the rule. 3 Chitty 236. 2 Wes. 636. 1 Chitty 236.

3. A Legacy was justem generis payable at the same time, but they found on looking over the will that the Testator had said, "after all my just debts are paid." They thereupon suffered the rule to operate. 10 M. & V. 410. 1 Chitty 188.

4. It is not there same a case not only justem generis payable at the same time, it much greater than the debt but it was also without any cause
E X C R S Y R R M S.

directing it should be paid after all just & legal debts, the 1st is not suffer the rule to act in part because the Inquest was an illegitimate child.

1 Pardy 389, 2 Pardy 326.

5th. Afterwards a case turns up with all the qualifications before mentioned to bring it within the rule; but nothing appearing on the face of the will evincing an intention in the testator that the legacy should cancel the debt. This will not suffice it to be cancelled. 7th declares the rule should not operate unless sufficient is appear on the face of the will from which an inference might be drawn that the testator intended was such. 2 Pardy 389, 2 Pardy 326.

6th. Firstly, It is declared the debt is not to be cancelled unless the legacy was expressed to be for the debt, then the intention is clear. This is also the settled law. 2 Pardy 389, 2 Pardy 326.

If several legacies be given to one person exactly alike in quantity & quality, for the same instument, they are not cumulatice the legatees are entitled to only one of them; it is considered as a population a mistake. But if it were given in different instruments, as by adding a codicil, it is considered cumulatice. The legatee will take both in as many as there are, unless a contrary intention in the testator may be fairly inferred. 1 Pardy 389, 2 Pardy 326, 2 Pardy 636. Pardy 389, 2 Pardy 326, 2 Pardy 636. 2 Pardy 389, 2 Pardy 326, 2 Pardy 636. 2 Pardy 389, 2 Pardy 326, 2 Pardy 636.
Excise & Admrs.

In Court a man undertook to dispose of his estate himself; he said he could have no will, but wrote notes to and among other gave an illegible promissory bond for $1000, afterwards to that perhaps death overtakes him before he could finish his notes so he got the man who was assisting him in writing to make a will as he laid in that will he gave this same daughter $1000; now there were two distinct instruments within the rule, but the circumstances attending it led us to believe that he intended she should only receive one of the sums, but the law determined she should have both as the man who drew the will swore that at the time of drawing it he took the testator for the bond for $1000; this answer was, "no matter, this is a loca-

ty to make up for my negligence in educating her.

The rule remains as it was, with respect to provisions made in the will for a wife or other person entitled to money from the testator by articles of marriage settlement, as if a man had life his will $100 in the will he had previously written into a marriage settlement, the amount it is considered as a satisfaction of the debt. She cannot take both, the she may have her election as to which she will take. 2 B.C.D. 733, Pre. Ch. 263, 138. 1 B.B. 49. 2 Ex. 46. 535, 1 P. 14. 424. 2 B.B. 349. 639. 3 B.C.D. 306.

A gift to the Legatee by the testator during his life is to be considered as a part of the estate.
Exors & Administrs.

Legacy bequeathed by the testator made previously to such gift. As if a man makes a will & therein leaves a daughter 5,000: Sometimes afterwards the daughter gets married in the life time of the Father & he gives her 5,000: and then dies before he alters the will. This Legacy is considered as paid. Another case where a man gave a Legacy of 500£ to his son, shortly after making the will, he purchased a commission for his son, and paid 750£ for it. This was considered as a satisfaction in part of the Legacy, the son had only a demand of 50£ on the legatee. It is not every little advancement that is to be considered as a part satisfaction for the Legacy, it must be something of consequence, as setting a son up in business. Pre Capt 282. 12 M. 25. 2 St. 115.

Of the Ademption of Legacies.

The Ademption of a Legacy is the taking away of a Legacy before it becomes due. This ademption is always to provide it never to be presumed. 3 Bacch. 769. Swiri 522.

There are certain cases where the intention of the testator that the legatee should not have the Legacy is apparent, i.e. that the Legacy is ademipted, as in other cases it is more difficult to ascertain it. The accidental destruction or the alienation of a Legacy may be an ademption or not, according to circumstances, but it is not necessary that, for the Legacy to be justified it must be replaced by a similar article. 3 Bacch. 769. Swiri 522.
Exors v. Adm'rs.

To determine whether there be an admittance or not, recourse must be had to the intention of the testator, for the intention is here the governing principle. See 205 3 B&Q. 735. 166 Co. ab 304.

When the alienation cannot be accounted for, but upon the supposition that the testator intended to become the legacy, it is an admittance. But if the legacy be so lost, destroyed or disposed of that any other intention may be inferred, it is no admittance.


If a debt be begreed in, the testator calling on for no other purpose than to take it away from the legacy, it is an admittance. 2 How 681 166 Co. ab 302.

3 B&Q. 735.

If the thing begreed in be pledged or sold by the testator, through necessity, it is no admittance. No if the payment of a debt begreed in were consolidated in the person coming to him voluntarily pays it, or if the debtor were in failing circumstances, or if he testator were in want of money, the receipt of the debt is no admittance. But if in this case the tire is answerable for the value of it. 166 Co. 378, 2 Bro. Ch. 328, 144. 3 Bl. 401, 261, 307. Forest 225, 260, 35.

To in many cases where the legacy was dechoys, or where a house begreed in was sold by the testator or the particulars in its place, there is no admittance, the legacy to take the accidental distribution that may be an admittance or not according to the circumstances. 166 Co. 378. 3 Bl. 401, 261, 307. Forest 225, 260, 35.
Exors’ Admirs.

If a man by will gives his Daughter $1,000 and afterwards his marriage gives her the same or a greater sum, the Legacy will be extinguished. 2 Bohns, 128.

If the testator bequeath a certain sum to one of his children, in the same instrument give same sum over again; it is but a repetition of the former. Swink, 538.

It is laid down as a rule, however, to be adhered by showing a different intention that if the legacy be of goods to be specified to be in a particular place, they must be there at his decease to give effect to the legacy. But the removal of goods out of a thing for the testator’s death is no admittance. You must in all cases infer from the intention intended of the testator whether it is an admittance or not, as there can be no certain rules laid down. 4 Bro. Chip 537. Coper 37 G, Bro. Chip 129, note.

Of Mutineers refunding Legacies.

There are Cases where the Legacy must be refunded, if debts afterwards appear. There is no time limited by the Engl. Law when debts must be lost. In some of the States they have made wise regulations on this head, which render the error in these measure safe. But in our there is no time limited by the Eng. Law, the Legacy might pay out Legacies afterwards debts might be lost in, which he would be obliged to pay out of his own pocket. There is not a Chip 9.
Exors & Admrs.

to keep any Legacy like the Legatee gives security that he will refund all Case debts afterwards come in. So as we have before remarked, no time is limited within which creditors must exhibit their claims of the estate of the deceased. And even when there is a limitation in some of the States, debts may arise, that the Exor will be oblied to pay, otherwise he will be necessary to guard all things of that kind, as in the Case of Warranty, the Exor is the one to look to, he is liable. 2 Bon 352. 2 Ten 208.

If a Legatee, on receiving his Legacy has not given security to refund all Case debts afterwards appear, he is not compellable to do it afterwards, according to the Books. 2 Ten 208. Chy Cax. 165. Ten 164. 60.

This rule however does not operate if the Exor, when he paid the Legacy was ignorant of the existing time of debts afterwards appearing, or if he be compell'd on Ciy to pay them. 2 Bon 366. 2 Ten 198. Chy Cax. 218. 190. 192. 313. 163.

Judge Coxe's says the Equity of the rule also appears to here incorrect - it appears like imposing as penalty on the Exor for his negligence. There is not more true than that creditors must be paid before Voluntors. He says there is no need of the enforcement of Ciy, that he thinks no action for money has been made without, & that money is paid this mistake. The Exor paid it thinking he had a self-beneficia mis- take, the consideration grounds of course, by some let discons the operations of 59.

J. S. Thurlough.
where the question came up collaterally, suppose the rule to be incorrect. There can be no Sec. on principle, but he ought to refund.

Remember the principle that creditors must be first satisfied: now suppose the Legatees were paid to creditor is not satisfied. There is no Sec. but the Exor is answerable to the creditor but can the creditor come on the Legatees? It is generally true that in such case the creditor is only recovery on the Exor. but there are cases when the creditor may come on the Legatees, i.e., on the effects of the debtor in the Legatees hands. This is where the Exor is unable to pay, being insolvent, then the creditor may file his bill in Chy to compel the Legatees to refund. Suppose there are several Legatees, must the same creditor come upon all of them, or upon one of them in this to refund. The principle is that the creditor must be satisfied he may come on one or all of them. If he come on one, then this one may come on the other Legatees so that, 843. 94. 216. 206: 216. 363. 94. 61. 467.

It has been a Sec. whether a Legacy be given to an Exor for his care & trouble. It stands on a higher ground than other Legacies, but it does not. It has no preference. If there is any it must be in the same proportion with others. 2 61. 94. 63.
Exors. & Admirs.

Where the Exor. has been mistaken in quiet the
other Legatees, one who has not been joined may com-
mit the other proceeding Legatees to refund, where the
 rents become deficient, the three pierce no provision
for refunding but the heir may still come on & Exor.
complain him, to pay it out of his own pocket, if he
voluntarily paid the estate to the other Legatees.

But in some cases he cannot come on the heir unless
be was compelled by Exor. to pay the other Legatees.
Then his remedy is to come on any one of the Legatees.

Whether the specific Legatee can compel another to
refund in part is really a Question revalde. E.g. Cap.
pose there are five Specific Legacies given, & as the
amount of assets to pay debts the Exor. is obliged
take one of these specific Legacies. Now every
sound principle of orders, as to believe that the oth-
ers ought to make it up to him in proportion as
it was taken to pay a just debt. The Authorities
are contradictory, the following is the procedure
which they go to prove that the others ought not to
refund pec. "that in case this specific Legatee enr
accidentally lost, the Legatee must bear that loss.
that he is no worse in this case." But says judge
Dray, this does not seem to be within the princi-
ple, when it is applied to pay a just debt. It is clear
2 Thry. Cas. 179.

* See Ceb. Cas. 36. 248. 2 East. 360. 30 B. & C. 1st Refunding
Legates. Vopis. 172.
Exors & Adminrs.

Of the Payment of Legacies.

To whom is the Erie to pay a Legacy? Why to the Legatee, if he be sui juris. The Erie should be careful in the payment of Legacies, to take a proper receipt, or to have a sufficient voucher to show that he has paid it, because it is held to be such an extant in all courts, that it cannot be denied by the Statute of Limitations. To be sure, by length of time a Legacy may be presumed to have been paid, the Erie may avoid the repayment, as if the Legatee should call for his Legacy 10 years after it was due, the Legatee was in low circumstances, had often met the Erie, they had transacted business together, and had frequent settlements. These circumstances would be presumptive evidences that it had been paid.


The Erie should be careful to pay the Legacies into the proper hands; for if the Legatee be an infant, or has no Guardian, the Erie cannot pay the Legacy to the Father or other relations of the Infant, without the direction of the Ct. of Chancery. The reason is, that every Guardian must give bonds to execute his trust faithfully, and if he fails, the Bondsman is liable. But if the Guardian direct it to be paid to the father, they always take bonds of them, the Erie is safe. If the Erie pay it to the father without their direction, he does it at his own risk, and if it ever comes to the courts, he may be compelled to refer it. There is an instance of this, which seems a very hard case. A Legacy was
left to the son of a gentleman in London a company in a ship, and the ship
man whom no one could suspect the executor paid the legacy over to the father. Sometimes afterwards the father and son entered into partnership in merchandise, and very largely, they traded becamesound up to
The signers found the legacy had never been paid to the son, because upon the executor he was committed
to pay it over again. (By Cas. 240, 10th, 283, 5 Cop 9, 15,
3 Dec. 485, 1st, Cas. 26, 500, Will. 26, 105).

If a legacy be given to a wife covert, it must
be paid to the husband: it is not like other choses in
actions. But if it were given to the wife, it is separate
use of the wife, the rule does not hold: she then has no
control over it. Where a legacy was given to a
woman covert, who lives separate from her husband
by agreement, if the executors paid it to her, but took her as
today, it was divided on a half note by the husband
that the legacy with the interest should be paid over to
her. So where they are divorced or in case it shall be
the case as the above, it has been adjudged that the
husband alone can release a legacy to the wife.

But if the wife raises, is the wife, being separate from
the husband, unable to receive the legacy, to have
nothing on which to subsist? She understands it, she
presumes she has settled an alimony on her. 2 Can. 247

If no time be appointed in the will for the
payment of a legacy, it is payable at his death or
year from the testator's death, which time is present.
Exors. & Adm'rs.

necessary to settle the estate. The estate may sometimes be
prolonged the time for a year, or cause shown. This rule is of the Eng. &

Where a Legacy is coextinct the Legatee does it
is to be paid to his representatives at the time appointed
for the original payment. 2 Co. 21. 199. 2 23.

The person who is entitled to a Legacy is
may demand payment immediately after the death
of the first Legatee, providing a year and a day be passed,
two times be fixed by the Testator. Tidens. (See page
474. Judicative observations on this.)

From what time Legacies carry interest.

If a Legacy be devised generally, it is regular
to carry interest from the expiration of one year,
the first year, from the death of the Testator. But if the Legatee
be of full age to neglect to demand it at that time,
he cannot have interest but from 1st
of the demand. These therefore remark the difference
between a Legacy to a Debtor, the latter of which bears
interest from the day fixed for payment, whether
demanded or not. The reason of this difference is
that the Debtor who is a Trustee is not like a Debtor,
bound to benefit for the person whom he owes, it
is sufficient if he advances the property in his
Trust when demanded. Pesh. 105. Remember the
above contains the Legacy to be of full age.
And also observe that when the Debtor is asked "why
is it not the Debtor bound for the Legacy, and paying on
Exors' Adm'rs.

in the same manner that the testator was bound to
do it the ground for an answer is that the estate is not
deleted to any one now ever was he is only a trustee,
and only to fulfill his trust when required. I mean
when the persons are capable of making that re
quisition, being suitably. 2 & 3 Wm. 106. 107 of 30:
P.114. 2 fault 415. 2 & 3 V. 52, 56. 57. 68.
P.114. 2 fault 415. 2 & 3 V. 52, 56. 57. 68.

But the Legacies are devised generally, no
time limited for the payment, yet if the Legates be
an infant he shall be entitled to interest from the
end of the first year after the testators death, this
no demand to made because no balance can be im
puted to an infant. 2 fault 415. 2 & 3 V. 52, 56. 57. 68.
P.114. 2 fault 415. 2 & 3 V. 52, 56. 57. 68.

I have thus far been treating of General leg
acies, but now of those payable at a particular
time. As if the legacy be apponted by the testator
himself to be paid at a certain time, say 3 years.
It is not fully settled whether it shall bear interest
from the time, or first for repayment, or from the
demands modern authorities favor the latter hy
pothesis. They seem to view it as in the case of a
General one pay it must be demanded. Judges
incline to the latter opinion, as the above are
contradictory. 1 fault 415. 2 fault 11, 161.

The general rule is that no interest is to be
paid till the time a legacy is demanded, the time
fixed by the testator when it shall be paid, but there
are exceptions. If a Legacy is made payable to
a child, by the testator in a future time, and no
other
Other provision be made for its maintenance, the law says it shall bear interest from the end of the year immediately following the death of the testator, that it were not payable in 10 years; the reason is that it is the Testator's duty to maintain the child until he lives, or is presumed that he intended it should be maintained after his death. (Ep. Cas. 201. 2. Eliz. 32. 3. Ath. 107.)

If a legacy be payable out of a fund which bears interest, (say it is payable a year hence,) if the interest is not received by the legatee, the legatee receives with the interest; but if the legatee has received interest, he must pay it over to the legatee.

By leg. money made payable at a certain day bears interest from the time fixed for payment."

**How Legacies are recoverable.**

To recover the method of recovering legacies is by a suit in the Ecclesiastical Court, or a suit in Chancery. The legacy be charge on lands, it is recoverable by filing a Bill of Sale only. But in this country it depends on the provisions made by the particular statutes. If the legatee the person to be paid, the personal property is a gift of trust. But in this country we have no Sec. 682. 1st Ed. 103. Comp. 254. 289. 291. Bath. 315. 6. 1828. 379 p. 276. 667. 178. 143.

2 Thon 20. Pearson. 100. loco d. 279. 264.
Exors & Admirs.

Of Residuary Legatees.

A Residuary Legatee is the person appointed by the Testator to take the residuary after the debts and legacies are paid. Then he is a Legatee. Hence, when the debts and other legacies are paid, the Legatee is appointed by the Testator, with which surplus is the exclusion of all others; except in cases where legacies are payable out of real estate, and they are disposed of, he has no claim, they go to lapse, for the benefit of the heirs. 2 Pet. 876. Acts 332. 2050.

If a Residuary Legatee die before the debts are satisfied, so that it does not appear to what the surplus would amount, yet the Exor or Administrator may pay any legacies that have the whole residue of the personal estate which remains over, to the Exor of the first testator. If there be no Residuary Legatee, or the Exor omits part of the testator's effects out of the inventory, or undoes alms those he puts in, the Residuary Legatee may file a bill of discovery to him, before he has paid the Testator's debt. 30 Jac. 484. Barth. 52. Psalm 409.

When there is no Residuary Legatee, the Exor is considered as such. In what cases the Exor is entitled to the surplus, what difference is made by having a Legatee life him, we have considered already under another case. But if no residuary Legatee be appointed, under this state, the Testator's intention to manifest that there shall not be a residuary Legatee, the residuary must be distributed as tho the Testator has died intestate.

1047. q. 550. 346. 46 12 Inst. 33. 144. 473. 254. 674. 737.
EXORS. ADM. EXORS.

DONALD C. A. R. M. O. S.

A donation causa mortis is no part of the title, nor has the donee anything to do with it. It is a specific present made by a person in contemplation of Death. It is always conditional: for if the donor recover, the donee is not entitled to the property. It is worse good as vs creditors, if it be want. This is good for the Donors' Representatives & Exors. It differs from a common gift, because it is always conditional. If, of course, the donor die, the legal right to the donation vests immediately in the donee, without the intervention of the donee or any other person. To give effect to this kind of gift, there must be a mutual tradition of the thing given, or some act amounting to it, so that the donee might get it. It is necessary to recollect that, a donation causa mortis is not good as vs creditors, but no action lies to the donee in this case, he not being entrusted with the Gift. (B. C. B. 267. 1 Mil. 428. 441. 3 How. 338. 249.)

Now then shall the creditor, who claims to the donee, get at it? Judge Thuree says he must bring his action vs him at [illegible]. If [illegible] is his own wrong, for the donee has nothing to do with it. The Representatives of the donee are bound by the gift, and the View in Action can not as in other cases, inventing the property to see the donee to recover it.

If those in action of a negotiable nature may pass as a donation causa mortis, if it be not so got in, the weight of opinion is, that it will not
Exors & Administrators.

pays as a donation to. Some, however, say that may pass for the better opinion is judge. The reason given why it will not pass is that the donor cannot recover of the obligor refuse to pay. But the person may be willing to pay, if so it is immaterial whether the note be negotiable or not. The only reason why it shan't pass is for fear the donor might be defrauded of his property. But JudgeJones thinks that the East will prevent the assignment, ought to direct the law (being intemperate) to allow the donor to bring an action in his own (t. a.) name. 1 Y. & 25. 161. 3 Y. & 26. 39. 362. 38.
2. 263. 2. 216. 2. 264. 2. 251. is not 2. 21.

Distributions.

After payment of all debts the Adonor is bound to make distribution of the personal property, to those whom the law has points out. Lev. 66. 56.

The mode of distribution is settled in 1695 by the Stat. 22. & 23. pub. 24, art. 2. in most of the States if they have similar statutes, founded upon or growing out of the Eng. Stat. Understand this Stat. well, if you never to do a thing, the partial undervailing of it is of no service. It shall be understood perfectly.

There are certain terms made use of in this Stat. & the subject matter there. When we are speaking of the Eng. Stat. which have a definite meaning, we must be governed by the construction which they have put upon them in their books. The Stat. directs that after the payment of Legacies, the residuary share, the say,
Ecclesiastic Admors.

plus shall go to the Children of their Representatives.
No representative is admitted among collaterals, by us.

[Text continues, discussing the rules for determining who are the next of kin, and the implications for distributions.

No distribution is made till after the expiration of one year from the death of the intestate. The personal estate first goes to the next of kin in the descending line of their legal representatives, i.e., to children of their issue as collaterals, before it can go to those in the ascending collateral line.}

[Further text discussing the implications of these rules.]
Exors & Admrs.

The States: To explain this part of this legal subject. Say J. D. dies leaving 3 children, A. B. C. they are next of kin only, but not his only. B. has wife, A. 10 children, C. he. now D. E. are the legal heirs of J. D. What will take what he left? They have taken his land, and the estate of J. D.

But say A. B. C. are all dead, B. is wife. A. has children, C. is wife. A. has children. The representation is at the end. D. E. will not take what their father left to them, but all the grandchildren per. D. E. A. per. J. D. A. if B. takes alike, they are now next of kin to take per capita... and remember this, so long as any of the stock remains (a part being dead) in any of the lineal degrees the estate goes per stirpes, pure representation. But after the stock is extinct, the estate is distributed per capita, or per stirpes among their children, or other words when all the descendants are in the same degree, they take per capita, but if some are more nearly related than others, they take per stirpes. Now observe I said (supra) that after the stock is extinct, the estate is distributed per capita, or other way. Some however contests that the distribution in this case is per stirpes. Dovetail agrees to the rule. Judge D. supposes that when there is no representation, as in this case, the distribution cannot be per stirpes. See Dov. 74, 4, 4, 429, 1 Deers 282.

If persons relate in equal degree to the deceased no preference is given except that those in the descending line exclude those in the ascending line. Estates may be the degree of kinship
Exors & Admors.

In the first law, proximity first quantity of blood is required in calculating the degrees of kinship. Rom. 3:16-23.

The jus representationis extends among collateral no farther than the children of brothers & sisters. Beyond this degree, children can claim in their own right only. To explain: say Tom, Dick & Sally are all the brothers & sisters, being the next of kin. Tom, if dead, leaves children; then those children take by representation. But say the brothers & sisters are dead. Dick left two children and Sally one, and these children of Tom. Dick & Sally are also dead, leaving children, then these children are next of kin & take as such representation is set out &d. 1st. P. 325, 594, 376, 212, 1 Salt. 250's 2nd 203. 1st, 1445, 2nd. 1st Ch. 53.

There seems to be one thing which mars this symmetry of the Eng. laws, that the Grandfather is included by the Stat. in taking with Brothers & Sisters. The same rule obtains where the brother is dead, leaving children, they take in preference to the children of the Father, tho' they are back in the 3rd degree. If both are 2 Brothers, Tom & Dick. Tom is dead, leaving children, they take the same that Tom did before they are in the same degree with their uncle who is included. The reason is that they take per representation. Now if Tom & Dick were both dead, then their children take as next of kin, & they being in the same degree as the Uncles, they all take as next of kin, not by representation.

I have said the right of representation est 35
Excuses Admirs.

No farther than to the children of Brothers. History, if there be no children, the part of their children also, those nephews, nieces, who survive, shall take the whole estate, to the exclusion of the great nephews, nieces of the proposer, i.e. to the great children of the Brothers & Sisters of the proposer.

A Stat. of James 2d. places the Brothers & Sisters in the same rank with the Father, both in the second degree, in the distribution of personal estate. But this degeneration of the mother takes place only when there are Brothers & Sisters or their children living. Noth 255.

In the distribution of personal property, no distinction is made between the whole & half blood, the Stat. 2d., which regulates the distribution, regards proximity of not quantity of blood. statute 255, 13th 504, 14th 318, 323, 327.

If a Father of a person deceased be living, the mother takes nothing, because whatever she might take is not belong to his husband, but it was of their property then the estate one half. If after a divorce a vinculo matrimonii by Parliament for sufficient causes, the son die his Father & Mother being the issue, they says it is doubtful whether the mother to be entitled to anything or not. But, as the Fathers right to her personal property has ceased, in this case it do seems that on principle they have a good claim. If the divorce were only a reverse of those who do not claim any of the personal property of his children, when the husband was living, because the husbands right to his
property, still continues, the after her husband's death she
might. And in cases where the marriage was not ab
indisir, void, she is entitled to a share after the death
of her husband. The Brothers according to the English
judications as I remember before take to the value
size of the grand parents; but are those decisions recov-
ribale with the governing rules? does not this mar the
symmetry of the Law? 3th. 726. 704. 788. 296. 216.

Children in ventre sa mere are by the civil, as
well as by the C. E. Considerer as being in effect capable of
taking property according to the rules of descent distribu-
tion, as favor of such an infant, an injunction
may be granted to stay waste. 3th. 115. 726. 07. 226.
274. 716. 711.

If there is a widow's life, there are any in the
descending line, she takes one third of the Estate; if there
are none in the descending line she takes one half of
the Estate, &c. when distributes amongst the collateral kindred.
A perfect knowledge of the State of Care is of great impor-
tance. It will enable us not only to understand the
distribution of personal property of which we are
here treating, but of Real property also. Remember
that when the claimants are of equal degree, they
take as near of kin, they take per capita, but when
they are not of equal degree, they take per strides.

W.B. the following pages included in brackets [-]
Exors Admors.

[That the mode of computing heir's rights by the laws in England was used in the Ecclesiastical courts of the Church. Distributions is the same as adopted in the civil laws, and that this mode is correctly stated in the preceding pages, will appear from all the authorities. In 1533, it is laid down by the Chancellor that the rules of computing heir's rights under the Statute are the rules of the civil law.]

The same doctrine is recognized in 10 Eliz. 41, 53, 2 Dice. 214. In John Strange, observant the rule in computing the degree of proximity of blood must be taken from the Civil Laws, to this ground to found an estate in the cases which have come in judgment since the Statute of Distributions, either at Law or in this Act. In 1527, the same doctrine as to the mode of computation is laid down in language that cannot be mistaken. To see the same rule is laid down in 2 Dice. 515 and 520, see also 2 Bacon 355. 10 Mor. 28. 595. 2 H. 118. 1 and 2 Saund. 23. 6. 1 and 2 Saund. 78.

That the distribution is to be made in the descending line, sometimes per capita, at others per stripes as before stated, had Sowerby or Wells, where he maintained this as the rule. To see this doctrine is recognized in 4 Burn's Ecc. Law. See there. Love quotes Burn's Epistle, page 7, and it is nowhere controverted. That rule as there laid down is on the supposition that...
Exors & Admins.

the intestates children are all dead, whether those children were two or three or more each of them having life children, as it may be, one of these two, another or more - in this case where there are only grand children their fathers & mothers having respectively died in the life time of the intestates father, the grand children take in their own right, and by representation of their father or mother deceased, & if the above distributions are in no way illegal, we will order an equal distribution to be made: it thus it may be, if there were only four grand children of the deceased, both his children & grand children having died before him.

That Posthumous Children take an equal share with Brothers & Sisters see Vols. 156, where it is declared by the Chancellor that it was settled law, that a posthumous child shall have a distributive share of the intestates estate. This point was also settled by Lord Hardwicke in the case of Wallis v. Wood in 4 Term. E. 365, & 2 Atk 115. Analogous to this doctrine was the determination of the estate in the case of Miller v. Turner in 105 85, in that case it was determined that a posthumous child was within the provision in marriage articles, for such children of the marriage as shall be living at the death of the father or mother. The Chancellor observes that a posthumous child is considered in the in many cases - in all cases relating to his advantage he must be considered as in the according to the Civil Law. So also in theStatus of Distribution he is considered as living.

That
Eccors & Admiris.

That when all the claimants are in the same degree, they take per capita. But when some of them are in a more remote degree than others, claimants only as appear to others, the distribution is per stirpes as before most see 2 Pet 3, 15. Where the Chancellor says it is now settled that the children of one brother stand in the place of the parent in sharing with the other brother. I take per stirpes, yet if no brother is alive, representation in loco parentis is at an end. If there be one brother living and another has left children, however many, they take but a moiety with the brother, but if that brother be dead, all in the same line of equality, take per capita. So it was determined in the Chap 36, where A had 3 brothers, who were dead at the time of his death, one like to the other 3, the last 4 children, that the distribution of his estate among his nephews & nieces must not be per stirpes, but per capita, so that they all take their shares without any regard to what their parents would have taken, for they did not take by representation but all as next of kin in equal degree. [See CHAP 50, the issue was whether the personal estate of E. & D. & E. so in distributio per capita or per stirpes, the left only nephews & nieces, one nephew by his brother, three nephews & 2 nieces by his sister. The Chancellor decreed they all should take equal shares per capita last per stirpes.

In 16th. 1595 the Chancellor says that intestate dying leaving a deceased brother & 15 children, or deceased Sister, the 15 children of the deceased Sister should take 10 parts out of 11. The same doctrine is found in 16th. 455.
That Representation among lineals continues. See 1 Ch. 27.

That repres. in the collective line cannot, unless by
good Brothers & SISTERS childrens, to let in their Grand children,
take as long as any of their Children are. Giving sec 10. P. 28.
This was a case where the intestate left a Brother child, a Brothers Grand child. The Brothers Grand child was not admitted to a distributary share, for there are two ways in which a person can take the personal Es-
tate of the intestate. And either as next of kin or by-
life. The grand child of the Brother is not taken as next of kin, for he was one degree more remote than a brother child, the is not taken by life. For the Stat.
Declares that there shall be no life beyond Brothers this
time child. Now, where he was a grand child, one degree too far.
So too there is no rep. in the 4th degree. 15. 1594.

Where it was decreed by the Chancellor that where the in-
testates relations were an uncle to a child of a deceased
person, the child should not take with the uncle, for he
is in the 4th degree, to which repres. does not extend. The
construction of that clause of the Stat, which says
that there shall be no rep. among collateral brothers
Brothers or Sisters childrens, means that no one shall take
by rep. but the Childrens of Brothers or Sisters. Sec 21. 233.

In 2 Pet. 16 16, there is a case which seems con-
trary to this doctrine, but this is not now considered
correct. The rule is as before C. done. See it overruled
in 9 O. 1615.

That all who are in the same degree of kinship take.
Excuses & Almors.

take equal shares where there is no right of representation. See 2 Dek. 225, where the heir was admitted to take equally with a nephew niece, they were all in the same degree viz. the 3°. See the same doctrine in 1 Ath. 359. So where the only relatives of the intestate were the grand-daughter of a sister & the daughter of an aunt, they shared his estate equally, being both in the 4° degree of kinship.

That a strict adherence has been observed by the English, of distributing to the rest of kin according to the computation of kindred in the civil law is evident by the following authorities. One boy 325, where the grand-mother being in the 2° degree, was preferred to the aunt who was in the 3° degree. The same point was adjudged in Salt 237, 11 P. W. 41. The great-grandmother takes equally with the aunt thus being both in the 3° degree. 2 Dek. 215.

I know of no departure from this rule a principle except in the case adjudged to before of proving Bros. thus & Sisters to the Grand-parents when they are both in the 2° degree.

That relations of the half-breed take equally with those of the whole blood, the personal estate of the intestate see 1 Penn 191. Where the Chancellor observed that, in the case of Smith v. Tracey, determined in the 28th. 121, which was 6 years after making the Rule of 1812, the 1st gave but an half share to the half-blood. Yet in Rogers v. Some of the other Rules their statute gave but an half share to the half-blood. Yet since that case the matter has settled that they sit have an equal shares with the whole blood. In 1 Penn 403, it seems to have been the opinion of the 1st, that
the half blood should have only an half share, but that is
not now law; for since that time it has been settled in the
House of Lords upon an appeal that the half blood do have
a whole share, equal with those of the whole blood. Reports
are 2 Brev. 124. The same is to be found in 17. Mer. 59 in 56.

That the distributive share on the death of the
intestate vests in the person who has a right to
see 2 Brev. 118. When it is apparent that the Chancellor consid-
ered a child in ventre sa mere as a person in the whole
the estate may vest. This opinion is confirmed by the opin-
ion of

in 16th Ed. who directs that a devise

to such child was good. A Bill in this is favor of such child
may be lost to stay waste. 2 Vern. 710.

There appears to be a distinction made in the
Civil Law, between a child in ventre sa mere. In the law
that is only conscious, the latter is now an imay. This distinc-
tion I believe has never been admitted in the Eng. law; it
is certainly a very nice distinction. Yet it would
be difficult for the most skilful to determine satisfac-
tory that such child is not animal. Such child
is need of a provision arising from a distribu-
tion share as much as any other posthumous child. In the

32. 34. 35. 36. of I. 2pace in the above that where a person en-
titled to a distributive share under the law, dies before
distribution which cannot be made unless a year has elapsed
after the death of the intestate, yet his share is vested
in intestacy, is transmissible to his Exors. & Admirors. So too
when of the son dies leaving 13. the mother who was entitled
to his estate, & 16. dies before distribution, the estate did not

Censors & Admors.

go to his next of kin, but to the next of kin of 16. in whom the
Estate was vested before distribution.

That in the ascending & collateral Issue all who are next of kin whether on the part of the father or mother
are entitled to an equal share see 19th. 52. No preference
is given to males over females, nor any greater respect
shown to relations or the side of the father, than to relations on the side of the mother.

That previous to the Stat. of Jac. where the father
was dead at the mother living the whole Estate
being the only person who was in the first degree see 40. was
2. Sand 34. 6. Love 88. I. Will 74. It is true that when the
father is living the mother takes nothing, even if the father
or 13. die before he had reduced the distributable share,
if it is chosen to Jonson, but they do go to his Censors. This
 conclusive upon the De. or some measure disputable whet
or chosen that accrues to the Wife during coverture, can
survive to her, when her husband, has not reduced the
chose, as a Legacy e.g. which accrues during coverture can
survive to her on the death of her husband.

That since the Stat. of Jac. 2. the mother does not
take, in exclusion of Brothers & Sisters or their repre. but
takes an equal share with them as a brother & sister and
serves to raise up the children of deceased Brothers & Sisters
in the 2. degree to take by right or as other ground in the
case of Slaves to Slaves be reconciled with other decisions
when all the Brothers or Sisters were dead leaving children,
and the uncles living in the same degree with them owning a share but were excluded, for in this case, the mother was living, who now constituted part of the estate, as much as if she had been a brother or sister, if the mother had been dead the uncles' devise must have shared with the nephews and nieces, for so are all the cases. 2 Fil. 364. 16th 463. 2 Ines 219.

The Stat. 29 Car. 2, alters the situation of a deceased wife's estate, for by it those in action which are not residuary estates remain undisturbed so must be appropriated to the extent of assets, but he must pay debts like any other Amor, not as husband, he is to take any residuum. The origin of it was this, under Stat. 31, Ed. 3; the nearest and most lawful friend was to be appointed. This he came in then the Stat. 16th 8, said to the widow or next of kin, the practice still continues of granting Amor to him, then under Stat. 22 Car. he must distribute to the next of him, but he is not next of him. Then Stat. 29 Car. attacked this said the husband should enjoy the estate. Suppose Amor is not granted to the husband but to another. Still the estate is left in the Stat. vests it in him. 25th 4 in all the States where there is a Stat. 29 Car. the husband is entitled to the estate. Where there is no Stat. 29 Car. but one of the 22 Car. he must distribute to the next of him, he not being next of him, his marital rights are not affected. 2 Bl. 569. broc. 106. 10 Fil. 381. 3 Ath. 526.
Exors. et Amicis.

Cases distributed.

Case 1st. A. d. i. d. leaving a wife & three children.
Answer. One child goes to his wife & the remaining two thirds to his children. Each taking one equal share.

Case 2nd. The wife no. Wife, but three children.
Answer. The estate is divided per capita, among the children.

Case 3rd. A. d. i. leaving 2 children & the son of a third child, who is dead.
Answer. The two children take each one third of the estate, the remaining third, as representatives of his father.

Case 4th. A. d. i. leaving a child & C. his children is dead, his wife a child & D. this child B. is dead leaving C. & D.
Answer. In this case C. the child of A. takes one third, being issue of the deceased, B. his grandson takes another third, the third being one third more of his father's. A. is the other third divided between the children of B. as his heirs. In representatives take per stripes & not per capita.

Case 5th. A. d. i. leaving three children are dead, but he leaves a child & B. he leaves children C. & D. he leaves child E. & F.
Answer. The estate being extant, representation of course the children of A. & C. take per capita, standing in the same degree.

Case 6th. A. d. i. leaving two children & C. his children is dead, so is A. of A. who leaves B. & E.
Answer. The children B. & C. take each 1/3 & D. the remaining third, as representatives of their Grand Father A.

Case 7th. A. d. i. leaving a wife, but no issue, his father leaves to his mother. Mary, three Brothers, Sisters, of the whole line. Son, etc. Sally, the half blood son States & S.
Susanna Rye, this sister of George & Edmund Rye.

**Answer.**

This, his coheir takes one half of the estate according to law.

Case 8th.
The only relations living are Tom, Dick, & Sally. Both.

**Answer.**
The Brothers & Sisters of the half blood of the whole.

blood take the Estate per capita in exclusion of the Un-

cles, by being the second & third cousins of the Deceased.

Case 9th.
The same case as the last, only Tom & Susan are 

dead without issue, & said Tom dead left his 

son, John.

**Answer.**

Dick & Sally are entitled to two thirds of the estate

being the next of kin to the deceased. Thomas.

of Tom, is entitled to the other third being the legal 

representative of his father Tom.

Case 10th.
All the Brothers & Sisters of J. R. are dead except 

Sally. But Mr. the lady of Tom, and Mr. J. R. the 

children of Dick are living.

**Answer.**

In this case Sally takes one third of the estate as 

next of kin. Mr. the legal representation to whom 

another third & Mr. J. R. take the residue, being 

the legal representatives of Dick.

Case 11th.
All the Brothers & Sisters of J. R. are dead. Tom left 

a child. Mr. Dick left children Mr. J. R., and Sally left 

32 & 7.

**Answer.**

In this case Dick, being entitled, represen-

tation ceases, & therefore the Estate goes to 

George.
Exors & Admors.

and Edmund, together with the children of Tom
Dick, equally divide the estate per capita, being
all in the 3rd degree of kinship.

Case 12th. The case as the last only George & Edmund,
the uncles are dead without issue.

Answer. Here M. N. O. P. Q. R. being the rest of kin, divide
the estate per capita.

Case 13th. The same as the last, only M. is dead leaving 12.3.

Answer. Then N. O. P. Q. R. take the whole estate in reduction
of the children of M. because representation among collateral, extend no further than the third
degree.

Case 14th. M. is dead leaving 12.3. So N. O. P. Q. R. are dead
leaving 4 (i.e. Figure 4), leaving 5.6. (i.e. Figure 5).

Answer. R. takes the whole estate as next of kin, to the exclusion of the children of M. N. O. P. Q.


Answer. In this case the children of M. N. O. P. Q. R. divide
the estate per capita, being the rest of kin to the
deceased.

Case 16th. George & Edmund left issue, viz. George left 15.1
Edmund left 16.17

Answer. The children of George & Edmund share the estates
with those of M. N. O. P. Q. R. being equal in same degree.

Case 17th. The only relations living at T. P. death are his
Daughter Solomon, & his Brother Tom.

Answer. According to the general rule Solomon & Tom divide the estate equally, but this is an exception.
Exors & Administrs.

Case 13. J.S. died leaving his great father Solomon, his brother Tom, and his mother Mary.

Answer: He had it not been for the Stat. 13 Tex. 260. the mother to have been entitled to the whole estate, being in the first degree, but now she is entitled to equal share with Tom. The great father Solomon is to die as in the last case.

Case 19. Same case as before only Tom is dead with J.S.

Answer: The mother takes the whole estate, for the Stat does not operate as her only where there are bother sons of the proprieors, or the legal heirs living.

Case 20. The only relation of J.S. is Tom, but his father Sally is born after his death.

Answer: Tom and Sally take the estate per capita, for posthumous children are considered in life, take equally with others.

Distribution is compulsory in Ch. 2 Con. 204.

10 Tex. 134. 2 Bent 362. 1 Con. 254.

Real Property is always to be distributed according to the laws of the country, where it is situate, but personal Property is to be distributed according to the law of the country where the intestate resided at the time of his death. 2 Th. 86. 406. Am. 23. 2 Tex. 36.
Actions by or vs Executors.

In some cases the Testator or intestate might have been sued, when the Eeze or Admin cannot. There are also some cases in which the Testator or intestate might be sued, but in which the Eeze or Admin cannot. The rule of discrimination between these cases in which the Eeze or Admin may be sued or account of the Testator, & those in which he may not has been laid down thus, "that the Eeze or Admin is liable for the contracts, but not for the torts of the deceased." But neither branch of this rule is strictly true, for there are cases in which the Eeze or Admin is not liable for contracts of the Testator or intestate in which he is liable for the torts. The rule now established as to torts appears to be this: If the Testator or intestate has benefitted his estate by the tort, the Eeze or Admin is liable, but if the estate has not been benefitted, the action does not survive, as the Eeze or Admin is the estate of the party aggrieved has been injured by the tort. In cases of slander, slander of Ballying, an action cannot be brought to the Eeze, the right dies with the Testator or Admin. No action of mistake, or any thing of that kind Can survive to the Admin or Eeze, thus for the rule seems to be a true one. But Judge R. says the rule ought to be established in a different manner, he thinks the inquiry ought not to be whether the assets have been benefitted, but whether another has been injured. But whatever may be our opinions about what ought to be, the law is as laid down in 2d 87.
liable for some, there was a Stat. made as a Dec. 3, 1823, which made the E in or Ab in liable for trees the Testator had given off, or asportatia in Alia Testatorum. By Equity this Statute was extended to all losses committed by his property generally. 2 Dec. 439, 495, 1 Com. Di 241, 140, 105, 30, 98, 102, 108.

In the old note the word is "acrobatic", but in the printed Statutes it is "Conis". Does this Stat. impose a liability on E or A? Moreover, or merely give them a right of action? Comp. 379, 3 T.R. 549.

Judge Reville remarks that in the same way that we get that law, making E or A liable according the equity of the Stat. we have got a great deal more. If the rule is, that if the estate is benefited by the tort the E or A is liable, so where a man has got the property of another beneficially into his possession, the E or A is liable, his estate is benefited.

There arises a Que. where a right of recovery for the torts of the Testator is survived by the E or A? how are you to sue that man? will you sue him for a tort? The 1st have determined that the action is lost, or the E or A shall not sound in tort, but in contract... what the usual mode of recovery is by a sum total which cannot be transferred. The same principle support an action for a tort. will also support an Indep. but to support an Indep. there the property must have been sold, or not to be found, so that it shall be presented. For if it remains in the E or A A has no

There will be 48 either. Not as E or A, nor, but as your Test. & Co., 106, 30, 4, 312, 12, 371, 1803, Act, 314.
Excise Advisors.

If an action which is to survive the death of the Testator, to be tried pending the suit, the action does not abate. 1 Coop. 372, 377, 403, 487, 155, 2 Co. 377.

In this case the action be such as to not survive it must abate. If therefore an action be lost by the Testator in a right of recovery which to survive to the Executor the action should be lost, the suit must according to the standing of principles abate, if the Plaintiff must sue to an action sounding in Contract with the Executor. But when the action as well as the right of recovery is such as will survive to the Executor, it does not abate by the Testator’s death — a scire facias must issue to summon the Executor over the suit. The Testator’s name is erased from the record & the Executor is put in. To a scire facias the Executor cannot plead any matter, which might have been pleaded in the original action. If no action is appointed or a scire facias or an action the Plaintiff must wait till the Executor is one. Salt. 2 Co. 32, 32, 182, 183.

It has also been said that there are some contracts which will not survive the death of the Testator. 2 Co. 297.

The rule of discrimination in this case is, that when (as is usually the case) the contract is such that the Testator has received, or is to receive any consideration from the other party, or performance, if the contract, the Executor is liable. But when according to the contract itself the Testator was not to receive any consideration from the other party, but a compensation arising solely from the performance of the contract, the Executor is not interested, if the party of performing the act
Exors. & Admrs.

...more negligence, his Ever is not liable. As an officer who is to receive legal fees, for the execution of a process, if this negligence is to execute it. Formerly action survived of the Ever in those cases in which the Testator might waive his own. Cor. 600.

When may an Exor maintain an action.

Can the Exor maintain an action in all cases where the Testator could? No. There are many cases where he cannot. The Exor could maintain no action, the Testator could.

for slander, see 2 Bac. 445.

The rule is, if the Testator has injured his effects, the Exor may maintain a suit for the recovery of damages, otherwise he cannot. Now, then see the reason why the Exor could maintain an action for slander. It is because the effects have not been injured, unless it be proved that some special damage was occasioned by the slander, which cannot be done. Cor. 377. Lat. 165. 2 Co. 87.

When a suit is commenced by the Testator, he dies before judge, what is to be done? The enquiry is, has that suit have survived to the Exor if the testator has not commenced it? If it has, the Exor may make himself a party to the action, by suggesting the death of the Testator, and his name instead of the Testator on the Record. There was no provision made by 2d. in cases where a suit is commenced by the Testator, but by Stale. Military of the suit. Where ever a suit, his Ever must be notified by offering a suit, to make him appear in which case he becomes a party to suit, and judge appears to him as Exor. Cor. 377. Lat. 165. 2 Co. 87.
Excuses & Admons.

And in cases it is an action that is have been
served, or it is commenced by the Executor, the Excusor enters
his name in the rooms of the Testator, in the Statutes, supra.
If the service dies or the Excusor neglects to enter
his name, the debt is to be remitted. This is certain in cases
envisaged. The Solicitor is provided for, to may keep the suit alive
after the death of the Testator if he pleads, but if he does
not the debt is remitted. 6 Geo. 3. 377. Stat. 18. 9. Of 87.
I have already observed that the Excusor may sue
to his own name, when the cause of action is founded on a
contract of his own, or has occurred since the death of the
Testator. As suppose at the death of Mr. his horse comes
into the possess. If A's Excusor, B, R. founds that horse,
then A's Excusor may bring the action, either in his own
name or as Excusor, but when he recovers it is against A. 3 W. 260.

The Excusor duty we know is to make a defence
of all unjust claims. But is the Excusor when sued by a
creditor of the Testator, obliged to take advantage of cer-
tain provisions statutes, which is Equity and not leav-
ing on him, or a Case he does not have to be liable
for a devastation? I find a case in 1 St. 326. 1956. 6.
Chancellor Hardwicke says he is not obliged to take
advantage of the Statute of Limitations. Judge Lewis
opiner is that the Excusor is not obliged to take such
advantage, but if he thinks tenant will not he may suffer
judgment to go against him, without being guilty of devastation.
Whether the Excusor is obliged to take advantage
of the Statute of Limitations, is a Case concerning which the
Court was divided. They say that the Excusor is bound

to take notice of its being unlawful. But Judge Reeves
supposes the Eeoe may pay the principal 1 legal interest
of the plaintiff, without being said to be a decretal. But
it is a Rev. 685102 Oct. 21st 1806 1214. 3 P. A. 131.

It is settled that in general he is obliged to avoid
himself of any illegality in the consideration of a Contract.
But it is doubted whether this rule retains to debts which
in honor or conscience ought to be paid. The Eeoe is not
perhaps warranted in retaining all those legal advantages
which his executor might.

It is determined, that if the action be one of
those where in many cases, a count for in any debt
receiv'd to the use of the Eeoe as such may be joined
with a count for money had & received for the use of
the testator. 3 T.R. 538.

But a Piff cannot join in one declaration for a
cause of action which accrues to him at law, with
one which he had in his own right. 3 T.R. 489. 3 Hen. 3d.

Your writer finds this in the Books, "It that party
in Eeoe's suit with, shall recover the debt in this
Hand's, he must sue in his Representative Capacity."
This is laid down too broad. Does it mean that the
"Eeoe is in all cases of this kind, to sue as Eeoe, or does
the rule mean that unless he sue in this way he is
liable to Costs? It cannot mean that he is obliged to
sue as Eeoe, nor is he except from paying Costs in all
such cases. Judge Reeves says the rule is not so. that he
is not obliged in all cases to sue as Eeoe. 1 T.R. Th. 12 8. 373.
350. 372. 234. 7 T. 388. 1 How. 87. 7 Bro. 44. 588. 9 11
Owes & Adm‘rs.

It has been said that when a promise is made to an Ewe as such, he cannot sue as Ewe, but must sue in his own name. Judge R. is unable to discover the reason of this. There has been a late determination to the contrary. 16 R. 387.

Suppose an Ewe or Adm‘r as such, lend himself to pay debts. Suppose he has offsets. Two will be laid in writing. Now is he personally liable? He is bound to pay; it cannot be said, plainly administrat. But Judge R. doubts the principle of this rule. Where is the consideration? Is the Ewe or Adm‘r bound to consider to pay? If it were a sealed instrument, we all know he would be bound by it, for the very sealing is a consideration in Sosa.

If the Ewe sue it is defective, it is a general rule that he is liable for $20 Costs. The origin of this rule is this: 1 St. 1795, no person was liable for costs, but by St. 1814, 3 St., which governs on this subject, those only were made liable to costs who sue in their own right.

This therefore extends not to Ewe’s or Adm‘rs. They do not sue in their own right, but in another’s. In almost all the States, they have Statutes making them liable. 2 Dic 446. 6 S. 62. 6 B. 182. 6 B. 182. 44, 181.

But the last rule applies only to people who are Ewe’s. 3 St. 436. 6 B. 182. 3 St. 182. 44, 181. 44, 181.

There is however one case in which an Ewe or the Adm‘r shall be liable for costs. This is where he brings action in his own right, as for a conversion, but in his own name. 6 S. 62. 6 B. 182. 44, 181. 6 B. 182.
Exors & Admirs.

If one of two or more Exors die, the Survivors may act for it as their first or as an authority.

In what mode you proceed in an Exor.

A judgment is given to an Exor for a debt of the Testator, first goes to the Goods or Chattels of the Testator in the Exors hands, t. to the Body of the Exor. If the Exor pays, all is well. But suppose he will not pay. A non est inventus is returned on the Executor, note late, or which is long, your then issue a cli for four days on the former judgment. But remember that if this the Exor can plead nothing in defence, that he might have pleaded in the first action, i.e. he cannot go back of the Judge. But he may plead anything which has happened subsequently, which would go to destroy the right of recovery. Or if sufficient defence being made Exon then goes to him personally de bonis propriis. He has precluded himself from pleading no assets because such plea he might have put in in the first action. (Teld. 2, 625, 283. 1835. 183.)

What things are Personal Property and Assets intermains.

It is a general rule that all personal property goes into the hands of the Exor & to the debt into the hands of the heir. Yet there are some things which seem to be personal Property which go to the heirs on the other hand some which appear to be Exon which go to the Exor. Thus Debt go to a Share to which nothing go to the Exor. They are not personal Property.
The rule of the same is to this effect, but if the
feudal is no longer fief nature, but has become
so, they at have gone to the Crown. On the other hand the
annual rent of land seems to be personal property,
but it is not a right of hereditament passing to the heir, while
the land is growing at the death of the Estator, which seems too be real, as the
coining of the rent is paid into the hands of the heir. Em-
blents now are sometimes considered as real, and
sometimes as personal property. They are thus considered by a Court of
land of the Crown to be done to them, it is a
"lawful" right. But as between the
Heir and the Heir, as also between the Service
and the Tenant, emblents now are always regarded as per-
sonal property when the Estate is determined, at an end.

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Exports Admors.

As between the heirs &c. on the emblements you will remember are always regarded as pests. Prop. There have been different opinions as to Roots, whereas this go seems uncertain, for the digging of these they will till your wounds the freehold. But judgewise it is settled by Blackstone (i.e. contrarily) but his loss is that like all other emblements or annual artificers profits they go to the Est. 53 C. 122. By the ob. said every thing affixed to the freehold no matter how slightly was considered as part of the freehold, in reality it went to the heir. But this rule is now clearly reversed for whatever is merely affixed to the freehold is regarded as part. Properly it is separation &c. materially injures that to which it is so affixed, not regarding trifling injuries or sophistry there as drawing a nail by which a Scott ing Plaff was ipso facto. This rule is now established holds equally between Land lord & tenant 4 Heyr & Exor. by Saw. &c. 894 1142 3d. 2d. 3d. 4d. 2d. 1624 3d. 4d.

Certain personal chattels called heir's goods are by the custom of Eng. permitted like real property to descend to the heir. If a tenant or intestate die possession of a farm for years, it belongs to the Est. in a tenant by a Serje for years come to the title of the Est. on he must annually add to the Inventory the surplus change after allowing for payment of rent. The rule is this, for respect to all accretions profits, they are assets of his heirs. If a tenant suffer enfeeble made a Serje, the rent in his death goes to his heir. It is a person on his lands. He must:

Note
rescissions, however distant, are real rights in the hands of
the heirs, it execution may pass from one immediately to the
other when the rescission happens. Equities of Redemption
on the Testator's mortgagees, are in equity real rights in the
hands of the devisees, but not at law. If the devisee grants
an estate in reversion occasioned, the future estate of the Testa-
tor is subject to the shall happen. If the Testator in mort-
gagees, or receive an estate in reversion, he takes in his
death as subjects in the hands of his heir, he may complete
a foreclosures. Heir in this case may also complete a
foreclosure, if he will pay the money for which the land
is pledged, but otherwise not. 163, 941, 562, 262, 410, 162, 153.

That species of personal property, called "paraphernalia" regularly does not pass to the heir in reversion. The first kind of
paraphernalia never exists in the heir. The second is only
in deficiency of personal effects to pay debts, not legacies.
This subject is considered under the title of Paraphernalia.

I. Advancement.

By Stat. Can. 2. every child except the Heir at Law
of the Testator, so long as he has received an advancement from the Father, receiving his share in case to be entitled to a distribution
thereunder the Stat. of Distributions, being what he has
thus received into the common stock, which is called
"throwing it into the pot," an ancient name for feeding
that with the rest of the Testator's estate more than
the distributive share of the other children or executors.
If a child in the life time of the Father had received
more than a just share, being of the estate, he may retain
the
Ecclesiastical Gifts and Bequests.

The present is now to deliver, it is to remember that a gift or bequest made by the father is considered an advancement. An uncle or nephew may give a child money so much; it is not his under his children a distributive share of the father's property. It is an advancement. This kind of advancement occurs only in those cases where the father dies intestate and the whole of his property; therefore, if he dies intestate, as to part only of his entire property. A child, so named by him in his lifetime, not being such advancement into his hands in order to have a distributive share of the part as to which he dies intestate. Cod. 176. Resp. 150. Wilson 446.

Many things which I shall mention are not advancements, but whatever is given for a marriage settlement, whether real or personal, is an advancement. All kinds of lands, or money to set up a house in life, can be considered as advancements, as if the debt had been on the lord it it. For value received, if it can be proved that no value was received, it is an advancement. 2628-1939. 2699 c. 400. 2190. 439. Eq. Cas. 334. 249. 243. 633.

No small trifling sums of money, in any little present, if property a parent may give his child, are to be considered as an advancement. Such as spending money, a watch, a horse. In Eng. giving a horse or watch to be considered as an advancement. But it is different in Cour. So also in Eng. Where a sum is given with an agreement, it is not considered as an advancement. 38. 431. 331. 2699 531 140. Eq. Cas. 269. 243. 2699 633.

There is a singular exception to the law of
Emiss & Admirs.

advancements in Eng. which is, that an advancement by the mother of one of her Children, shall not bar his taking an equal share with the others under the distribution. Therefore whenever a Child gets from any other person than the Father, is not an advancement. Take this as the rule. 2 P. Wms. 336.

It seems that the doctrine of advancement does not prevail in cases, where a man has property of which he is ignorant, or which he does not notice in his will. See Ch. 179.

When a man made a will of part of his property, & died intestate as to the rest, one son had a much greater Legacy, than the others, they contended that the Son who had the Legacy, Legacy could not take a distribution share of the property, as to which the Father died intestate, without bringing that Legacy into the common stock. But the C. decided otherwise, this Legacy is not in the nature of an advancement, for an advancement must be made in the lifetime of the Father. 2 P. Wms. 49.

Of Administration Bonds.

Every Admnr. must give Bonds for the faithful discharge of his trust. By the Engl. Laws they are not to give Bonds, but Ch. may compel them to give; Caution, i.e. security, they being Trustees, whenever it appears a security for any good cause shown. Act. 316. 2 Dec. 1797. C. 457. 5 Aug. 361. Shown 299.

No person can be an Admnr. until he is of age.
Excurs & Advers.

If age, the reason assigned is, that before that age he cannot give bonds. Co. 29. 3 Dec. 121. Earl. 446. Vat. 241. 338. But Judge Rees remarks as he did before, that this is not a sufficient reason, for other bonds are required of an infant. Exon; they are binding notwithstanding the principle of the E. 1. Erect. 74. Dec. 1802. 8 P. & J. 67. Co. Lit. 72. 315.

What then is the nature of this Bond? For what is the Admier liable? Why the Condition is, 1. That he will make a true inventory of the estate of the intestate as fast as it comes to his hands, and exhibit it to the Court at the appointed time. 2. That he will not embezzle any of the estate, but render a just account of the same to the Court. 3. That he will dispose of the estate as the Testator directs. If he does not inventory, or if he makes a false account, or does not account, he forfeits his bond. If he has not inventory, says the Court, it is not forfeits for non-payment of debts, as you see it is in case he does not inventory. Neither is the Testator to pay this Bond into a Court, to accumulate a forfeiture of the Bond, the an action lies as you will see even in the civil law. But if the Admier neglect to make a distribution, it is a forfeiture of the Bond. 8 P. & J. 315.
Cobes & Admirors.

Devastavit.

Any act or negligence of the Exors or Admins, by
which the effects are lost or injured, subjects him to a
devastation: he is answerable for what he has wasted
of the effects. He is not liable for any loss which may
come to the effects, provided he use ordinary care in
their preservation; the proof, if he has not used this
degree of care, he is liable, is considered as having
committed a devastation. Nor is an Exor or Admin
answerable for any misjudgment as to where the debt
was a certain sum, or for goods in expectation that
they would rise in value, but that fell: this is not
subject him to a devastation, for he wished to do the
best he could. An honest diligence ought to be used.
He is liable generally, so far as before said, only to the
amount of effects, but if he embezzles or is careless
his duty suffer, the property to be destroyed, he is liable for
a devastation, or which execution goes out in bonds
propricius, he is not liable on the footing of effects, but
defective what he has wasted. Other things may be equal to a
devastation, as if he voluntarily pay an inferior or
when there is a superior one unpaid, there is a defecti-
cy of effects. He is not liable in all cases for not Con-
verting property left him to be disposed of into money,
but, there must be a reason for it, as that it is not be-
slots to advantage. To create a devastation, there must be
done without a negligent misconduct. 20 & 431, 10

Whil, Courtiers were reconcilable at Saxe.
Eas & Advers.

...far Eve released the obligor on receiving the principal, + interest, of a debt which was unjust. without receiving the penalty, he was in terms of technical, mania, guilty of a devastavit. But Eve is liable, a liabity down this penalty - they said he had no right to the penalty - almost all the States have done the same. 

To submitting to arbitrary, amount to a devastavit if the award is not just, but judge of the Questions whether a rule so rigid as this should be enforced. Bob. 43. 2 Dec. 48.

If an Eve this Cavendish pays a debt which has already been paid, it is a devastavit. If an Eve in selling the goods of his Testator suffers a loss through want of that care & diligence which no ordinary careful man would use, he is liable for a devastavit.

The payment of an usurious note has been considered a devastavit, though Judge Ken is, thinks it would not be so. Consider the principal, illegal interest were only paid. If an Eve pays a debt bound by the Statute of Limitations, it is a Question whether it would be a devastavit, if it were a just debt. Judge Ken is, thinks it would be so. Consider. Bob. 107. 105. 106. Bag. 129. 

A devastavit is always considered as a wrong or injury done to a Creditor - the Debt is always severable only as far as a debt - if he has, said.
Causes of Adiors.

all the money he may plead, pleas administrate... When goods are lost not by the &rsquos fault, he may be sued by a bordler. Pleas pleas administrate not give the heirs in evidence. In case of a devestavit he may be charged in the bond.

This there are several Cases the act of the&lt;rsquo;regularly binds the whole. so judge in the hands of the. is cause in the hands of all this I mentioned above, but if one of them commit a devestavit he may be liable, or is not liable for the devestavit of another, unless he has directly or indirectly contributed to it, for a devestavit is in the nature of a trust.

As to the remedy the modes in the different States in the U. S. are not united, some of these are according to the English mode. Suppose it is supposed that. as the bearer of the. the plander, plander administers the causes in that place, etc. he shows he has proved out all the effects to have notwithstanding his com., as a judgment. as a judgment, but he can never get a sejourn of nonis propria, but there is a judgment but it may be said proof of property, always come in the present of not under. is to the bond of the bond of the bond of the bond.

But how are we to know when there is a devestavit? And you take as the case from. give it to the court, he said it resides in the court. the court. is the one way, but are you to take his word that the
there is a devastaat. No. In this return a sec. for issues suggesting the devastaat - the Earth comes in may prove that there is no devastaat. The facts to prove this, the judge goes to see the bond proceedings, but if he succeeds there is an end to the suit. Another mode is the sheriff does not return a devastaat but merely makes broad that you suggest or the record of the court that there was a devastaat - after that a suit of enquiries goes out, the sheriff summons a jury to enquire into it and if they return that there was one, then a specie facies may be issued, all those one as if the sheriff had returned a devastaat - the suit may be reversed that is not as in the former case. Brook. 827, 62 E. 350, 1 Dyer, 215, 5 C. 322.

Judge lower says he knows this mode is the Reports of some of the neighboring States - Bring suit of the suit, when the plaintiff files an information to admit it, then reply devastaat again - this seems a reasonable one, he does not see why it might not as well be tried in this as in any other way - the trial then to be devastaat, yet some - this is certainly much easier than the English mode.

If there be two suits, one having effects to the other none, of the former cannot a devastaat, both may be tried in the first instance in the usual form of process may go as to both. But - if no effects be found, then both will be relitigat.
a seire facias will go to both, then judgment will go to the Receiver only. If both parties have signed receipts, one only has in fact received both as liable to Creditors, but the receiver only to Assignees. Sec. 318, 2 B. & C. 116.
Exors & Admrs.

Difference between the Law of

Connecticut and the English Law.

The Law of several of the States says, as nearly as that of Connecticut says, that the personal property is only sold out of which debts can be paid, except the so-called executor's debts. In fact, not only the personal property, but also the Real property of the deceased is subject to the hands of the executor for the payment of debts, but the personal is first subjected. Then the Real by order of the lot of Probate.

In the English law, some debts are preferred to others, so that in deficiency of funds, some particular debts will go wholly unpaid, but in Connecticut, no preference is given, all debts have no priority, except debts due to the public, and sickness debts as well as sumptuary charges. These must be paid the third being nothing left to pay the other debts, all other debts are paid pari passu. On a deficiency, all the effects being averaged proportionately among the creditors of all sorts.

When the Ego is approaching, the estate is insolvent, he must apply to the lot of Probate, who will appoint a committee or authorize three judicious persons, to appraise all the property of the deceased, of which it is the Ego's duty to make an inventory, and also to adjust all his accounts, allowing such debts as are just & liquid, or reject all others, which they have full authority to do, do their part.
Exors & Admors.

In the property of the estate and the accounts the estate is insolvent, the executor may take the property or the appraisals of the estate, having strict the account, pay it out of his own pocket, or he may sell the property, the assets the more than the appraisals shall be appropriated to the payment of the debts, and if there be a residuum it shall be exercised in favor of legacies or distribute according to the Statute of the Sale of the property does not amount to the appraisals at the average must be proportionately reduced. New estate being discovered after the average is struck, the estate must be forwarded to the estate of Insolvent to get an order for a new appraisal of the estate, and he must invent new, the proceedings are the same as before. The estate discovered must be appraised. If it proves still insolvent if not the debts must be paid to the residuum disposed of according to the laws of the deceased or as the law directs. The mode of appointing Commissioners, discounting the is revised table is very respect except that the Commissioners have additional powers, there can be no appeal. The estate may reject the return they make appoint new Commissioners, but it is not done very frequently. The allowance of the Commissioners is final as it respects creditors, but not so as it respects executors. nor the share, for they can direct upon the debt so allowed to make any defense that might have been made by the testator or intestate, if they may appear to the creditor in the, if they decide the point of difficulty.
Exors & Admors.

from the Estate there must be a new average.

In Eng. the Estate has fully paid its debts the
plan is plain Administ. But in Bowch, an Ex. can no
plan plain Administ. to a Creditor, but he must find
officially that according to the average of the Probate
he is to pay but is or the pound, or whatever else the
average may be. Except when the whole Estate is
exhausted in payment of funeral charges, public or
sickners debts.

In Eng. there is no limitation as to the time
debts must be paid. In Bowch, there is a time
set by the Ct. of Probate for all Creditors to bring in
their accounts or else be barred of their debts.
A new average can only be made among those who
have come in. If the new Estate is being discovered
while these Creditors who did not before come
in, now may, or have their debts paid up to this
average, which have been paid the Creditors who came
in for the former average, if there be sufficient E-
state discoverd. The remainder shall be averaged
among those of the former Creditors, if they prove
to be a residue, it shall be distributed in disposal
of the Legacies, but if any of those of the Creditors
in any of the Creditors have been at any expense on
discovenring the Estate, their expenses shall first
be deducted therefrom.

In Eng. the Ex. gives no bond. In Bowch, he
does in the same manner that an Ex. does in
if he neglects to inventory an Estate he is liable.
on his bond. If an Euler refuse to pay or administer on his new discovered estate, a suit must be laid on his bond given for a faithful discharge of his trust, and the same is the judges of Probate, all the new discovered property will be recovered out of the Ender or Admino, the judge of Probate, and held as Trustee for the creditors. And for such refusal the Ender or Admino may be displaced, and Admino de bonis non appointed instead minister upon it.

An Euler a devestavit can never be a payable creditor, it may be paid by legatees. Our advice is, in the first instance, the devestavit is always caused in the Ender, the suit is to be on the Bond, to judge good to him. Remember that he todo whom it is allowed his reasonable expenses for carrying through the suit in the first instance.

For the same reason there cannot be an Euler in the last resort where the estate is insolvent. This is a general rule, wherever there is an admino bond, the suit must be laid by the rightful Euler, Admino is the trespasser, the damages will be thus recovered on the judge obtained to him, which ought to be assessed with the other debts. If there were an Euler of his own wrong, one Euler could not then recover his whole debt.

A difficulty has arisen as Euler, the same one will happen whenever there is an admino bond with respect to what must be done with a voluntary Fund, the nature of it is that...
it is not a right as to Creditors, but it is to be prepa-
red to act volunteers, as Legatees &c. To put a case.
The estate is represented insolvent — upon examination it is found that without the bond the estate be insolvent — but by its admission the estate to be rendered insolvent, therefore agreeably to the rule 
that Creditors must be prepared to volunteers for the 
obliges of such bond is considered a voluntary, the Commissiones reject the Bond, for such rejection the estate not only pays the debts, but there is a surplus, say $50. The Bond is for $100. Now agreea-
ably to the rule that the holder of a voluntary bond shall be prepared to all other volunteers the obliges of the bond ought to come in to take the $50 in preference to any 
Legatee or next of kins — but a rejection of a debt by the 
Commissioners destroys it, so that the debtor can have no demand on future in anyone. You see that this 
that by striking them off, he is cut out from the resis-
tance, by which above all others he is best entitled 
of he is not struck off, Creditors loose their debts in 
part. Therefore it seems that the Exor can proceed 
this way without vacating some one provision of 
Law. However judge it, thinks the difficulty may 
be evaded by the Comm in such cases taking one 
account of the Bond, carrying it into the Ct. of 
Probate, to stand as a Legacy of the first and to 
be first entitled to payment or a surplus.
Executors and Administrators

Miscellaneous Articles

Where money is voluntarily paid into the hands of the person by whom the money is to be paid into interest except in case of mortgage money, and if he put it not to interest, he is then liable to the seller of the money to pay the interest, and if he put it to interest, he is only liable for the legal interest. If the money is lost by burning said ordinary business he is not liable for such loss. A tenant may continue him to pay the money to interest and then put it into a safe and secure place, and if the money is lost, he is then liable to the seller of the money in the same manner as if he had put it into a safe and secure place. If the money is to be paid into interest, it must be paid into a safe and secure place, which may be accomplished in one other hypothesis than that he meant to profit himself thereby.

It is a principle of law that where one has power to himself by legal authority to use any property as a security for debt that he shall not be enabled from him in favor of any other executory one, where he has so used his debt by a mortgage to make it not be accusable to that mortgage, nor can on the same reason it would seem that where a creditor has proved a lease upon property by lease of accommodation, his debt cannot be so subject to the execution as though the general premises so security would not be the same as if the same were property had been leased before to render the execution?
Everett & Ainsworth

a Bankrupt, the Summa becomes Debtors an action for the said

payment, debt, for the parties are liable for the debt of the bankruptcy.

and in each case the lien under mode of receipts has been found by filing a suit in bankruptcy, and such has been the mode in

suit against the bankrupt, that have now default, and a common

law action should be joined. If both the parties should bring on to

the instant, and have common lawyers, create a standing

Judge. Everett states that the Summa of either might be sued on

the convention, that has to run, and the convention, that such

and a proportion ought not to be constituted, a judgment being

served by the convening and convening issued, the action is

obtained on this point, the Summa of the last deceased partner

can compel the debtors to make payments to him on no grounds

being opposition, to represent the last deceased partner with

power to do it.