Remarks

Vol. 43, line 3
of P. 837, the 2d
sheet, that regard
Law & Law of nature
are distinct

Refere to
Vol. 16, p. 3
Bla. 43.
Of Law.

Law in its most significant and extensive meaning is strictly a rule of action, and when thus defined applies to every species of conduct. Of law how ever thus understood there are several kinds:

1st. The law of Nature, which is the un revealed law of God and obligatory upon all men.

2nd. The law of Nations, which is merely the law of Nature applied to nations.

3rd. Municipal Law, which is a rule of civil conduct prescribed by the supreme power in a State commanding what is right and prohibiting what is wrong.

In one word: Municipal Law is a rule of civil conduct, Natural law of moral conduct, and Revealed Law both of moral conduct and faith.

The particular subject of the ensuing Lectures is the consideration of that branch which regulates civil conduct and first therefore.

Of Municipal Law.

1st. To be obligatory according to the definition it must be sure and is therefore said to be permanent, uniform and universal. It is however never more universal than its peculiar extent necessarily requires, and it is always general and not personal within its particular local limits. This differs from a compact or it is a compulsory command issued to the person obliged to perform it, whereas a compact will be
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Laws which are retrospective are plainly allowed by the Constitution of the U.S. for a prohibition making retrospective laws is also allowable to be made which interfere the obligation of contracts.
Of Municipal Law.

 unnecessarily void unless it proceeds voluntarily from the person bound by it.

2. It must be prescribed. A Retroactive Law therefore in its essential nature must necessarily be void because the definition requires with a publication of the law that no person shall be liable to its restrictions unless furnished with a knowledge of it. There is however a material difference between a Retroactive and an Ex post facto Law. The first constitutes a genus whereas the last is a species. A Retroactive Law alone which has a retrospective view, and it is entirely immaterial whether the application of it is penal or remedial. The Supreme Court of the U.S. decided in the case of Bull v. Caldwell that a retroactive remedial Law can never constitute an Ex post facto Law as the latter is prohibited by the Constitution of the U.S. In Connecticut after a statute of limitations had run on an Intestate Estate, the Legislature passed an act reviving the particular claims of the creditors to the estate, and enabling them to collect their respective debts. On a writ of error taken to the Supreme Court of the United States it was determined that the Legislature had the right and that this was not Ex post facto.

3. The rule must be prescribed by the supreme power in a State. This always means the Legislative power, as in politics these are convertible terms. Thus far as to the discretion of the Municipal Law.
Remarks.

The preamble is no part of the law but generally sets out the reasons for making it.
Rules of Interpretation of Laws.

1. The words of a law must be generally understood according to the known usual and popular signification of them. This rule is not however universal, since terms of art are to be understood according to their acceptance among the learned in that art. Thus, when a technical term of the Common Law has acquired a fixed signification and is used in a Statute, the Statute is to be construed according to the Common Law construction. As for instance the word "credibil" as applied to witnesses in the Statute of Wills is construed as the it had been compiled.

2. If words are dubious in may ascertain their meaning from the context, with which it may be useful to compare a word or a sentence; whenever they are ambiguous, equivocal or intricate. For this purpose the preamble in often resorted to, for assistance in the construction of the Statute. On this principle also, other laws made by the same legislator, respecting the same subject may be compared with the dubious one to obtain a just and proper construction.

3. The words in which a rule is couched are always to be understood as having reference to the subject matter of the Law. As where the English Statute of Edw.3 forbid ecclesiastics purchasing provisions at Rome, it would seem according to the common understanding of the word "provision" that it prohibited purchasing grain and other victuals; but when we consider the subject of the Statute we may presuppose the refutations of the Papal see, and when we learn that nominations to
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The word 'generality' in the proper word and thus the definition will be complete.

1. Mod. 344.
2. Bar. 652.

4. Ex. 62:61
5. Co. 2:6
6. 19 2:14:
7. 2:66.
8. 892:

9. Bsa. 64:63
10. 67
Rules of Interpretation for Law

I. The effects and consequences of different constructions are to be regarded in order to select that which is best. The rule is, that when words bear either none or a very absurd signification if literally understood, we must a little deviate from the varied sense of them: But where the meaning is plain no consequences are to be regarded for this would be assuming a legislative authority.

II. The spirit and reason of the Law must be consulted when the words are dubious, rather than the letter of it. The object of constraining Law is to discover the intention of the Legislature, and from this object arises the Equity of Law, which means nothing more than the Equitable construction. The Equity of the Law is defined by Gronious to be the correction of that wherein the Law by reason of its universality is defective. This definition W. G. considers correct as far as it goes, tho' it is not sufficiently extensive to include the spirit of the subject.

Municipal Law is of two kinds 1. Lex Scripta 2. Lex non Scripta

Of the Law non scripta or unwritten Law. This is called the unwritten law because its original institution is not set down in writing. It derives all its authority from general immemorial usage, which implies general acquiescence of the people and legislature in the adoption. It consists of three kinds, 1. Common Law properly so called,
Remarks

which was in the latter part of the sixteenth century. 1681, 637.

(2) in the same manner as a roll of Parliament is—

(3) Records of Courts can never be contradicted but
decisions of Courts may be as they are liable to mistakes

2 Inst. 338, 239.
2 Pococke, 169.
1 Bla. 68, 26.

1 Bla. 64.
Rules of Interpretation for Laws...

2. Particular customs authorized by local usage.
3. Particular Laws, by custom observed only in certain Courts & Jurisdictions.

II. Of the Common Law. This is merely a general custom extending throughout a State. It may therefore be termed customary law. It is founded on immemorial usage and is called Common Law, to distinguish it from particular and local customs. A custom to be immemorial must extend back to the time of legal memory at the accession of Richard I. to the throne of England. This rule however was not established till about 60 years after this accession. So that what at first required only 60 years to transcend the bounds of memory, now requires centuries. It is built on the decisions of Courts of Justice, may be found in their Records, Reports, and in treatises of learned sages of the profession preserved and handed down from the time of highest antiquity.

Question of facts are decided by the jury. Questions of Law by the Judge, and Courts of Justice. Records and the decisions of Courts are not the common law itself, but merely evidence of the common law. This evidence is merely prima facie evidence and may be rebutted by the testimony and circumstances; and all these decisions may be overruled by every succeeding Court & Judge. But if these decisions were conclusive evidence, or constitute the common law itself they could never be overruled.

A Precedent is a former judicial decision on this point in question & therefore affords evidence of the law also. A Precedent should always
Remarks.

(6) A precedent is not to be overruled merely because the reason of it is not discovered.
Precedents are bound makers of the law.
If it is necessary that they should be done away with, let it be done by the legislature for
statutes have not a retrospective operation, but
decisions have.
Rules of Interpretation of Law...

be followed, unless full proof and unjust. And it is from such
evidence, the new proponent is on him who objects to its being law, if he
intends to retract it by other circumstances.

But a question arises, how did the Common Law originate? There clearly
must have been a time when it did not exist in fact, although in a legal sense.
There were wars, and the system in truth was created by courts of justice,
however legal precision may reject by courts the idea. Society cannot
exist a moment without either customary or positive laws, and until
any custom of this nature is prohibited by the Legislature, every cus-
tomary law established by courts of justice is sanctioned by the tacit
agent of the Legislature, and therefore obligatory in every view.

Every new decision is not new law. But it is said to be merely a
new exposition of the old Common Law which has always existed but
never before promulgated. Thus Lord Mansfield is said by Justice Buller
to have created the whole system of the Law Merchant himself. Yet he
pretends to no new branch of the Common Law, but merely an elegant ex-
position of a column which has long beautified the fabric, but has
been for centuries screened by the mists which originated from negligence
and weakness.

II. Of particular Customs. These are nothing more than local usages &
their differ from a prescription, which is merely a personal usage. Besides
Customs derive their authority from the same source, and rest in the same
Remarks

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Rules of Interpretation of Law.

Foundation as the Common Law. They are laws to all intents and purposes throughout the limits to which they extend. Thus the custom of giving land is an absolute law throughout the County of Kent.

This a general rule that he who would avail himself of a particular custom, must plead it. For it is the duty of judges to notice a general custom, ex officio, yet they cannot regard these until pleaded, more than a bond or any other private security.

In pleading a particular custom, two things are to be regarded, 1. The existence of such a custom and 2. That the claim arising from it is within its purview and operation.

Again as the Defendant may regularly deny any plea of such a custom as pleaded, as existing, the Defendant may dispute the fact and the issue will be tried by the jury and not the Court, this differing from the trial of Common Law principles. But if the same particular custom has been previously determined and recorded in the same Court, the jury cannot try the issue.

There is a certain system of unwritten principles which is called with those termed "Custom" denominated Law Merchant. This Judge Blackstone denominates a particular custom. But there are three substantial reasons which militate against this idea of the learned Judge.

1. It is not a local custom nor confined within certain limits but is restricted only to certain transactions, called Mercantile.
Rules of Interpretation of Law

Neither is it particular custom as it is not a local usage. 2. This is never required to be specially pleaded as a particular custom is. 3. This is never tried by the jury nor supported by witnesses, but decided by the judges as the Common Law. But if a new case arises, the judges sometimes examine witnesses from a disposition to inform themselves, and conform to the practice of the Merchants. But even in this case, after Lord Mansfield had consulted Mercantile Witnesses, he condemned the practice and overruled their testimony—From these circumstances it must be inferred that the Sea Mercatoria ought not to be held a Local usage.

Construction of Customs

Of the Validity of Customs

Customs to be valid must be accompanied with several circumstances.

1. They must have been immemorial, or they must have been used so long that the memory of man extend not to the contrary.

2. It must have been continued without interruption. But this interruption must be of the right itself to destroy the custom, as no forbearance of exercise will destroy this right. But if the commencement of the right can be shown, the right itself will be destroyed.

3. It must have been peaceable or acquiesced in, or that common consent which originated the immemorial usage will be wanting to support the custom.

4. It must be reasonable or rather taken negatively, they must not be unreasonable. Unreasonable I say, because it is not incumbent on the
Of the Validity of Customs

It is the duty of the party pleading it to show the custom to be reasonable. On the contrary, the party disputing it must show its unreasonableness to overthrown it and destroy its efficacy.

5. It must certain. Certainty is equally requisite to the support of general as to particular customs and to both as to Statutes or Contracts.

6. Customs so established by consent must be when established compulsory. And as must general customs in order to be binding.

7. Customs must be consistent with each other and hence two contradictory customs will destroy each other.

If a party intends to reject any custom pleaded by the other he ought to deny its existence. For if he admits its existence, he then relies upon another inconsistent with it, the rule abrogates both, and it would be attended with a manifest absurdity.

Construction of Customs

Those customs which are in derogation of the Common Law are to be construed strictly and never extended to other cases of a similar nature. Thus by the custom of gravel-kinds in Kent, an infant may convey all his estate in fee simple by deed of Settlement, yet he cannot convey a life estate, neither an estate for life or years, because it is in derogation of the Common Law.

In England, it is a general rule that Customs submit to the King's prerogative. Thus if he tye land in Kent it descends, according to the
Remarks.

[Handwritten text]

18th. 67.
77. 80, 2.

[Paragraphs of text]

18th. 77. 80.

[Continued text]
Construction of Customs.

Common Law of the realm & not according to the particular custom of Court.

III. Of Particular Laws which are generally observed only in certain Courts, and Jurisdictions. These are generally in Great Britain the Civil and Canoon Laws of Rome. They differ from particular customs which have local usage, as those have merely a local jurisdiction. These derive all their force in Great Britain from their adoption and not from any intrinsic efficacy in their nature. This adoption may have been by immemorial usage, or by act of Parliament. In the last case they cease to be unwritten Laws and are equally binding with any Statute. But as we are considering unwritten Law at present, the first peculiarly demands our present attention.

These particular unwritten Laws are binding in England because they have been adopted and actuated in their Courts of Justice.

For the same reason in these United States the Common Law of Great Britain as far as it has been adopted derives its force altogether from a similar sanction. Under these circumstances therefore the Common Law of England ought not at this present time to be rejected in any part of this Country, unless it can be proved to be absurd, unjust or inapplicable to our particular circumstances. It has been generally adopted and has acquired general efficacy as the rule of our civil conduct. The true rule seems to be this. The common Law of England is prima facie binding here, and those cases in
Remarks.

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[Signature]

4th April 1829.
Construction of Customs.

which it is not binding are exceptions to the rule. The exceptions are when
the principle are wholly inconsistent with our form of Government, but
these only serve to strengthen and confirm it.

A Question has long been agitated how far the English Statute
Law is binding, independant of its special adoption? To decide this
it will be difficult: In the State of New York they have been adopted
in major and in many other states several of them have insuper-
tably gained ground and respect. Thus the Statute "Atoni" is con-
sidered obligatory in every State without the sanction of Legisla-
tive interference, and so in the Statute of Gloucester taxing
otherwise the Statute of Westminster 2. on which is founded the action
on the Case.

The present rule of adopting English Statutes appears to be
arbitrary, since without any demonstrable reason we have conferred
all the English Statutes enacted prior to the middle of the
18th century of Hen. 8. as obligatory and conclusive upon us. The proper
area for a distinction that of the Colonization of America, and
no other can be admitted with reason.

Can a Common Law distinct from the Common Law
of Great Britain exist in Great Britain Connecticut?  
This question has excited much warmth and solicitude among
the Jurists of our State particularly on the first establishment of
Construction of Customs.

The Federal Government before the Circuit Court of the United States while Judge Webster presided.

Mr. Gould is convinced of the necessity and consequent propriety of such a system: for where their common law is inapplicable to our state, we must have another variant from theirs, or a failure of justice will inevitably follow.

So likewise when an adherence to theirs is attended with injustice or injustice we must unavoidably have one of our own to regulate our courts.

The Common Law is a system of Ethics as applied to all our cases of perfect obligation. It is a perfect system of principles which in its various ramifications is exactly commensurate with the wants and necessities of Mankind. But the Statute Law can never answer this purpose. It is impossible that the Legislature should make positive Laws for every transaction. Civil Society can never exist without a customary Law. The English customarv Law in certain respects we never can have; nor yet therefore requires that we should have a Common Law dictum from theirs. But the advocate for the opposite opinion contends that we can never have a Common Law, because this country was not settled in the time of Richard I., and therefore we can have no immemorial usage. I answer that 60 years was sufficient to establish their originally, surely the same time should be adequate to our object. And that the very objection
Construction of Customs.

comprises an absurdity in terms. For to say we must have immemorial usage to have a Common Law distinct from the English, is to say that we must have their Common Law rules if we have a distinct Common Law. So that we can have no distinct and independent Common Law, because it will be distinct and independent from the English system. How proposition & absurd!

II. Of the Lex, Scripta or Statute Law.

This general division of Municipal Law is said to be written because its original institution is committed to writing, and the Roll or original Record is the Law itself. It is supposed that many parts of the Common Law are derived from ancient Statutes which are not now extant. How many rules are thus derived it is difficult to determine and quite unimportant. The most ancient Statute now extant is the Magna Carta of King John as affirmed by the Statute of New 3. These ancient Statutes which were enacted prior to the Colonization of Connecticut are here equally binding with the Common Law.

I. Statutes are either Public or Private.

Public Statutes respect the whole community.

Private Statutes only regard particular persons and private concerns, and whose rules do not extend to any other persons or concerns and therefore are not referring to the civil conduct of the community at large. Thus the distinction between them is
Remarks.

(1) a stat. respecting monies being paid into a town treasury in private.

L.C. 76.

D.C. 496.

S. H. 120.

R. 551.

2. B. 639.

1536. 86.

L.C. 77.


4. B. 27.

1. Bar. 640.

R. 429.

1562. 47.

1. B. 640.

12. R. 249.
perfectly apparent, yet the application of this distinction in practice is
not so obvious as to require no elucidation. The bulk of statutes relate to
Public and General conduct. And there are particular cases where statutes
that relate immediately and in terms to particular classes of men only,
are notwithstanding considered as public acts and regarded as the whole
community: As for example, a statute respecting "Mechanics." This would
be denominated a public statute, but if it regarded Shoe-Makers or Tanners
only, it would be private. The distinction is very nice and the true rule
for ascertaining it appears to be this, "If the class of persons to whom the statute
relates is a genus, it is a public act. But if the statute contemplates what
is denominated a species it is private." Now as species is a relative term
the difficulty which arises naturally requires a succeeding rule, which is
this, "If the highest division of the class contemplated, is capable of a sub-
division into classes it is a public act, but if it only denotes a subdivision
into Individuals it is then a private statute."

In England, however, every statute relating to the king is a public one,
for he is always regarded a "Parens Patriae." The head of the Body politic,
a known and independent branch of the constitution. For this reason, a statute
inflicting a penalty or requiring such service for the king (as in the bounty
for the State) although its operation may be confined to certain individuals:
yet is considered a public act. So likewise any law which immediately re-
lates to the public revenue, is public, although it affects only a species of men.
Remarks

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12 Mar. 63.
Of the Sex. Scripta or Statute Law.

Thus a law imposing a tax on every garment that is made by a Taylor is a public law; since the public wealth is benefited by it. For example, the Statute of Frauds and Depositions is a public act. Scheinwitz's Statute extending to all 'Mechanics.' But a law respecting Blacksmiths or Tailors is merely a private Statute, since the highest class of Tailors is capable of no decision above Individuals.

II. Statutes are either declaratory of the Common Law or remedial of some defects in it.

1. Declaratory Statutes merely declare what the Common Law is or has been. They make no new Law, but merely expand the As one and the Legislature in these Statutes virtually acts in a judicial capacity, which appears improper, as it is the province of the Legislature rather to make Law than to declare it. The Statute of Connecticut, which declares the tenure of lands held in fee simple is merely declaratory; it was enacted merely to settle a disputed point, & declare that the people of this State had an allodial property in their lands. An absurdity in terms! since fee simple, and allodial property are entirely independent, the first expunging a title gained from a Superior, while the last implies an independent title. But since their intention is understood, it is immaterial.

2. Remedial Statutes introduce new Laws, either by supplying the deficiencies, or abridging the superfluities of the Old. All Statutes which do not declare the Old Law, but create new Law, are Remedial. As for in-
Of the Sex Scripta or Statute Law.

The great body of all statutes consist of Remedial Laws. Again—Those statutes which inflict a penalty or punishment of any kind are denominated Penal Statutes. The word penalty in its most extensive acceptation, is synonymous with punishment, but commonly used to denote pecuniary amends. And in strictness, all statutes giving higher remedies than the rule of natural justice require, doth not so considered in the books. Thus a statute giving treble damages is sufficient to satisfy the requisition of natural justice.

A statute not inflicting a penalty of any kind is denominated Beneficial or sometimes Remedial, doth in the last case not as distinguished from Declaratory, but penal.

The statute giving costs to a successful party in a suit is penal, it always so considered as costs were never known at common law. They regarded their first introduction a species of penalty inflicted for a failure in justice. This species of penalty was substituted for the ancient amends for false claims by the Statute of Glouchester 6 Ed. 1st.

Altho' a statute inflicting a penalty is called a penal statute, yet as many statutes give the whole or a part of the penalty to him who sue for it in action brought by an individual in his own right, to recover it is broad a civil action; and the declaration is amendable by the Statute of but a penal action is not. This distinction is very material as many rules apply to penal which do not to civil causes, so if the action is to recover part for
Of the Sex Scripta or Statute Law.

The individual & the residue for the State, it is a civil, not a penal action. The common action on such Statutes is the action of Debt, but in Connecticut the action of Indict, asump. has been adjudged appropriate.

Lastly all Statutes are called either Affirmative or Negative; but the distinction consists in the phræasology; the sometime different constructions to them are given in the Books.

In England, every Statute commences its operation from the first day of the session of Parliament in which it is enacted unless some other time is limited for its beginning in the act itself as is most frequently the case. The reason of it is probably this. The whole session is considered as one day— as the session of any Court in a day is esteemed the same, and no fractions of a day are allowed.

Thus like all retroactive laws which have a retrospective operation it may be oppressive, since on the last day of any session, a new felony may be created & one who has accomplished an innocent act during the session may be liable to punishment.

If follows from this, that if two acts are passed the same session on the same subject the one repeals the other, as there is no priority, if they are inconsistent both must be abrogated. But since there is a rule that if two Statutes are repugnant the last repeals the first, there is one authority which goes to the destruction of this legal fiction and establishes the law enacted last in fact.
Remarks...
Of the Law Scripta or Statute Law.

In Connecticut, there is no definite rule respecting this subject, but it is universally agreed, that no person is bound by a law until all persons have enjoyed the means of obtaining its knowledge.

Of the construction of Statutes

I have before observed that by construction, is meant the discovery of the intention of the Legislature, and to construe a Statute Equitably is to ascribe to it the intention of the makers of the Law. So this is the discovery of the intention of the Legislature, the following rules of construction are intended to aid the mind in making that discovery. Very frequently the construction will turn upon the nicest rules of grammar and on very subtle and artificial distinctions.

I. In the construction of Statutes and especially those which are remedial, three points are to be considered. 1. The old Law. 2. The Mischief. 3. The remedy, that is:

1. What was the common Law when the Statute was made?

2. What was the Mischief for what the common did not provide.

3. What remedy the Legislature has provided to cure this mischief.

The two first, are those which are principally to be regarded in construction. These will show what remedy was intended to be provided.

II. Penal Statutes according to the general rule, must be construed strictly i.e. according to the letter of the Statute, and not according to the spirit of it, Ex. gr. The Statute of Edw. 6th enacted that those who were convicted of stealing horses should not have the benefit of Clergy, the
Modern decisions have been heard upon this rule since 1821. Mr. Ryan says that the intention of the legislature is to be followed in all cases. 4 T. R. 2.

It is a general rule that if the repetition of an offence involves an increased penalty, the offender must be subject to the increased penalty unless judgment has been given against him for the former offence and unless the thing was done before the second offence was committed.
Of the Construction of Statutes.

Court adjudged that this did not extend to him who stole but one horse. This rule does not seem to have been understood as it ought to be. To understand the rule it must be remembered that penal statutes are to be construed strictly against the subject, but equitably for him. If he is within the letter of the statute, and not within the reason of it, he cannot be punished under it. The true meaning is this; you cannot consult the reason or spirit of a statute to bring the subject within it, within the letter of it, but you may consult the reason of it to bring him out of the letter of it. It is a rule that the penal code shall be construed favorable to the subject.

It follows then, from what has just been observed, that no person can be subject to the provisions of a penal statute unless within both the letter and spirit of it. For example. A statute declares that any person who commits a certain act shall be guilty of felony. Now if an idiot does this act, he is not guilty of felony.

And indeed it is a general rule that any universally expressed in a statute does not include any person legally incapable. Thus if a new statute is made containing ever so general expressions, infants, idiots, etc. are not included unless particularly named. The rule that penal penal statutes are to be construed strictly against the subject has not been uniform. Thus the statute 25. Cod. 3. declares it treason for a servant to kill his Master’s life. The servant this clearly not within the letter of the law, was by the
Remarks.

(i) one reason is the sovereign is the party offended and relief must be had from its own laws.

1 Hen.Bl. 23.
3 Tan. 799.
Of the Construction of Statutes.

The court extended this to the servant who held his Master's wife. The servant the clearly not within the letter of the law was, by this decision lost within the reason of it.

It is a general principle that the penal laws of one sovereign State cannot be taken notice of in another sovereign State, so as to subject the citizens of other States in this State. If a murder is committed in one, and the offender flees into an other State, he cannot be there punished, but must be brought back to the State whose laws he has violated. If the State (who must be a party in the suit) should prosecute the offender before the Courts of another State it would be degrading herself to the rank of an individual; and besides, the other State would not take cognizance of it.

The penal laws of a sovereign State are therefore local. And here it is that an act of confiscation in one State cannot affect the partizanship in another. This border between the different States of this Union as well as between us and any European Country. This question was agitated in the case of Kellogg vs. Batson in before the inferior Court of Connecticut, and from thence came before the Supreme Court of Errors who merely said that the common law principle was a dangerous one; but did not in any way impair it. Every sovereign State in this Union is to this State a foreign State.

It is not over sea, mountain, or river that makes a State a foreign one but the sovereignty of it.
Of the Construction of Statutes.

This is a rule that when an offence has been repeatedly incurred by the continuance of an offence, only one can be sued for at a time, as the penalty of $1 per week given by our Statute for overflaying the lands of another. Here the penalty for one week only may be sued for at a time. The penalty is given for continuing the nuisance each week. To oblige him to remove it, and if he is prosecuted for the first week, and the penalty recovered of him it will generally produce the effect which the law intended. viz. a discontinuance of the nuisance.

Again. This is a rule that if the repetition of the offence incurs an increased punishment the person is not subjected to the additional punishment or penalty until judgment has been rendered against him for the first offence before the second was committed, for it does not appear that the second act is a repetition of the offence until the Court have first rendered judgment against him. And if it is not stated in the second indictment that he has been convicted for the first offence, this shall be punished as being the first offence.

These rules are all founded on the idea that Penal Statutes are to be construed strictly against the offender; on the other hand Remedial Statutes are to be construed liberally.

III. Thus where a Stat. of Edw. II gave a remedy against executors the words "to extend to Administrators" was construed to extend to Administrators, and so where the Statute "de bona exportatione" gave a remedy to Ex. II was construed to extend to Administrators.
(3) Because they are presumed to express precisely the intention of the legislature—for the words of explanation must be literally taken or there might be endless construction.

(4) Different parts of a statute are so to be construed that the whole if possible may stand together. This applies to contracts, deeds, wills, or executory agreements as well as statutes.
Of the Construction of Statutes...

But this it is a general rule that remedial Statutes are to be construed literally; yet a Statute taking away a Common Law remedy is to be construed strictly. Thus the Statute of Limitations is to be construed strictly and not to be extended to analogous cases.

So also the words of Explanatory Statutes cannot be extended by beyond what the letter will warrant. The same with the declaratory of the Common Law.

Where Statutes are partly penal and partly remedial the construction is to be strict as to the penal part, and liberal as to the remedial, which will apply to the State against fraudulent conveyance in Connecticut.

The different parts of a Statute are to be so construed as that the whole Statute (if possible) may stand and take effect together.

But a saving totally repugnant to the body of the Statute is void, as if an act vests land in the King and his heirs, saving all per son right or vested interest in the land. Saving the right, in either of those cases the saving is totally repugnant to the body of the Statute, and is for void.

Where the Common Law and a Statute are repugnant to each other, the former gives place to the latter.

So if two Statutes are opposed to each other, the one last enacted repeals the first one. And this upon a general principle of universal Law that "leges posteriores praesentem contrarias abrogant." So if an after clause of a statute differ from a former clause, the last is to take effect.
Of the Construction of Statutes.

And repeal the former: for such is presumed to be clearly the intention of the Legislature, and their will or intention in the Law. This rule is distinctly from one which has been laid down, "That a repealing totally referable to the body of the Statute is void." For in the case of this repealing prevails, there is no law made, it being inconsistent with the whole provision of the Statute.

Every Statute is in its nature repealable. Therefore no clause in a Law that it shall not be repealed is void. This has been several times attempted by English Parliaments but could never be effectually for a subsequent Legislature has always power to abrogate, suspend, qualify or make void any Statute made by a former one notwithstanding any words of restraint or prohibition contained in such Statute. It has been declared by an English Statute in the time of Edw. 3 that all statutes contrary to magna carta should be void, yet subsequent Parliaments have attempted to make many clause therein, and such subsequent acts have been constantly held to be in force.

But the Law never favors a repeal of a former Law by implication, nor is it to be allowed unless the iniquity be quite plain. (See 2 N. Coke says) it carries with it a reflection on the wisdom of the former Parliament.

There are two or three rules with respect to the construction of affirmative Statutes, in which Mr. Gould does not discover
Remarks

1. 2 Sam. 30.
2. 1 Kgs. 49.
3. 1 Kgs. 206.
4. Psalms 337.
5. Psalms 89.

2. Kurr 203.
11. Co. 63.
29. Titus 32.
Rv 2. 293.
any good sense. It is said to be a maxim of law that an affirmative Statute does not abrogate the Common Law. This is not true: for an affirmative Statute does repeal the Common Law if it implement or of it. Suppose the Common Law says that a Def. in a civil action shall have 6 days' notice: and a Statute is passed declaring that he shall have 12 days. This is an affirmative Statute and repeal the Common Law allowing but six days. If the Common Law proceeding, and a Statute prescribes a particular remedy by summary proceeding, the offender may be prosecuted either at Common Law or in the method prescribed by the Statute, because this sanction is “cumulative” and does not expulse the Common Law punishment.

The second rule in which Mr. Gold does not discover any good sense is: That an affirmative Statute does not repeal an affirmative Statute. This rule is arbitrary and in most cases unmeaning and perfectly nonsensical. For exactly the same rule may be laid down the reverse in negative terms and be equally true. It is perfect nonsense to lay down any positive rule respecting affirmative Statutes, for the intention of the Legislature is the sanctum sanctorum to direct you to a court construction in this case, for the true rule see 2 Term 9 P.L. Henry. But these two rules were never intended to apply to express clauses of repeal; for an express clause will repeal a former Statute.
Remarks.

[Handwritten text not legible]
Of the Construction of Statutes.

Another rule for the construction of Statutes is; That if a repealing Statute is itself repealed afterwards, the Statute originally repealed is hereby revived, because the Legislature by removing the repealing Statute show clearly an intention that the former should again be in force.

If a Statute has been repealed by three different Statutes, and only two of the repealing Statutes be repealed, the third continues in force, repeals the original Statute. - It can never be set up as long as one of the repealing Statutes remains. It is not probable that such an instance will often occur tho' it is possible.

On the other hand suppose a Statute which has been repealed be revised by a subsequent Statute, the repealing Statute becomes of no force.

It is said down as a rule that if a Statute be repealed all acts done under it while it was in force are good. But if the subsequent Legislature declare that the law was void in its creation, all acts done under it are also void. The 1st clause of this rule is good Law. — But the 2d part of it is clearly not defencible on any ground. It is a doctrine which is monstrously dangerous to society, and one which can never be adhered to without totally destroying the most valuable rights of the citizen. — for according to this doctrine, if a subsequent Legislature happen to differ in opinion from a former one, they may declare their act null, then enforce all acts which have been done.
Of the Construction of Statutes.

In conformity to an existing law of the land must by the subsequent act of legislature, be set aside as illegal. And further, while the law continues in force & not disannulled, the civil rights of the citizen must be regulated by it, and his disobedience of it will assuredly be punished. Now how! Now how! That must be made a pernicious doctrine!

It is a general rule that Statutes are not to receive such a construction as would give them a retroactive operation beyond the time of their commencement; this rule has in a number of instances been followed by many unfortunate circumstances.

It follows from the rule that if an action be commenced for an offence & the statute is repealed before judgment and a new punishment is inflicted by a subsequent statute, the offender must escape punishment. For he cannot be punished under the old law now repealed nor under the new one enacted since the commission of the crime. This, therefore, advisable whenever a penal statute is repealed to insert a provision that the statute shall remain in full force so far as is necessary for the punishments of all violators of it antecedent necessary for the punishments to the repeal—A case of this kind happened not long since in the State of New York, a man was prosecuted under the statute for forging, after the commission of the crime and before the trial, the Legislature repealed the statute without making any provision for punishing such as had violated the law.
In penal statutes, if a higher or lower punishment is inflicted for any given offence than was inflicted by an older statute, this statute is repealed. If a penal statute is made inflicting a less punishment than the common law, the common law is repealed. This will not hold here; a conversp.
Of the Construction of Statutes

...and a new Statute was made inflicting a different punishment, the offender being brought into Court to be tried, the Court unanimously declared that the man must escape with impunity, for he clearly could not be punished under the old or new Law (as would be convicting him under the Statute). 

But tho' it is a general rule that a Statute ought not to be construed as to give it a retrospective operation, yet a covenant to do something lawful at the time, if indeed unlawful by a subsequent Statute it is invalidated. If the covenenter not bound to a performance, as if he covenant with a Merchant in France to deliver him there a quantity of gunpowder, and afterwards our Legislature enact a law prohibiting the exportation of it to that Country, here the covenenter being prevented from executing his covenant, he is not bound to perform it. The Statute ought not to affect the Covenant, and indeed it does not directly do it, but it does virtually do it, by prohibiting such exportation. This is rather a qualification of the general rule, than an exception to it. Mr. G. says the Covenant here mentioned is considered as made under the tacit agreement that it shall be subject to the act, which the Legislature may see fit to pass.

So on the other hand if one covenant not to do an act which a subsequent Statute makes it his duty to do, the performance is prohibited or more technically speaking, it becomes impossible. If the covenanter
Remarks

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17th tbl. 65

17th tbl. 65.

[Signature]

[Signatures]

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[Signatures]
Of the Construction of Statutes...

Therefore, if an apprentice hire should contract not to leave his Master, our Country should be invaded, and a Law should command all persons under 21 and over 16 years to appear on the Frontier of Country, the apprentice is not bound to perform the covenant.

But if a Man covenant not to do anything which then was unlawful, and a Statute comes and makes it lawful, such Statute does not repel the Covenant.

If a contract is declared illegal by Statute and after a contract of the kind is entered into, a subsequent Statute is made repealing the prohibition Statute, this does not make the contract good for it being originally void and no after act can cure it.

If before the time at which the party is to perform his contract the Legislature, by an act, render a performance or to part illegal, still a Court of Equity will so far as consistent with the subsequent Statute, decree the other part to be performed in specie. And I presume it would be enforced at Law, if the case is adapted to a common Law remedy. This is decreeing according to the rule of "ejusdem". The rule is the same if a literal performance is prevented by the act of God.

There are two clauses in the Constitution of the United States which may be mentioned in this place.

The 1. is that no ex post facto Laws shall be passed by any State in the Union.
Remarks

Of the Construction of Statutes

Which the Courts of U. S. have decided to mean penal retroactive Law.

2. That no law shall be made impairing the obligation of contracts.

Mr. Gould knows of no decision under this clause; it is difficult to say how far the rule which have been laid down, would be applicable to the same. This must be believed: that if a contract was made by a citizen of this State to export a quantity of Gun powder to France, and a war breaks out between us by which all commercial intercourse is prohibited, here he presumes our Courts would consider the Contract at an end.

It is a rule that a statute requiring the performance of an act which is impossible is invalid.

It is said by Coke that Statutes contrary to reason or the law of God, are void. This proposition appears to be totally indefensible.

A moralist may say, that the law of nature is paramount to all other laws; but as a member of society no man can be permitted to hold this doctrine. For if this is to be the case, every Judge is to decide by the light of his own reason what Laws are contrary to the law of nature. This would be placing the judiciary over the heads of the sovereign powers who make the law. Whereas it is the province of the judiciary merely to administer justice pursuant to the law when made by the sovereign Power. Mr. Gould presumes that this is the true rule with respect to Statutes contrary to reason.

That if there arise out of a Statute, collaterally, any absurd conse-
Remarks

(8) Judges are the proper persons to decide on the constitutionality of a law. It is now one of the business of the legislature to expound the constitution than to administer the laws of their own making or expound them—and it is certainly or proper for the court to say that laws are repugnant to the constitution or to each other.

(8) "May" here means "must" "shall."

(m) This is not however universal rule.
Of the Construction of Statutes.

questions, manifestly contradictory to common reason, it is with regard to these collateral consequences, void if a legislature will positively pass an act which is unreasonable. Courts of Justice are bound to enforce it.

But whether a statute, law opposed to a written constitution, is a different question, and is now universally acknowledged, that such statutes are void. If there is a repugnancy in the statute, irreconcilable with the Constitution, the Court may, and must say that the statute is null. The Constitution is intended as a check on the law-makers. And the difference between a constitution and a statute is that the former is paramount to the latter. This question has been repeatedly decided not only by the Courts of the United States, but also by the State Courts.

This subject is luminously treated of in Vol. 2 p. 293. of the papers entitled the "Federalist" written by the late General Hamilton under the signature of "Published".

When a statute says that a court "may" do a matter of justice between parties, it then becomes the duty of the Court, and they must do it. Thus a statute of Wis. and Mary declares that a court "may" award costs to a defendant who is acquitted in a penal action; here it was contended that the statute by using the word "may" left it at the discretion of the Court. But it was determined not to be discretionary with (m)
Remarks...

(3) Yet this has a particular qualification, for if the offence is created by one substantive clause — [Hawk. 3d. 111.]
and the new jurisdiction is created by a direct [20. 2d. 90. 114.]
direct, the court of Kings Bench is not excluded;
but if both are created by one clause, the ordinary
courts have no jurisdiction — 2 Hawk. 304. Ch. 11
524. Cr. 2. 643. 2 Hale P.C. 5.
Of the Construction of Statutes.

The Court, but that they must do it.

It seems to be a general rule that Courts of a general and establisht Jurisdiction, are not to be ousted of their jurisdiction by a mere implication of Law. Thus if an English Statute make a new Law and oblige a particular Judge to execute it, the Court of R. B. is not ousted of its jurisdiction, unless the Statute contains express words of exclusion nor by analogy would it out the Superior Court of this State of its Jurisdiction in case of a similar Statute made by our Legislature. The provision the new Statute has made is construed thus: That the new Judges are to have concurrent jurisdiction in this case with Courts of a general jurisdiction.

But it is an unsettled question, that if a Statute create a new offence and establishes a new jurisdiction, whether the Courts of ordinary jurisdiction are to be ousted. Say it is a question because Hale and Hawkins so consider it. Mr. Good supposes that the Courts of ordinary jurisdiction are not ousted in that case, but have no authority to take cognizance of it. The Courts of ordinary jurisdiction are not in this case ousted of any jurisdiction already vested in them, but merely excluded from a participation with the new Court in the trial of a new offence, as these Courts of ordinary jurisdiction never could take cognizance of this offence, they are ousted of nothing nor any thing taken away from them.
Of the Construction of Statutes.

It was formerly a question (this it is now settled) that if a statute authorizes a body of men to do acts by vote of a majority, it constitutes a certain number of those men a quorum, here a majority of the quorum is not sufficient to take a vote, unless it is a majority of the whole number of men composing the body.

An authority conferred by statute on two or more individuals in joint, is not several unless so expressed, and therefore if one dies the survivor or survivors cannot execute the authority. As if A, B, & C. are authorized to sell an infant's property, here neither one nor two of them can do it, but all must join. And so was the decision in 3 E. 3. But by whom the assembly appointed two persons trustees to an insolvent debtor, or, one died if the court said that as the authority was joint, authority was left in the survivor.

But if a power of a public nature is given to several the act of the majority, if all be present is binding on the whole. As if A, B, & C. are appointed commissioners for a public purpose and all are present, if A, B, & C. to a certain measure, and C. opposite it still it is good and binds the whole, C. as well as the rest, but if only two are present they cannot bind the other who is absent.

But in the case of corporations, property so called, a majority of those who are present can bind the whole corporation. In the case of corporations, the authority is not usually confined to A, B, & C.
Remarks.

Every statute is or ought to be construed alike in both countries; the only difference between these or to this subject is, that the mode of relief & mode of enforcing the law is different.

Vol. 87.
30th. 34th. 66.
Ct. 207.
2217, 666.
Pct. 310.
Of the Construction of Statutes.

But to M.R.C. of those who may happen to associate with them.

It is frequently said in our Statute Book that certain contracts shall be void and that others shall be voidable. Now by a void contract is meant one which is ab initio void and in contemplation of law is, as if never had existed, and by a voidable contract is one which is good till set aside by the course of law, and of course all done under it before it is set aside, is good.

The distinction between void and voidable contracts may be well exemplified by the cases of infant's contracts, see title of Parent & Child. The true criterion with respect to void and voidable Statutes is this: if the object of the Statute would be defeated by regarding the act called void in the Statute as voidable, it must be construed void; but if it can be preserved by construing it voidable, then it may be so construed. Ex. A Statute of Elizabeth, prohibits Bishops from making leases longer than three lives or 21 years.

The object of the Statute was to prevent the impoverishment of their scones, an action was brought against the Bishop's Lyceum during the Bishop's life to recover back lands, leased for a longer term than 3 lives or 21 years. But the Court held that maintainable because the object of the Statute did not require the lease to be considered void during the Bishop's life. Our Stat. 4 & 5. Fraudulent conveyances may affect in rem.

Simplifying the above we'll Statute 217.

In closing the remarks on the rules of construction it may be observed that their rules are the same in Equity as at Law. The remedy or mode of relief to be sure, is different. The object of both Courts is to discover the will of the lawmaker.
Remarks

...
Of the Construction of Statutes...

which is to govern in both. The difference found in the books between
the constructions given in courts of law, and in equity, is no more than
what you will find between different sets of judges in courts of law.

Of Reading Statutes &c. by which of Interpreting under them...

I would premise that there is a difference between pleading a statute
reciting a statute and counting upon one. Merely pleading a statute is
nothing but stating the facts which bring the case within it. Therefore in
pleading it is not necessary to quote the words of it, or even mention the statute.
Thus, when in England a defendant would plead the Statute of Limitations
(21 Jac. 1) in bar to an action of assumpsit, all that is requisite is "more
assumpsit infra sex annos." Sometimes they plead it by saying that the
promise was made six years before the date and nonsuit of the
Plaintiff. Yet, in neither of these modes of pleading is the Statute men-
tioned or alluded to. The most lawyer-like mode of pleading the Stat.
of Fraud of Sheiuries is that there is no memorandum in writing.

Counting upon a statute in pleading, consists in an express reference
to it, as against the form, force and effect of a certain statute entitled "-
Thus, if a suit is brought on a statute you state the facts of which the Def. is guilty
then that these are contrary to the form, force &c. (as above).

Reciting a statute is quoting its contents. It is not uncommon
for lawyers, out of abundant caution, to recite a statute in pleading.
Remarks
Of Reading Statutes & the Order of Prosecuting under them.

As it is not necessary, but the practice prevails to a very great degree, public statute courts of justice are bound in Connecticut. Of all public statute courts of justice are bound to take notice "ex officio," there are some exceptions to the rule. On the other hand Courts are not bound to take notice of private statutes unless they are pleaded, indeed they can't do it, whereas of for of these they are not supposed to have any knowledge; whereas of public statutes they are for they are the laws of the land with which they must be thoroughly acquainted in order to execute the duties assigned to them.

In Connecticut a private statute (as well as a public one) may be given in evidence under the general issue. For here, our statute allows every thing to be given in evidence under the plea except a discharge from the Plaintiff or his accord, or some other special matter whereby the debt by the act of the Plaintiff is saved or acquitted from the Plaintiff's demand.

But even in Connecticut private statutes must be read when given in evidence under the general issue, but public ones need not for the Court or Jury can have no knowledge of the former context, unless read, whereas the latter they are supposed to know. This reading of private statutes is a characteristic difference between the said public ones.

W. Swift in his System of the Laws of this State, says that the
Remarks.
Of Reading Statutes & the order of Prosecuting under them.

Statute of limitations must be pleaded here and cannot be given in evidence under the general issue of non-pleadment. This says Mr. Godd is not true. The reason assigned by Mr. Lee is that it would acknowledge the promise & contradicts his plea, but does not our statutory that every thing may be given in evidence under the general issue except (as quotation from the Statute in the 1st sentence of this page)? and does this Statute limitations come within that exception? Clearly not. Again a well established rule of law that a plea of non-pleadment does not mean that the Defendant never assumed & promised, but that he is not at this time liable.

In Connecticut a Defendant is not bound to plead a private statute by way of defence, but may give it in evidence. But in Connecticut (as well as in England) a plaintiff must if he brings an action on a private statute, declare on it as he would on a bond.

When the rules of pleading (which will be mentioned hereafter) upon a public statute to be pleaded it is not necessary that it should be read.

But it is not only necessary for a party to plead a private statute in England and Connecticut, but he must recite its provisions. The court to form their judgment from what appears on the record & unless the provisions of the private statute are there recited how shall they know its contents?

The it is not necessary to recite a public statute, yet if a party pleading
Remarks.

(p.) The reason is if the advantage is not taken in the pleadings, the judge are not supposed to know the defect or misstatement. Judgment of course cannot be aiunt.

(2.) He may plead in abatement, or pray for andhread the st. upon the record, and demur. This mode indeed is precisely the same as that of tak-

King advantage of a misstatement in a deed.

[Handwritten notes and references to legal texts]
Of Reading Statutes & the order of Prosecuting made upon it.

It undertakes to recite it, he must recite it correctly, or (as some say) it is not aid by verdict. Lord Mansfield says if a defendant on any part of a statute, he will hold him to "false letter." Holt and several others say that if the misrecital is in an immaterial part of a statute, it is aided by verdict. Mr. Gwana says that the current of authorities are that the misrecital is fatal.

But on the other hand, the misrecital of a private statute, even the necessary to recite it, is aided by verdict, or Demand. (1) If a private statute is misrecited, the opposite party should plead and set forth, or allege that it is further enabled by it.

According to the rule of Common Law a public statute when it is used to defeat a specially must be pleaded specially. But in civil when the Stat. against usury is intended to be made use of to defeat a specially, it may be given in evidence under the general issue.

In declaiming on private Statutes, it is necessary to recite them substantially in the recitation, if the recitation purports to be recitation, it must be correctly recited.

When a Statute is in part public and in part private, there is no need of reciting the public part, but if a party in a suit would avail himself of the private part, that part must be recited.

It is never necessary to recite the title or preamble of any Stat. either public or private. And the reason is that they form no part of the
Remarks.

[Text continues on the page in a legible script.]
Of Reading Statutes and the mode of Prosecuting under them.

Law. The preamble is nothing more than the motion which the legislature made to pass the act, and the title is merely the name given to distinguish the act from the others.

And it being considered unnecessary to recite the title it was held that the mere recital of the title of a public statute was not fatal but by a late decision in 6 Modun, it is fatal. Mr. G. finds but two decisions as to this point in the books, the first in point of time is in D. Mayn, that it was not fatal. The latest as I have mentioned is in 6 Moore, that it is fatal. He inclines to believe that the latest will be adhered to, and considered as the law.

In England where the recital of a statute is necessary, the party pleading it, must give the date of it and the place where it was enacted. Otherwise it will be ill on demurrer. But in Connecticut we never mention either the date or place where it was enacted nor always the title.

When a private statute is pleaded, the existence of it may be put in issue by the plea of "nulli hioc record" and the question may then be tried whether there is in fact any such statute.

But it is otherwise of a public statute. For to this, nulli hioc record cannot be pleaded, which goes upon this principle that the judges are bound to take notice of a public statute.

It is a general rule that in declaring on public statutes it is not
Remarks.

19 Feb. 503.
1 Mar. 503.
19 Mar. 504.
1 Apr. 505.
2 Apr. 505.
19 Apr. 506.
12 May 507.
19 May 508.
16 June 509.
13 July 509.
20 July 509.
25 Aug. 509.
17 Sept. 509.
20 Oct. 509.
18 Nov. 510.
19 Dec. 510.
20 Dec. 510.
27 Dec. 510.
30 Dec. 510.
31 Dec. 510.

19 Feb. 503.
1 Mar. 503.
19 Mar. 504.
1 Apr. 505.
2 Apr. 505.
19 Apr. 506.
12 May 507.
19 May 508.
16 June 509.
13 July 509.
20 July 509.
25 Aug. 509.
17 Sept. 509.
20 Oct. 509.
18 Nov. 510.
19 Dec. 510.
20 Dec. 510.
27 Dec. 510.
30 Dec. 510.
31 Dec. 510.
necessary to count on the statute, whether the offence be such only because prohibited, or be evil in its own nature or whether it be prohibited by more than one statute, or by one only, for the court are bound ex officio to take notice of them. But this rule there are some exceptions. 1. If there is likewise an existing remedy at Common Law, if the action is brought on the Statute, it must be counted on. For without such counting the court cannot discover whether the party means to pursue the Common Law remedy or the Statute.

2. And it seems that where an action is brought on a penal statute it must be counted on, and the statute is a public one. It would not be possible to discover the foundation or principle of the rule, and how it has grown merely out of usage: as it has always been the practice to do it. There certainly can be no necessity for this rule, for a penal statute is as much known to the judges as any other public statute.

3. And it is settled as a general rule that if a public Statute gives a new species of action which was unknown at Common Law, it is unnecessary to count on the statute: and indeed Bacon says it must be counted. Thus in the action of Waste founded on the Statute of Use and Waste, to recover the place wasted, this being a new species of action to recover land, it is necessary to count on the Statute. Neither does it seem there is any reason for this rule.

But where the Statute extends an old remedy to a new case, there
Remarks

* For the table does not name the law but merely
give a longer duration than it had by the former,
but the former contains the law —

(1) It is a rule in pleading that no offence may in
the same indictment be laid to be done both by
the Law and Stat. But this must
be done in two counts — for where there
are two counts, the Court supposes the popup
as to distinct offences of course, where it is
doubtful whether the offence is against the
Stat. or Com. Law — it is prudent to count upon
both or rather to count upon the Stat. for
it is not necessary to count upon the Com. Law.
It cannot be lawfully laid in one count for it
would then seem that the person was pros-
seured both at Law and Stat. Law and upon the Stat.
for the same offence which cannot be done.

(2) If any contract or agreement good at Law
unsaid in writing is by the Stat. required to be unsaid in
writing it is not necessary to count that it is unsaid
for this may appear in evidence — the
necesary to count on it. As the Statutes of England enabling a party to bring
bail or security for goods of the testator taken away or injured in his lifetime.
So also where a public Statute does not create any new is purely reminiscient.
that it is not necessary to count upon it.

So also where the Statute does not create any new remedy, but merely
renders the benefit of the common Law it is not necessary to count on it.

If one Statute prohibits an act, and a subsequent Statute inflicts
a penalty on the person doing such act, he who seeks for the penalty must
count on both Statutes.

When a temporary Statute which has expired, is continued by a subsequent
Statute it is sufficient to count on the former without noticing the latter.

In a prosecution for a Common law offence when there is no Statute
prohibiting, if the indictment contains "contra forma Statutis," these words
may be rejected as surplusage. There being no Statute on the subject might
not to vitiate the indictment, if it being an offence at Common Law, it
shall be deemed a prosecution under that Law.

If writing is necessary to the validity of a Contract at Common Law.
it is necessary for him to plead it to aver it to be in writing.

Once more if a Statute make writing necessary to the validity of a
Contract unknown at Common Law, it is necessary in pleading it, to aver
it to be in writing.

This is necessary in pleading a Devise of Lands: it must be shown the
Remarks

(2) But in another part of the Act it is said all provisions for a breach of this law must be brought within two months. The information need not state that the acts were committed within two months. This rule is not an arbitrary one and is founded on the principle that the exception in the enacting clause sets into the description of the offence. In the other case it is a mere matter of defence on the part of the defendant. 

(1) But now the Act introduces a new rule of evidence, that has not attired the rule of pleading at common law to the case of Stat. of Rhode Island. This requires that the only proof of writing be writing.
Of Reading Statutes &c. the Order of Prosecuting under them.

in writing, as writing was first made requisite to its validity by the Stat. 32. Hen. 8. And it must also be shown that the requisite made necessary to the validity of such a bill by the Statute 27 Car. 2 have been complied with.

It is necessary that exceptions in the enacting clause of a statute which creates an offence and gives a penalty, must be negatived in the declaration or complaint of the person prosecuting on it, & the omission so to do is fatal. But if the exceptions are contained in a clause subsequent to the enacting one, the omitting to negative them is not fatal. the reason why it is requisite to be done when contained in the enacting clause, is that, when found there, the exceptions are part of the description of the offence. as if the statute should declare that all persons (except Ministers of the Gospel) who are guilty of profane swearing should be subject to a fine of £50. Now in prosecuting under this statute the exception contained in the enacting clause must be negatived by saying that the Dfl is not a Minister of the Gospel.

Where there are two subsisting remedies, one at Common Law, and one under a statute, either may be pursued, and if one is barred the other may be pursued: the remedy given by the statute in such cases is without preclusion.

And further, in case of two subsisting remedies one under the Statute, one at Common Law, if a Def. brings his action on the statute first, & yet by reason of some requisite in the statute, want from the Common Law, he cannot prove his case agreeable.
Remarks.
Of Reading Statutes & the order of Prosecuting

there to he may prove his case agreeable to the rules of Common Law & recover in this suit as tho' he had brought it at Common Law. E.g. the Common Law if another is injured in his property through loss or recovery of damages. Suppose a statute declares that if the fact can be proved by the usual means of triple damages, the party may recover the same.

And the same rule holds in public prosecutions. This is however contradicted by 2 Hals. & by a decision in Cro. Eliz. but more modern decisions are agreeable to the rule as laid down... see 1 March 244. 2 & 362 356. Salt 212. 2 Feb. 138... old authorities contra viz. Cro. Eliz. 231. 307. 697 & Co. 99. 2 Stain. Plan. of Brown. 71.

If that, which was no offence at Common Law is made so by Statute and a particular mode of prosecution is pointed out by the Statute, that mode only must be pursued. Thus if a Statute is made declaring that some indifferent act should be felony, and that the felon should be prosecuted by indictment, here he could be punished in no other way, whatever mode there may be at Common Law for prosecutions in analogous cases. This is the general rule, but it admits of some qualifications and indeed the rule holds in only two cases.

1st Where the particular mode is prescribed in the prohibiting or enacting clause, the rule prevails.

2nd Where there is no prohibitory clause, but the Stat. that whoever does such an act shall be proceeded in this particular manner, this mode only can be pursued.
Remarks

1. 1 Sam. 244.
2. 10 Co. 75.
3. 6 Mc. 26.
4. 19 Lev 8.52.
5. 918.
7. 2 Par. 265.
8. 4 N. 25.67.
9. 2 Sam. 47.
10. 170. 265.
Of Reading Statutes & the Mode of Prosecuting under Them.

But if the particular mode of prosecution is prescribed in a separate substantive clause of the statute, then this particular mode need not be pursued, but the Common Law mode may be pursued.

So also if the act which is prohibited by Statute is an offense at Common Law, the particular mode prescribed need not be pursued. The Statute here intends to give the party his choice of the modes of prosecution.

If a Statute creates a right or an offense and furnishes no remedy, the Common Law will lend its aid to enforce the right or punish the wrong.

Where the Statute merely gives a civil right, it is said that the action must be brought on the Statute: here the Statute furnishes the right, and the Common Law the remedy.

Of Prosecutions under Penal Statutes.

Regularly no public offense can be prosecuted by an individual in his own private right and capacity.

In England all crimes or public offenses are prosecuted in the name of the King, and in Connecticut in the name of the State. The King represents the public in the former country, and the State in the latter. The party injured regularly prosecutes for the wrong.

In England private persons do prosecute for small public offenses in the name of the King, but then it is done merely for the purpose of obtaining costs, the surplus of the penalty going to them. It seems that indi
Of Prosecutions under Penal Statutes.

Individuals are not allowed to prosecute in this way for serious offenses. Indeed, there are no particular rules to be found with respect to the right of individuals to prosecute.

If a statute is violated which prohibits or commands anything for the advantage of an individual, he can prosecute in his own private right.

If an individual is personally injured by an act which is a public offense, he has his right of action on the statute for his private injury. If nothing is said in the statute concerning his civil remedy, and the statute is good evidence in his favor.

If a penal statute gives a two-fold remedy, the public remedy is of course inflicted by a conviction of the offender at the private suit of the individual injured. — When a statute inflicts a penalty or forfeiture for disposing of another of his right of any kind, the person injured, not the public, has his remedy.

When the statute prescribes no particular form for recovering a penalty inflicted, the proper action is debt.

Qui tam. Actions

These are a sort of actions called by the name of qui tam actions from some Latin words, which were in the writ when the pleadings were in that language, viz. "Jurem pro domino regi et e contrario." This is an action brought by an individual on a penal statute.
Remarks

3 Mat. 15:12
4 2 Tim. 3:9

2 Tim. 2:25-26
1 Tim. 2:1
Gal. 6:7
Col. 3:6
1 Pet. 3:32

51: 160.
2 Tim. 2:6:
1 Cor. 2:29
Qui tam Actions.

Partly for himself and partly for the public.

Qui tam actions are carried on by civil process. Qui tam information by criminal process.

Qui tam proceedings are of two kinds: Qui tam actions & Qui tam informations. Their difference consists merely in the form of the process. The Connecticut quit tam complaints are accompanied by a forth with process, are properly quit tam informations. Qui tam proceedings are made creatures of penal Stale and not of the Common Law. And they are rarely known at Common Law.

A popular action is one given by statute to any person who will sue for a penalty incurred for a violation of some penal statute. It is called popular because it is given to any person who will prosecute.

Many statutes give only part of the penalty to the person prosecuting to conviction, in which case it is also called a popular action.

When the whole of the penalty is given to the individual prosecuting, he may bring his action without joining the King or public, for if he is to receive the whole penalty it certainly is useful to join the Public. But still the usual mode is to join the public in both cases, whether the whole penalty is given to the individual or half of it.

A popular action then is not necessarily a quit tam action for where the whole penalty is given to the prosecutor, he need not join the Public.
Remarks

Laws, 653.  261.  85.  74.  1650.  75.


Tyr. 96.  Co. 17.  84.  228.
Qui tam Actions...

Neither is every qui tam action a popular action; for the penalty inflicted for the violation of the penal statute may be confined to the party injured only; and in this case, it may be a qui tam, this is a popular action.

If an individual is civilly injured by an act prohibited by the statute he may have his action or remedy on the statute, even though the statute does not expressly provide one.

So also if a statute prohibits or commands an act for the benefit of an individual, that individual has of course an action on the statute for an injury occasioned by its violation. Here the remedy is implied merely and not expressed.

Again, when a statute inflicts a penalty upon one for depriving another of his right of any kind, without making any appropriation of the penalty, he who is injured is not the public; shall have the benefit of the penalty. This rule is also laid down under "Reparations under Penal Statutes" these are instances in which some individual is supposed to be injured.

If an injury prohibited by statute is immediately injurious to the public only, yet if the statute give part of the penalty to an individual, he may have an action.

So also if a statute prohibits a certain act but does not give any penalty the action must be a qui tam and not by the party alone.
Qui tam Actions

As upon the Statute 32 Hen. 3, which prohibits suing for the profits, or upon the Statute 2. Rich. 1, de scandalis magnatum, or upon the Statute of Henry, or upon the English Statute of Appeals. 

But what the offence is immediately injurious to the public only, no individual can bring a qui tam or popular action unless the whole penalty or a part of it, or a sum certain in money is given to the individual.

All penal Statutes which give the whole or part of the penalty to the party prosecuting deviate from the common law rule.

The cases then in which these prosecutions will lie are:
1. Where the Statute prohibits an act immediately injurious to an individual and does not give him any remedy;
2. Where the Statute prohibits an act immediately injurious and gives a remedy by part or the whole of the penalty, the individual may prosecute.

In Connecticut, qui tam actions may be brought for breach of the peace, false imprisonment, perjury, theft, assault & battery, and forgery.

It seems to be a rule of the Common Law that when a fine or remedy is given to the public by statute and also a civil remedy to the party injured, the penalty of course is given upon conviction in the civil suit. This rule however is not ordinarily enforced. In Connecticut the Courts will not inflict the penalty unless the Plaintiff
Remarks

2 Sam. 252.
Peph. 173.
Esth. 92.
Eph. 7.

537. 167.
2 Par. 268.
275.
1660, 68, 8, 88.
71 num. 536.
Qui tam Actions.

In the civil suit move for it. The rule is the same when an action is brought for a breach of the peace on the Statute.

So also in the case of exactions law suit, if then a civil action is to be the Court may inflict the penalty unless the Plaintiff but in these cases the Court hold that they are not bound to do it of course.

When no form of action is prescribed in the Statute for the recovery of the penalty, the proper and most appropriate action is that of debt. It has been decided in Connecticut, that the action of Indebitatus Assumpsit will be—M. Gould knows no instance where this action has been brought in England for offences against public statutes, but it is their ordinary action to recover a penalty inflicted by bye laws: which penalties are called amercements.

When a penalty is given by Statute partly to the King or public, and partly to the individual prosecuting, the King or public may prosecute & recover, the whole penalty. And in this country the rule holds good as applied to the public & individuals. The reason is, this part of the penalty is given merely from motives of policy to aid in detecting offenders.

A. bona fide conviction on a qui tam prosecution or information is a bar to any after prosecution for the same offence. Hence if a qui tam prosecution is commenced and the defendant convicted, the plaintiff can never after prosecute for the same offence, but it should
Qui tam Actions.

appears that the conviction was obtained by collusion, it would be
no bar but the public might prosecute.

If the public have prosecuted & the offender is convicted, in which
case there can be no presumption of mala fide, no individual can
afterwards prosecute for the same offence.

A suit in England is considered as pending from the time of
becoming the writ & in Connecticut from the time of service. A
person claiming a penalty under a penal statute has no right till
he has commenced a suit. When a statute inflicts a penalty give
the whole or part, or the whole to the prosecutor, this is regarded
as an hereditary jaron. The first occupant is entitled to it, and the
first act to recover it, is by commencing a suit, the thin who first
commences a suit to recover the penalty, acquires an inchoate right
to it & the recovery of judgment, his right is consummated.

It follows from the rule laid down that in England, the King
by releasing the whole penalty before the individual owes bare the in-
dividual from recovering it, whether the whole or part of the penalty
goes to the King.

It also follows from the rule laid down, that when part of the
penalty is given to the individual, has actually, and part to the King
the, the individual has actually commenced a suit, the King may re-
lease his part of the penalty, and that part only, for by commencing
Remarks

2. Bl. 437.

Reg. 100.

Nov. 52.

28th Nov.

2. Nov. 1769.

Jan. 98.
Qui tam Actions.

The suit the individual has made, the popular action, the ornamental action, is it not in the power of the crown to release the informer itself.

It is said by Sir William Blackstone that after the common in former has commenced his suit, that Parliament may release the whole, as well that part which belongs to the King as what belongs to the individual. This is done by virtue of what the same learned commentator calls, the "omnipotence of Parliament".

But where the whole or a part of the penalty is given to the party agreed, the King cannot even before action brought release that part which goes to the individual, for this is a remedial statute and intended to give the individual an remedy for his civil injury.

The reason for this doctrine is that in the latter case the individual has a right to the penalty, before the action is brought, whereas in the former case, his right does not commence till after the action is brought.

At Common Law it seems that the prosecutor might after conviction release his part of the penalty.

By the Statute of 4 Hen 7. no common recovery would be bar to any other action for the recovery of the same penalty. As this is an Ancient Statute Mr. Gould supposes it would be considered in the Law of Connecticut.

By Statute of 10 Edw. 3d. it is enacted that the self in a popular
It is to be observed that several acts committed in continuity at the same time is but one offence and is so punished as a breach of the Sabbath. Here there is but one offence, tho' the person labor unlawfully the whole day.
Un tam Actions...

action shall not compound the prosecution with the Defendant at all till after answer made & not even then without leave from the Court. This is intended to prevent fraud on the Justice of the State.

It is a rule that if the plaintiff in the popular action dies, releases the penalty, withdraws the suit, or suffers a non-suit the public may proceed & prosecute to conviction, that is, the public may take up the same prosecution which the individual has commenced, & go on with it, or may abandon that, I commence anew.

If several persons are convicted of an offence in a popular action only a single penalty is inflicted on, recovered of, the whole. But in a public prosecution a distinct penalty is laid upon each of them. If then an individual prosecutes, only one penalty is recovered. But when the public prosecutes a penalty is inflicted on each, & usually. The reason of the difference is said to be that popular actions are founded on contracts, while public prosecutions are founded on crimes.

Mr. Gould cannot discover that the true ground of the action has its foundation any more in contract than in any thing else, he thinks that the distinction has grown entirely out of the form of prosecution.

In popular actions the Plaintiff or Prosecutor is entitled to no costs unless the Statute inflicting the penalty expressly allows costs. But when the penalty is given to the party aggrieved this brings...
Quasi Action.

According to the statute, he recover costs as of course. The reason of the difference is very obvious; in the former case, he does not sue for an injury, whereas in the latter he does. In Connecticut, he recover costs in both cases.
Baron and Rome.

Of the right of the Husband to the property of the wife.

The general principle which regulates this law concerning this branch of it is the duty of the husband which is to provide necessaries and protection to the wife—on this principle it is, that he is entitled to the property of the wife, so far as her.

Of the Wife's choses in possession.

A man by marriage acquires an absolute right to the wife's personal property in possession, by a legal transfer which may be stated—Co. Oct. 381, 1 Dec. 239, 1 Horn. 385, 386, 1 Simk. 118, 1 Nol. 248.

The fact of the husband becoming thus possessed of this portion of the wife's property, does not lay him under any stranger obligations to discharge her debts, than those he had not received a cent, and it is highly proper that the husband should be answerable for the debts of his wife, as by the marriage he takes to himself all the property and all wholly dissolvable by cancelling her debts. And the property of this becoming answerable for these charges it is, still worse sticking, when it is recollected that all the personal chattels which the wife acquires, and becomes possessed of during coverture, some
immediately the absolute property of the Husband—and it is also
true that in this business of paying debts, we must not look upon
the Husband in the same point of light as we do an Ext— or
Ad— who pays only to the extent of arrests—

However it must be noticed that the Husband is no
longer liable for the debts of his wife, than during coverture.

Exemplified by example—A. marries B. who brings him $5000 and
over $500. B. dies within a short time, then $500 cannot after the
death of B. be collected out of A., although they might have been at
any time before her death—and yet if A had died in the
stead of B., the $5000 would have gone to his representatives
and the $500 have been left for B., the wife. So pay for
her debts always remain her own, for although the Husband dur-
ing coverture is compelled to discharge them, yet it is plain
that they are her debts and not his—

Of the wife’s choses in action—

In the wife’s choses in action, viz., notes, bonds, in
use by the husband acquire of disposibul or a reduction a right
of disposibul, or reduction to possession, at any time during co-
verture, and by reducing them to possession he becomes vested
with an absolute right to them.
Remarks

There is one estate in action given to the husband by Stat. 32 Viz. B. or where there is rent a leve due to the wife for a farm leased - the rent a leve will go to the husband - Co. Dec. 851 - contract. 4 Co. 51, Co. 162, 69, 3 Ed. 12 Bla.
453.
Unless the husband is possessed of, or exercises unequivocal acts of ownership towards them, which is a certain true reduction of possession, they do not become absolutely his; and upon his death survive to the wife. But if she dies first and before he has reduced them to possession, they would descend to her representatives were it not for the Statute of the 29 Car. IV. which attains the Com. Law in this particular. This statute has been adopted in many of the states in the Union, e.g., New York and New Jersey. In law, it has not been adopted and the business stands as at Com. Law. The intention made by the Statute is, that the choses in action of the wife, not reducible to possession by the husband during coverture, shall still go to the husband as Adm. of the wife's estate, and this statute enabled him after debts paid to convert the remainder to his own use without liability to account.

The wife might appoint an Exec. Adt. that she was obliged to account to the husband.

The meaning of the statute, 29 Car. IV. is a matter of course and shall be here noticed.

It was law well-known among the old Saxons, and universally recognized as such, that at the death of anyone, the personal property was to be divided into three distinct parts, called the cessionability from Wes. 15 to the discharge
of debts, 1/3 to the wife, and 1/3 to the children, or representatives. And it was the duty of the King to see that the property was thus arranged and disposed of, but the incapable persons had to attend to the business—the duty devolved upon the clergy in each diocese by appointment of the King. The clergy were particularly chosen as being the best qualified to discharge this duty, for in those dark ages of Europe literature was a rare thing, and fell to the lot of but few, except the clergy—and this was the means by which spiritual courts became courts of Rebaté. This power thus vested in the clergy was shamefully abused, and prevented to the worst of purposes; for instead of distributing the property as their conscience directed, they appropriated it to what they termed pious uses, which phrase (giving it a tolerably free translation) means the swelling of their coffers or the building of Monasteries for monks and priests to patter in. This state of affairs existed for a long time, as the influence of the Pope was vastly ex-tensive, and so there was no possible power by which the evil could be remedied. The grievance at length became insuffi-cible, and a statute was passed 31, 32, 33 which compelled the ordinary to grant administration to the next and most suc-cessful friends of the deceased. This statute placed the business in a point of view less grievous if it gave to the creditors of the decedent...
Remarks

It has been held that the husband neg-lects to take out letters of administration and another is appointed still the devisee is obliged to account to his brend and even if his representatives provided that the husband be deceased for the remainder of the estate after debts paid -- P. Wilson 84, 5 8th. 626--

[Text continues]
deceased against the Adms. for an action against the Adms. for the recovery of their debts — and these Adms. were generally tygers, so that they were unable to rescue their esquires under the power and influence of the Papal see; still however they were not compellable to distribute the residue of the estate, there being at yet no statute passed enforcing it. Fortunately, however after the Restoration in Eng. the Stat. 22 Charles II. was enacted compelling distribution after debts paid. Now it would seem that this statute would aid the husband Adm. as well as others, it in fact did — but he or husband had so long been in the habit of conceiving the residue of the property his own to to their own use, and as they thought that their pretentions were a little better grounded than those of other administrators, a bill was strength produced, and received the seal of legislative sanction, giving to the husband the remainder of the property after debts paid.

In Con. This business stands as precedious to the most of the stat. 22 Charles II. on different grounds. For by statute the administration belongs to the next of kin to the to the wife it is therefore supposed that the husband is not entitled to it a folleto he cannot have her chosen in action as Adm. — Although the husband may reduce his wife's chosen in action to possession yet he may not bequesthe them —
Baron and Time

It is laid down that a conjunct settlement made by the husband to the wife is a purchase of her share in action, and he thereby becomes absolutely vested with an absolute right to them, and if he die before the wife the choses will go to her representatives.

But the choses in action of the wife are not liable for the debts of the husband after his decease, but the debts against his estate be what they may; neither can they be taken in execution for his debts during his life—because they are a species of property not liable to be taken on execution—they are not in fact property of themselves but merely evidences of it.

Altho' the husband may dispose of the choses in action of the wife at pleasure during their joint lives, still he cannot assign them without a consideration; if he does, the contract is not obligatory upon the wife and she may demand them if the assignee—he may release or discharge them choose quoad silentium that is without any consideration.

It is said that the goods of a woman in the hands of another person by finding or bailment, upon the marriage, become the property of the husband, and he can sue and recover without joining the wife in the suit, for goods in the hands of the bailee are constructively in the hands of possession of the bailor.
Of the personal chattels of the wife were by a stranger or
wrong done converted, before her marriage, the husband must
join the wife in the action—

Provided the husband is about to sue for a bond of the
wife, he must join her in the action—So that if either of them di
after judgment but before collection, the survivor may be the sole
proprietor of it on the principle of Mit No. supporter of joint-tenancy
and he further apprehends that as the doctrine of joint-tenancy is
not recognized in law, should the question arise it would be de-
lected that the Husband should account to the representative
of the wife—

Of the Husband's right to the chattels real of the wife

Chattels real are such personal property as favours of
the realty, that is personal property which arises out of mis-
taken to the realty such as leases &c. In the wife's chattels real
the husband has a greater or more extensive right than in her
shares in action, because he may not only dispose of them
with the same freedom as he may the shares, in action but
they may be taken in execution for the payment of his debt.

But if the husband dies without disposing of these chattets
real, they will go to the wife, and on the other hand if the

dies first it will survive to him the husband on the ground of joint tenancy, and from this there will probably arise an important question in the State of law.

The husband cannot dispose of chattels real by will because the disposition must be made during his life if made by him, and the will does not commence its operation till after his death.

Although the husband cannot devise chattels real, yet he may dispose of them by deed, which commences its operation in present.

The chattels real of the wife, are not liable for the debts of the husband after his decease, because she could not devise them, and at her death they became absoluta in her by the "jus servandae," and therefore not his assets.

If two unmarried women are possessed of chattels real, and one of them marries and dies, her right to the chattels goes not to the husband, but to the surviving tenant.

For by the creation of the estate she had a right prior to that which the husband derived from his wife, the other tenant.

Of the right of the husband to the real property of the wife.

The husband has a right during coverture to the use...
Remarks

By the stat. 32. ch. 8. the husband is enabled to make a bond, 
10 Co. R. 22. 2. 
Part. §10. 4

lease of the wife's estate for the term of three years, line
which leases are binding upon both husband and wife.
first of all the real estate of his wife, but by Con. Law he cannot alien to any act of his own.

The husband may acquire a greater interest in his wife's real estate, provided he has children born alive which interest is by the curtesy, an estate acquired not by marriage, but in consequence of marriage.

If the husband dies first, the wife's real property remains vested in the wife, but the entitlements on the land will go to the husband's Ex. So also if the wife should die, the entitlements would only go to the husband, unless he was she is entitled to a curtesy estate.

Tenancy by the curtesy here explained. On the death of the wife, the husband is entitled under certain circumstances to a life estate in her real property, and the fee simple in her heirs; this estate of his is called a curtesy and he is tenant by the curtesy. The rule that entitles the husband to this estate is, that he be married 2nd. Since of the wife 3rd. Issue born alive and 4th. death of the wife. That there must have been a marriage to entitle the husband to this estate, is obvious at the first blush, and the marriage must have been lawful and she (meaning the wife) must have his wife at her death.

The wife must be seized of an estate of inheritance, that is of lands and tenements in fee simple or in fee tail.
The husband can have no estate by the Curtesy in an
execution or remainder because the wife is not seized or actually
possessed of them.

The husband must also have issue by his wife in
born alive who during the life of the mother which issue must
be capable of inheriting, the issue must be born during the
life of the mother for provided that it should be born after
minits after her death it is evident that the property can
not vest in such child and as it must vest some where
immediately it would go to her legal representatives.

It will some times happen in estate that the
issue will be unable to inherit in fee simple estates it is plain
to see that can never happen. Example as to estate
an estate is given to Mary and limited to the females jointly
heirs of her body so that it was an estate in special tail
male, John married Mary and had a son and then Mary died
here John in this case cannot be tenant by the Curtesy as
he had no child who could inherit the estate.

By Gael kind tenures the husband is entitled to
the Curtesy whether he has issue or not. In Conn. we have
no statute regulating the doctrine of Curtesy and of course live
at Conn. law and as our property was all held by Gael kind
tenures Mr. Reeve supposes that a very great question.
Remarks

The wife may now hold property to her sole and separate use, tho' formerly at law she could not. Ath. 373.


2. Diz. 19166.
might have been made and perhaps it is not too late to make it now suspecting curtesy estate or the ground of our property being held by D. & E. tenances, and give the husband a right to the curtesy whether he had any issue or not.

In love, it was formerly decided that the husband should be tenant by the curtesy only during the minority of the issue, but this is not now noticed or adhered to.

When the wife holds property in her own separate use, the husband can have no claim to it by the curtesy.

It will be proper here to remark that a gift made to the sole and separate use of the wife cannot be defeaced by the husband. If the gift was not to the sole and separate use of the wife, the husband would have an interest in it and by virtue of which, his right or interest might defeat or wholly destroy the gift.

All the choses which the wife acquires during coverture unless given to her sole and separate use go over directly to the husband or if the gift was immediately to him—

Of the right of the wife to the property of the husband.

At the death of the husband, by the statute of distribution the wife is entitled absolutely to one third part of the intestate
Remarks

[Text continues from top of page]

[Signature: "Pho. 6th. 10."
Co. Hg. 2
140. 5 124. 159.
E.E. E. 64.
2. 15. 18. 1]
Husband's personal property, and if he die without issue one half and the remainder to his representatives. This can happen only in cases of voluntary—so the whole of the personal property may remain a way from the wife by will—

And at the death of the Husband, the wife has by the

con. Saw a more permanent property in the ineritable estate of

the Husband, called Dower, which is one third part of the ineritable property which the Husband possessed during coverture, and which the issue of the children and wife might inherit.

In con, it is only one third part of the real property of which the Husband died seised of that composes the dowry. In Eng. however the wife can have her dower right to dower by a judicial conveyance that is free and money, and yet a deed executed jointly by husband and wife will not free the wife of her right for the act is void—

It has been observed that the Wife is entitled to dower in no estate except that which become her issue by possibility might become heirs—Example, A. marries B. and has a son and then B. dies, and A. marries C. C. shall be endowed of the lands because her issue might by possibility become heirs.

A wife to be entitled to the estate must be the actual wife of the husband at his decease, therefore a de
Baron and Feme

were "a vincula matrimoni" in one, destroys the wife's right to dowry at the "mensa et thoro" because in the latter case the bonds of matrimony are not destroyed.

If the marriage takes place before the age of consent arrives, the wife if she is above the age of nine years will be entitled to dower at thoro the law considers this marriage not as void but absolutely void.

The age of consent in males is fourteen years and in females twelve.

When the parties arrive at the age of consent, they may consent or assent to the marriage. Their consent operates as a complete dissolution and their assent a complete consummation of the marriage.

Formerly the wife of an idiot was entitled to dower but the husband of an idiot was not entitled to thoro; but it is now established that the wife of an idiot is not entitled to dower because the right of dower grows out of the marriage relation, and this relation is founded on contract an idiot being unable to contract the hareson which the right to dower next is in this wanting.

The right of the wife to dower is paramount to the claims of devises, creditors and mortgagees; because the right of the wife commenced upon the marriage contract and not.
Remarks

[Handwritten text that is not legible due to the nature of the image]
fore that of creditors. If the claims of creditors were prior to the use or
enjoyment there being considered by the law as general incumbrances
and that of the wife to dower as a specific one, they do not destroy a
metes the wife's right to dower because the law prefers specific incum-

This...the right is sufficient to entitle the wife to her right to dower in the interest. A reversion in law is but

due to possession, it because the power to re-

vise to possession is in him, and cannot be exercised by her, un-

less the law otherwise he might be might for the purpose of
defending her of her dower neglect to possess himself of it.

An alienation evidently in contemplation of death will
not defeat or bar the wife's right of dower; because by law it is con-
sidered as a testamentary devise or disposition of which cannot pre-
clude the wife from her dower, in law.

In law, the wife is entitled to dower in an equity of redemption provided the husband has an interest in the

subject matter mortgaged, but the reverse is the case in

Eng.
Of the doctrine of barring Dower.

There are several ways by which Dower may be barred, I will first consider the method of barring it by a Jointure.

A Jointure, if intended to be in lieu of Dower must be made previous to marriage, and it must be made directly between the parties who are to be married without the intervention of any third person: it must be made in lieu of her whole dower and not of any part only, and it must be so made as to vest into that immediately upon the death of the husband, it will commence its operation, and it must also be considered expressed to be in lieu of Dower otherwise it will not so be considered.

This Jointure must be competent livelihood otherwise the Court on application will annul it. The principle on which this rests is that the wife when the bargain was made was in an unfit temper of mind to make a judicious bargain. For generally when a contract is made between two persons, they must both abide it however foolish it may prove for one of the parties.

In cases where a Jointure is made in lieu of dowry after the marriage has taken place, the wife may have her election which to take: the Jointure or Dower - If she takes
of what is a jointure composed? it must be a freehold property or an example see lale or a life estate — because the estate must be of a permanent nature otherwise if it were personal it would vest immediately in the husband — and if the estate would probably be of a perishable nature so that before the coveture should be thin the whole of the jointure would be dissipated — this business of jointure was regulated by riot. by a statute in cou, if the widow does not keep the dowry in good repair part of the estate shall be taken from her by the county court to the heirs and given to the heirs with which the repairs shall be made and then the overplus if any shall be paid back to the widow.

tower will be based by both of the wife with an adtlion — unless the husband should again receive her to favour — it is likewise bad by a devorce "avinculo matrimonii" but not by a divorce "a numeris et thor" — it is also bad by the commission of leman by the husband — but there is no such law in cou. in eng it is bad by a retention of the title deed of the husband's lands from the heir to whom it belongs — this operates as a punishment for mismanaging the property of the
Baron and Time.

him because the title deeds are the only evidence of their property

property in Eng. as they have no public records, this rule does not obtain in Con.

If the damages above the hands assigned her for dow

see the "Jus pacto" &c. [sic] puts it to her interest therein and the

she can recover it by a suit at law.

It may be barred by having a fine and or suffering a common recovery.

By a stat. in Con. Dowry is not barred by a de-

vorce "quinque matrimonii" unless the wife be the offending

party.

Of Paraphernalia.

Respecting this subject there are no statutes, the doctrine of Paraphernalia rests upon a long succession of judi-

cial decisions.

Paraphernalia consists certain articles of the wife's

prospits his husband's property which signify something over and above her dowry. The Eng. law use it to signify the apparel and

ornaments of the wife suitable to her rank and dignity. --

Of this species of property there are two classes as
I. Bedding and necessaries

II. The jewels and other ornaments

Of these two branches of paraphernalia, the law is material
differently to the first branch, the wife has no absolute claim
no one, not even her husband can deprive her of her bedding and nec-
nessary clothing.

She may have more than is necessary if so the husband
may dispose of more than is requisite to his rank and dignity.

Of the second branch the husband may dispose at pleasure
during his life, but, by modern authority, he cannot devise them
if he should the wife can hold them to the exclusion of the devise.

Paraphernalia of the second class are assets in the hands
of the Court to pay the debts of the husband after the other
personal property is exhausted and not before.

The claim of the wife is superior to her paraphernalia
is superior to all other claims when the personal property, even if
ever one to be taken for the payment of debts, there is none then the
wife's paraphernalia.

In cases where the specialty creditors have come upon
the paraphernalia, the wife in Equity may be deemed a creditor against
the heirs for so much as the specialty creditors have taken from
the specialty creditors, her paraphernalia.

If all the personal property is exhausted by the heirs.
Deed with 4 common hands. seventh of 16th 1645 in 1540 we learn.

The court of Alnwick in the 16th century is mentioned. The report of

from the 16th is by Eppes in the said book, in voluntary

renewal. A statute passed in 1645 or 1646 prohibi-

tion from a legal question of habitus alone. For the,

monks of Conisboro writing, when they engaged - completed, not

be given in charting and declarations sufficient - an argument to

while 1546 to 1646 does it appear for validity in matters of rights

of not being in manner of the word of

gone. John Ralston the present Robert John in

Robert, 한다; John held, without perhaps not come before

from my old common work of the word of

the present the heir of one on his lands

the 16th - a congratulation that it shall be as well that

been rights to make up to her co-owners equal condition?

Ey 243 244 it is 1646 to 1646 - an agreement with

be redivisible. The defect - lawns of the 16th century

with this book, the ones not before, at 3, 395 also the

morass. every she rejected 21 of 3000 acres. - law of yeald

land made before marriage - cannot be affected by donation

of the word of 1645 - in 1645 to 1646 - it consists usually why

not thus. Land by husband to husband to sells lands made

permanently to all conditions - voluntary submission & through, then

agreement to wife. - this land down the land to the wife

in long the next, 1645 1646 1645 1646.
Baron and Same.

She contract creates and they then take the paraphernalia of the wife in satisfaction of the remainder of their demands, the wife cannot in this instance have any claim to upon the heir for the paraphernalia thus taken for the land is not liable for simple contract debts.

If the husband creates a trust estate in his hands for the payment of his debts, the personal goods must first be exhausted and then his lands are liable as well for simple contract as special ones and in case the wife's paraphernalia in case the wife's paraphernalia is taken to satisfy either the simple or special contract creditors she has a remedy for the recovery of the paraphernalia.

The wife has a claim against the devisee for the paraphernalia equal to that against the heir.

If there is a jointure between the husband and wife made before marriage or a discharge of all claims against the estate this is a bar to her claim to the paraphernalia.

If the jointure is made after marriage but in presence of an article agreed upon before it has the same effect.

If the husband pledge during or consume the paraphernalia of the wife for the payment of his debts she and not the debt will have the right of redemption.
If at the time of the marriage the parents of the party
make her any valuable present, it has been considered
her sole and separate property. Bro. Ch. 26. 16.

A wife who has separate property may by her own con-
tract render it liable, but always in such a manner
as to secure the separate rights of the three
band entire. 20. 29. 20. 89. 89.

The usual mode of giving separate property to precatory
husbands, or husbands to third persons as trustees under the idea
that a wife's court could not be the direct grantees of distinct separate
property. 20. 29. 89. It is unnecessary at this time to have
recourse to trustees for a great relaxation has taken place
in the rule in several particulars. Burnet. A. 15. 29. 30. 89.
20. 89. 20. 89. There never has been a decision recognising the
necessity of trustees in granting a separate estate to the wife
20. 6. 6. 20.

The strongest case reported was where a legacy was given
to a woman separated or divorced a woman, if the said was
held to be the husband's unless it be expressly mentioned
in the deed of gift to be to her sole separate use
20. 6. 89. 95. 89. 26. 4 All cases in which the wife is considered an
executor to her husband recognises the right to hold 30. 89.
separate property. In all cases of settlement of

Baron and Time.

...any personal property remains after the payment of the husband's debts, the wife will be entitled to it, for the purpose of redeeming her personal effects.

If the wife sells the husband's estate to redeem the personal effects and the debt taken out, she is obliged to abide by the devise, and provided her husband should have limited it over to the remainder over to an other person on her death, the remainder will go to her such person—-for by this step she relinquishes all her original claim to the personal effects which she ever had—

We have thoughts that in Connecticut that the question should be made, the E. would not be allowed to take the personal effects of the wife for the payment of debts, while they remain either personal or real property for that purpose or in Connecticut both one liable for debts—

Of the wife's separate property.

Of this branch of the subject I shall give but a slight at present—

The power which enables the wife to hold separate property to her use has been growing into notice, for these two hundred years back—within the last fifty years it has pro-
of joint money she has been considered as a creditor to his estate (subsequent however to the claims of other creditors) & where the husband borrowed the wife's joint money he was held a debtor to the wife—10 V. 438. 269.

But all her contributions of her separate property to the main tenance of the family do not render her a creditor to the estate. Sometimes mortgaged her real estate in conjunction with her husband & is then considered a creditor to his estate for its redemption subsequent however to the claims of the other creditors—2 V. 604. 629.

Actors of separation or agreement to separate between husband and wife are after marriage are sanctioned both by law and equity & have an effect to bind the parties & to yield up all the husband's maintainable rights so far they extend. A mere agreement to separate will not his maintainable right to the wife's person but by this no other maintainable right will be affected. Or 542. If she renounces a right to the maintain of her estate to her shop or action chattels.

The sale to the creditors they shall have none, and she may convey & without his joining. The celebrated cause of corruption orollion better the point.
Baron and Time

passed more rapidly than during the whole time before.

And property by the wife to the separate use is not
in the least under the control of the husband.

This doctrine of the separate property of wife has been
established by the intervention of the courts of Chancery for at
least it was not little known and was recognized only in two cases. 1, 2, 3 The power that with which the husband
was vested to enforce the fourth personal property of a husband
and 24, 25, 26, 27, 28 the first class of the wife's paraphernalia was able
to be considered as the separate property of the wife and the
lance is still the same at the present day.

But the practice of the husband's endorsing the
wife ad ostiam octoside has long since grown into desire
in the case of property being given either real or per
sonal to a woman so that it should not go to the husband the
same or closest have interfaced and given reality to her.

It was properly contended by some that a decision
was never had upon the point that to convey separate prop-
erty to the wife certain particular words must be used
so to the "real and separate use" of the wife but it is now
well understood that any mode of expression will answer
provided that it carries with it the idea of separate prop-
erty is intended to be conveyed.
The consequences of these acts are that when the husband gives to the wife a separate main-tenance, he will be discharged from all liability for her necessaries. When such main-tenance is generally known, no mere agreement to live separate will not do this and how for the want of a cope will be liable will be con-sidered hereafter. There are some cases where labouring people (in which their true. labour for their own respective support) when the husband will not be liable for her necessaries, still he has made his wife no main-tenance.

If a married woman living separate shall shew a child the legal presumption is that the husband had access to her. and of course that it is his unless he shews to the contrary as P. pointedly disapproves of this one supposing that the burden of proof should lie on the other side. "That he had access to her"
And in cases of property being to a married woman
if any words are used which are indicative of its being intended as
her separate property, the husband will have no control over it;
as in the case of diamonds being given to a bride on her wedding
evening.

The husband may also during the coverture give
property to the separate use of the wife or where he believes
that she may have all the averts of the estate part to which
she can raise, this agreement will be enforced in Chancery.

More of this doctrine will be observed here
after as it will of necessity intrude itself into the judges

great branches of this Part. Turn back two leaves.

(6) If the husband the money arising from the sale of such things
to her husband, she will have an execution to the estate of the
amount thereon. 28 P. R. 384.

Of the dominion of the hus. over the wife.

Mr. Black is of opinion that by marriage, the hus.
bond has gained no more authority over the wife than the
wife gains over the husband although he is well aware that a
difference of opinion has been adhered to.

When the wife is guilty of any excess which endanger
his property or the peace and welfare of the family, the
husband has an unqualified authority to restrain her; but
the wife has an equity to the same right to exercise
...
authority over the husband to restrain any excess of his.

Formerly when the husband had been correcting the wife, the old laws allowed the plea of "reasonable correction" to be given in justification of his conduct. This common law doctrine has long since exploded except in the delicate brain of Ch. P. Levi of the state of Arizona.

If a husband now beats his wife or even violently threatens her, she has a right to go before a Justice of the Peace and sue the peace against him, and the Justice may if he esteems the testimony of the wife to be true issue the County Court or Quarter Sessions. The wife is permitted to testify in a case like this because abuse is generally given in secret - "wie mea." But it has been supposed that there is no doubt but that the case in Hutton 016 in New York law attests the elementary writers have generally thought differently - it is certain that in Tit. 632, there is a decision recognizing the one in Hutton which was 8.5. Really,-care.

The husband may imprison his wife for destroying his property. He may prevent her from going into his house & keep company. If imprisoned by him merely because he had the power will be good cause for an application for a divorce. -"Mag. 478. 10 N. C. 444. 155113.
Baron and Time

Of the husband's liability for the wife's torts.

The husband in conjunction with the wife is liable for the torts committed by her as well before or during coverture—that is, he is liable coextensively in cases of slander, assault, battery, trespass &c., if she should die the action will not survive against him as it would have expired against her had she been alive. If however he should die, the action will survive against the wife.

There are cases in which the husband is alone and solely liable for his wife's torts, as where they conspire together she is not at all responsible being considered under the exception concerning her husband.

That compulsion is no excuse for the commission of a tortious act by a general maxime except where an is made a tortious wrong seen mechanically as a mere instrument in the hands of another. To this principle the above-mentioned rule is a singular exception & is the opinion a foolish and unfounded one.


Baron and Time

As to such acts as are confessed crimes - how the law considers them as two persons of course they are liable separately for each other's acts.

If the crime amounts to no more than love and simple theft - the company with him the doctrine of coercion applies - but if she commits theft alone and without the knowledge of her husband she will be liable alone.

There are one species of crime - a base of theft where he is liable alone although he has no concurrence with the wife in doing the act - this is where she misses the penalty of a statute - merely male prohibitory. See the common informer cases or in a civil action of debt or debt by perjury 4 Bla. 248 where or to this distinction

If the power of the husband to contract together -

It is laid down as a general principle that husband and wife cannot contract together - as to any executory contract in which the husband has promised the wife. Nor knowing of no instance in which it can be enforced for it is certainly a shop in an action of the wife - consequently but if reduced to possession she is insolent to have reduced it to possession. This proposition is not true as to executory contracts.
Baron and Fume

The reason given for the rule that the husband cannot convey directly to the wife is that they are considered as one person in law, a man cannot convey to himself. Thus if it can be called one, it purely artificial. Indeed no rational principle would allow be violated by such direct conveyance.

The statute renders, but one instrument of writing necessary for this purpose. Whenever it is adopted, it vests the estate conveyed immediately in the estate giver use. Now under this statute, a man may convey an estate immediately to his wife, although nominally to trustees for her use. In this case she is the estate giver use, 1st. 112. 1874.

The effect of marriage on contracts entered into previous to love venture by the latter with the wife.

It is generally true that all executory agreements enter into before marriage, which are choses in action, belong of right immediately to the husband.

But at this in a court of law a wife has notice for the husband's non performance of such co-
-century agreements yet the chancery have always refused them, if made solely for the benefit of the wife & in consideration of marriage. - C. Hin. 488 a part. 373.

So again all bonds entered into before marriage, the condition of which is a settlement on the wife have never been recognized at law yet in equity the bond is good evidence of such covenant & will there be enforced - L. W. 248.

Suppose a bond given before marriage and in consideration of marriage, the condition of which is that it shall become due on his death. This bond is unable by her against her husband's executor in a court of law unless it be true that the bond was discharged by marriage now this cannot certainly be the case because it would operate to destroy the very point of the provision & because she can enforce it in a court of chancery and there exists no power of law enabling her right to redress in a court of law.

Quotio voluntate - where a bond is given to a woman before marriage, will it be discharged by marriage? It is settled that in chancery it will be enforced being considered as an agreement. At law it has been supposed to be void. But neither of the two important decisions have determined it
to be so. In one case (Hol. 216. c. 9. 371.) two judges were of opinion that it was good at law. Hol. 61. 2. was contra.
In the other case (Dalk. 326) Hol. determined it was void against 3 judges. It is not perfectly settled.

While a husband is bound by the contracts made by the wife during coverture.

In these cases where the husband is bound by the contracts of the wife, they are considered as his contracts and are only issued. The wife is considered merely as his agent.

1. Whenever she contracts under a power of attorney from the husband are as valid to bind him as if he had made them himself; this is upon the ground of express agreement.

2. Whenever he expressly consents (orally) to her contracts, they will be his upon the same ground of express agreement.

3. A third class includes all cases where he agrees to be bound by some subsequent act or acts.

4. In the fourth set of cases, where he expresses no particular oral consent before an agent after making the contract and yet they are his contracts. As in places where wives accustomed to trade for themselves. As where it is customary for wives to buy their dresses.
Alphonse contracts as former wives are in the general habit of making one with another, or to further economic earning. This arises from the locality of custom.

5. Where wives do not generally make contracts, the husband may be bound from the particular situation of his family, as where the husband is lame or disabled and the wife has been customarily in the habit of contracting. This arises out of the particular circumstances of the family.

6. He is bound while the articles purchased by the wife are received used and go to the benefit of the family. Here his agent is presumed.

7. So wherever the contract is for necessaries for the wife herself, which the husband has refused to provide for her, these must actually be necessaries but they must be according to her standing or degree.

A husband may forbid a particular trust but it will be effective for it may not be convenient for the husband to pay him as another. This liability of the husband does not proceed on
Baron and Simn.

the ground of ejectment above the ground of duty, yet the action is valid. Against authorities present the following rules 1. Thor. 126. 2. Veat. 135. 142. Vol. 76. 2. Thores. 255. 3. St. 347. 496. 875. 1217. Re. Ch. 382.

5. A husband is bound for money lent to his wife to be paid out in necessaries. Necessaries are actually bought for the wife in the capacity of the husband. The reason why it should not be lawful to husband is always to maintain his wife so long as she is with him, or if he forsook her away.

When a Wife can bind herself by her contracts.

It will be recollected that the general rule is that the wife's contracts are void, still there are cases where she may be bound. It is well in the first place show the reasons why she ought not generally to be bound, in doing which it will be seen in what cases she may be bound. It then it is a principle of the law not to be broken upon that the husband is entitled to his wife the person of his wife. If the courts bind herself.
she could be imprisoned which would infringe the manumitted rights. This principle is on the husband’s account. The law generally supposes her to be in the power and under the coercion of her husband; and therefore on her account she should injure herself in such constrained circumstances as will not suffice her to make contracts.

She is in fact deprived of the means of proving. Now it is evident when neither of the foregoing reasons exist the wife can contract so as to bind herself.

1. Where a person having a wife has adjured the realm or expatriated himself. In such case she can bind herself for neither of the reasons exist. The natural right of her person would not be affected, for this he has himself abandoned neither would she be under his coercion for he is entirely absent.

2. So where he is banished, the foregoing reasons would upon the principle mentioned in the last case, she can bind herself. Here we see that it is not merely the suitorure absolutely considered which prevents a wife from contracting but the cause.
quencee resulting from the courtari
but A more modem case us which she can bind
her self in where he is transported four years
lit. 18. Moore. 851. Wean. - belong to the line on the top

1. The restricted case of Baron Estnik's wife
at the question being some yet in M. Reig's opinion
settled one important point - the case was
the wife of the Baron had married before &
by articles of agreement she and her hus-
band had separated he having given her a
separate maintenance. During the time of
her living separate she made a contract &
was afterwards married to the Baron. She
is certainly bound by such contract - for
the articles to separate gave the husband no
possible contract over her either as to her
person or her contracts; but on the contrary
he thereby relinquished all pretentions to
her. As one intitute but what she ought to
be bound to the extent of her maintenance.
In this case it was decided by Mansfield, &
Scott. Wilson & Butler that she was bound to the
extent of her contracts — 12th. 5.

5th. When a wife has real and separate property, but lives with the husband can she bring her self by her contracts. Not legally because her person is subjugated would be subject to its enforcement. Chancery however intercedes for her contracts and will give a satisfaction by a process not affecting her person but her property.

13th. Ch. 22. 2. Att. 3929 P

6th. There is one species of contracts which bind her altho she live with her husband, she have no real and separate property which forms a solitary exception to all the cases. This is a conveyance by fine and common recovery in a court of justice — the may by this manner convey alone & it will be valid unless the husband defects; a portion it will be valid unless the husband defects a portion it will be valid if the joins her. He may always destroy such conveyance by defect. In fact the same doctrine prevails. 1 Wm. Sc. 994. 2. SC. 95. 1 Roth 947. 10 B. 43.

It is a question never settled in Connecti
whether the wife cannot so convey away her real property that the husband cannot break it up, and she not convey an estate so as to commence after his death which would not deprive him of his usufructuary profits? In Eng. she could not because one leading maxim is that an estate of freehold cannot be made to commence in futuro. Within could the time limit by remainder because it would contravene another maxim that an estate in remainder must be created a commencement at the same time of the creation of the particular estate. But neither of these maxims prevails therefore Mr. A. seems to speak with confidence when he says should the question come up it would be decided in the affirmative.

A pure court has always been considered as capable of operating a “power”. But the act itself is not considered the act of the person is not considered as the act of the person in his act, but the act of the person empowering her.
to do it in her act. A sure court may execute, and administer as such; and she acts under the power as good as any person.

Any contract which the wife enters into during the coverture except that of fine and recovery is void; therefore if a grant of land is made to her during her coverture, she may after the death of her husband wave it, as generally as before remarried she may wave any contract whether executed or executory.

After the husband's death she may agree to the contract made during coverture and such agreement or approbation thereof makes the original contract valid without being done over again. As if the husband and wife leave the lands during coverture and after his death she agrees thereto, it is binding on her in the original lease without a new one in binding on her; and together with all the covenants therein contained and this agreement may be by acts as well as by words, or if she arrive rent from the April after coverture, this is sufficient to secure any agreement.
to abide by the original cope.

Something will now be noticed which have not been mentioned and are managed by the court of Chancery.

It was once a question how far a court of equity would interfere to compel a husband who had received property with his wife to pay her debts after the course of equity was determined, but it is now settled that they do have no right to interfere because it would be setting the law at defiance——the same rule therefore obtains in equity as at law. This is mentioned merely because some lawyers have attempted to revive the dispute.

It has been mentioned that the separate property of the wife is liable in equity for her contracts and the judgment is against her property, not against her person, so that § 266, 270.

We see then that a pure court may have a separate interest in the husband's property when she is pursuing her separate property. She
may sue by her husband, or her proctor, or her next friend, or if she refuses she may sue in ch. alone.

If personal property be given to a person covert for her sole and separate use, the very dispossession of it is freely by any mode or manner that she pleases as if she were a person sole.

But why cannot a person covert convey a way her separate real property in lieu of her dower, may find the 8th of Term. 8th. hot declared that she cannot do it in any manner whatsoever. But if we have most at in Court preventing the disposition of real property whether her separate property or not. Mr. 8th sees no reason why she may not device in any way so as by which she pleases — but in those states where the 8th of Term. 8th she cannot.

The words not of the remainder of the subject are lost.
of an estate in the West, included in the Herefordshire or any part of it or estate on foot in the Herefordshire or any part of it or estate, the entire interest of the estate or interest in the estate, belongs to some of the

in evidence. This is the history of the

ment as by being the sufficient - of estates or estates which

core of such estate, and which

and the Herefordshire or any part of it. The Herefordshire or any part of it.

described by certain of the Herefordshire or any part of it.

operation and duration. From 1683 to 1692, and 1692 to 1707, in 1707 to 1713, and 1713 to 1720, the Herefordshire or any part of it.

the Herefordshire or any part of it. The Herefordshire or any part of it.
Of Husband & Wife

from the lectures of Mr. Gould

Marriage regarded by Comm. law as civil
1 Bl. 433. Contract.

Of the rights and duties resulting from the relation of husband & wife

1 Bl. 432. But one person in law to many purposes.

I. Of the husband's right to the wife's estate.

The general principle by which the law is to this branch of the subject is regulated is founded on the husband's duty to maintain and protect the wife, and for estate is so far out this is necessary to enable him to discharge this husband duty.

1 of wife personal chattels in possession

This in general absolutely vested in the husband by law.
2 Bl. 433. Case, he may not only dispose of it at pleasure, but if he.
1 Comm. 535. dies intestate before the wife, it goes to his executors or ad
1 Bl. 257. ministerer.
Co. L. 354 6. He may bequeath it.

1 Comm. 552. But he has no right to personal property which wife has in
1 Bl. 289. estate. S. 40. He is executor Bailey H. 2d.
1 Comm. 555. Husband also entitled to all personal chattels acquired
2. Of wife's personal property in action or Choses in action

If this husband may dispose at pleasure, reception post pe.

During their joint lives

But reducing it into possession or some act of ownership

During their joint lives is necessary to give the husband abso-

lute title; otherwise it survives to her on his death, and would

go it is said to her representatives (jure vide post) on her own

death, but for the statutes. 1 Ed. 5 & 29. Ch. 2.

He loses all title in this case as husband but he may

take it as administrator, not liable in England to account to

her representatives. He takes as administrator by virtue of the

above statutes. 1 Ed. 5 & 29. Ch. 2.
Maryland

9th. Marylandiana deceased, before his [George] Edmund. A they self, late White, as many of them as are sons that Brooks or grandchildren, descendants from them or father or mother, grandchildren, the estate must go to descendants of the grandfathers and such are George of Edmund.

10th. George of Edmundiana deceased, without issue, but Oliver, while the father of Mary was living and Jonathan, sky, the great grandfather of his sons Moses and Aaron. A Selam White of Lucy White, the children of Oliver are deceased. Believe you, too, Jonathan and while anew, you go to Oliver too, for them is no good

11th. Jonathan is deceased. Believe you, too, descendants Moses and Aaron. Where is Oliver White for the same reasons before mentioned.

12th. Oliver is deceased. Believe you, you in the last case. J White are the descendants of Oliver. Selam, Lucy and his Moses and the descendants of Oliver. Jonathan and Lucy, as his Moses and the descendants of Oliver. Jonathan and Lucy, as his Moses had been deceased, leaving issue, which you would have taken. Bamp, otherwise, with Aaron and if Aaron had been dead leaving children of my acquaintance, I would have been left behind with my estate. As the descendants of Lucy had been deceased, leaving children, these children would have taken.
In correct of it is not then they take it for slopings.

14 In this case there is no exception and forwarding the
mother is affected living seven children John and
James and a daughter. Long while he giveth his
Unele & nephew have gone before his mother relations losing both
the mother's female living. Many the mother takes both
sister & Whitacre and if many had been dead John
Sufan would have taken both of if John & Susam had been
deal leaving children these children would have taken
both as a proof of my construction is correct. Yet in most
context they would have taken both five slopes and John
deal left and without affair both John & Long would have taken both

15 Elizabeth was dead. The whole estate shall go to such
in hand in the same case as if she had received them
husband & had disaff. that the losing of her dead children
by or former husband it goes to strict Obedience and if
she had no issue to her father if he was living and if he
was dead to his descendants preferring the same with
as he was before disposed.

16th case as before only if had two wives Mary & Elizabeth
a both were dead the estate shall go in the same manner
as in the last case to the hundred of both. Whether the
legislature intended that there should be distributed
as many as the 14th, 16th, 18th is uncertain for the
shall be divided as is pointed out in those cases and as the statute had
been immediately before proceeding for the infringement of my claim if he
sells it, it would be most consistent with a straightforward
construction to construe the provision mentioned in those cases
as a purchased estate; but since there is no provision for
a purchased estate in those cases unless it falls within the
provisions of the statute and there is an uncommon usage
for the acquisition of property demanded in all possible cases
for the defense of property demanded in all possible cases
throughout the statute. It is probable that it is
reasonable to conclude that it must be distributed
in the same manner.

In this case an estate, which came to the intestate by
device to some hundred in the same manner as
was his father, brother, and father-in-law as living.

If in this case any estate which came to the intestate by
device from some hundred is to be considered as a purchased
estate according to the technical meaning of that term, it will
go well. It is, so to speak, Thomas Needham's son and heir
of the whole blood, not a fish to be considered as a de
defended estate because derived from some hundred lived to
husband the father. He cannot be treated as a purchased
estate because the word of the statute has made it certain
express provisions for all other purchased estate except
that which is derived from some hundred and that
it cannot be treated as a defended estate because
all estate except such, comes to the heir by the death of the
ancestor even though that come by a deed of will or devise
an intestacy purchased estate as those which are acquired
by the owner by payment of money. There is no provision in
the statute for purchase of these estates, this in my judgment,
ought to be considered

For the same as the brother, husband, the father, and
brother-in-law, that is, his master, of a defended
estate, in any to Thomas Needham a son of a defended
estate, to Thomas Needham a son of a served
...
It will be observed that the statute that an entailed
in fact shall descend in the manner above illustrated
and as well as to simple estate away and yet there is a provision
in the first section that nothing in this act shall affect any
estate, but that the same shall descend as before, etc.

These clauses seem not to refer to each other, yet I perceive
the first provides for estates attempted to be entailed after
the enacting of the statute.

In many of the statutes of descent in the several States we
find a provision for the descent of real property of
which the owner was not actually seized in the known
method of that of which he was seized; the statute provides
only for that estate of which he shall seize; the term is
therefore, as in its technical sense, the maxim seems just.

The statute will have the full effect in Maryland.
State of New York

In the deferring line the distribution is the same
as under the statute of 1839 respecting personal
property. In the deferring line, there is no person
that can receive the real estate property except the
father-in-law is born to child when there is no son of
that child living until the estate came to the child,
the part of the mother real estate be carried on

when there is no son born to or from the brothers or
sisters of the intestate and their children may
inherit the larger share of the estate by

default dead of age from some reason to the intestate.

The lineal issue can inherit it must be noted

that the lineal issue can inherit it must be noted to

the person from whom it came if the intestate

agreed or otherwise in such any real estate being

in hand who regard is paid to the proven land of the

half blood it forms no obstacle any case on

the that children of Samuel Stiles a half blood

can inherit to an estate that come to the intestate

by default as well as Thomas Stiles a brother of the

half blood it is found out that was John Stow

could not have inherited the said estate but it not

because then a brother of the half blood brother

he is not related to the proven from whom he

the children of the brother to find it more within

cases of his brother they take what they

want, have even of all the brother and son

hence are dead leaving children.
The next private relation of which we are to treat is that of Parent and Child, being the immediate consequence of the former.

The general rule is that infants, i.e. persons under 21 years of age, are not bound by their contracts, inasmuch as no person can sue and recover on them; infants always having it in their power to plead their minority, in bar. This non-liability however is not viewed in the light of a disability but as a mere privilege, for it is of no consequence as to the infant whether his contract be a beneficial one or not, as he may forever rescind it, and this privilege proceed upon the ground of a supposed want of discretion.

The age of infancy is fixed or rather limited to the age of 21 years, a period at which full age is attained for almost all purposes, the doubtless there are many who are capable of contracting long before that time; yet as it is absolutely necessary to have some general rule respecting this subject which shall hold good in all cases, the Courts have thought proper to pitch the above determinate period. This rule applies to females as well as males.

The right or privilege which is allowed infants to rescind, can differ no farther to deprive, than merely to the breaking up of the Contract, for they cannot, as an eminent jurist observes, turn their shields for protection and of defence, into an offensive weapon.
Parent & Child.

Of the disabilities of Infants.

An infant or minor is a person under the age of 21 years, a period at which full age is attained for almost all purposes, at which time they are emancipated from the power of their parents. Infants are placed under a certain number of disabilities by law, which however are said to work to their advantage only.

Under the age of seven years they are not liable criminally for any act or omission whatsoever. The presumption is, that the infant under this age is "doli incapax." If this presumption is not to be rebutted.

There is an instance in the book of the pardon of an infant under this age from a crime, from which some have inferred that he was punishable under that age; but they did not recollect that a person accused of the crime of homicide which was the crime for which the infant was pardoned, may be pardoned before conviction. Had they, probably this inference could not have been drawn. It is now settled as law that under the age of 7 an infant is incapable of a crime; the rule is the same where crimes below capital, between passion.

It has also been held that the presumption of his being "doli incapax" throws the onus probarandi upon the public from the age of 7 to 10½ only, and that from this time to 14 the burden of proof rests upon the infant; this distinction however is not supported. The rule therefore stands now undisturbed that an infant from the age of
Parent & Child.

It is prima facie evidence of his being doli incapax & that between these two periods it is the business of the public to rebut this presumption. After the age of 14 the presumption is, that he is doli capax, & the burden of proving the contrary rests on him. . . . . .

Also it is generally true that an infant over the age of six is liable to punishment as an adult yet the rule is not without exceptions; for it is laid down that infancy excuses from punishment common misdemeanors, yet I presume that the exceptions reach only misdemeanors below felonies. . . . .

When infants are indicted for crimes, judgment shall not go against them on their confessions, but he who is considered as counsel for them shall put in a better plea & the crime must be proved.

Another privilege this called a disability in infants is that their contracts are void or voidable.

In England both males and females are of discretion to give their guardians at 14 in males & 12 in females. In Connecticut the age of discretion for this purpose is 11 in males & 12 in females.

An infant may even be appointed executor in ventre sa mae but cannot act as such until he arrives at the age of 17 and in the mean time administration must be granted to some one durante minore actabi.

No person can act as Administrator till the age of 21. Doe.
Remarks

P. Kay 338.
P. 39.

Level 155.

Land 44.
428, 633.
P. Print 484, 1096.
Parent & Child.

A man's hope cannot be one till that age. And although a person has right to administration as next of kin, he cannot be appointed till that age.

The reason why an infant cannot be an administrator at 17 as well as he can be executor is that an infant must give bonds to the court of probate for the faithful execution of his trust, and an infant is not bound by such bonds, but an executor gives no such bond at Common Law there being a special trust reposed in him by the testator. In Connecticut we have a statute enabling infants to dispose of their personal property at the age of 17, by will, from which it is inferred that they may be executors; for it is a general rule that all persons who can devise such property may be executors. But we have another statute which seems to render the inference which declares that executors shall give bonds for the faithful discharge of their trust. Yet the better opinion is that an infant may be an executor at 17 that is act as one at that age.

In England, a female infant may be betrothed at the age of 14, and entitled to dower if her husband lives until the be 9 years old, but when a female infant is thus given in marriage either party may desert at the age of consent.

A full age is completed on the day preceding the 21st anniversary of a person's life, an infant may be liable civilly for non-payment, as when he omits to cover a ditch whereby another's land is overflowed.
It will be recollected that the foundation of the action is the fraud, not the contract as the rule of damages may be very different in the case of the fraud from that in the case of the contract.

This rule refers to acts whose beginning are express, not to those ex contractu at whose subsequent acts may be tortious after the contract was made; in this case nothing can be looked to but the contract itself; nothing else must be the foundation of the suit.
Infants are liable civilly for their torts, as a madman or an idiot, for violation is not necessary to render a man liable for tort.

But there seems to be an exception to this rule in the case of slander, for this tort infants are not liable under the age of 7. This rule cannot be less neither will the case in Ray support it, for those the person prosecuted was 17, and the Court held him liable, but did not decide but that he might have been liable at a much earlier period, I am inclined to believe the true rule to be this. That he is liable at the same age as he would be for his own crimes malitia being necessary.

Infants are not liable for fraud civilly. The authorities do not support this rule. He is and ought to be liable, observe J.R. civilly for fraud and imposition.

The above rule is denied by Lord Mansfield, and it is certain that an infant may be indicted for fraud as a common cheat, also when the statute for procuring goods by false pretences.

Judge Page is clearly of opinion that infants are liable for their frauds, he says that a fraud in an infant is a tort in him, and that he is as much answerable for it, as he is for his tort. (x)

It is a general rule that infants are liable civilly for those acts, which are accompanied by actual or implied force or violence. This was equally arbitrary & nonsensical.
Remarks...

(a) as when a minor hires a horse & injures him. 12 Vin. 203.
and the action is bast on the tort not on the contract—for this would be nothing but merely changing the form of the action—
as in the case of Allen v. Baker tried in Supreme Court of Can. Feb. term 1808—

12 Vin. 203.

12 Vin. 203.
29. ca. 483.
9. Mod. 30.
7. Rock. 70.
13. Ch. 398.

16. Bl. 78.
13. Rock. 91.

6. Cel. 89.
17. 48, 122.
14. Ch. 316.
12. Cel. 463.
2. Bl. 47.
2. 12 Vin. 104.
An action sounding in tort cannot be sustained against an infant when the cause of action arises ex con.

It has been said by two English judges only (Trevor and Parker) that of an infant pretend to be of age in consequence of which he obtains credit, he is bound by his contract under those circumstances, and the doctrine seems to be supported by an inference very rationally drawn from an observation of Lord Mansfield. Mr. Gould thinks that it may be considered as pretty well settled that infants are not liable for their frauds in writing on contracts.

Nevertheless Courts of Chancery will in some cases bind the minor to his contracts when entered into by fraud or collusion. This is done on the ground that the Chancellor is the common guardian of all the infants throughout the kingdom, & that a Court of Chancery is a Court of Conscience.

When a contract is strictly void, Courts of Chancery cannot help taking advantage of its want of validity, they have the power when the contract is merely voidable.

Infants at different periods of their minority are of sufficient age for different purposes.

In England males of 14 and females of 12 may appeal of discretion dispose of their personal property by will, & in this respect the probate rather Ecclesiastical Courts are regulated by Civil Law.
Remarks...

(a) Infants for example will be liable at the following case - By stat. it is made felony to fling a pebble stone into a navigable river now if an infant does so fling a stone he will be within the statute because doing the act is made felony which is an offence without benefit of clergy which is an offence corporally punished at law. Law.

(b) W.C. says that this is no reason which he does not understand he supposes that the true reason to be this - The judge thought the privilege of minors to send to be cured by implication.
Parent & Child

In Connecticut, Infants may dispose of their personal estate by will, at 7 years of age. All infants are considered as serants to their fathers who by law are entitled to whatever property the infants may obtain by their skill and industry. But to property acquired in any other way, as by devise &c. the parents have no claim.

Penal Statutes inflicting upon offenders corporal punishment sometimes include infants under the general term "all persons," sometimes not. The rule is if the offence, which is sometimes made corporally punishable by Statute, was punishable at Common Law, they are included if otherwise, they are not punishable.

In the last class of cases, that is, those which are not corporally punishable at Common Law, the corporal punishments is said to be collateral, that is a punishment not incident to the offence at Common Law. The above rule therefore amounts to this where the punishment is collateral, infants are not included, but where it is incident at Common Law they are included, but that and the Common law punishment remains undisturbed.

Of the Contracts of Infants...

It is generally true that the Contracts of Infants are not binding upon them; yet an adult is bound by his contract with an
Remarks

3. Nov. 24th.
300. 709.
3 Dec. 140, 1.
1 Jan. 171.
2 Jan. 362.
302.
1 Mar. 109.

Feb. 129.
Feb. 169.
3 Mar. 140.
20 Feb. -
20 Feb.
Infant which is contrary to the general rule that contracts to be binding must be reciprocal. This rule however must be taken with this qualification, that if the infant contracts upon "at ini tow" not merely voidable, the adult is not bound by them, and this qualified rule is the same in Equity as at law. It seems to be true also, that altho' the infant has received the full consideration of the contract, he may still avoid it, & retain the property received. This rule has been somewhat relaxed by a late decision of Lord Thurlow's who held indebtedness a sufficient ground to recover back the consideration fraud where the infant disaffirms the contract.

The above rule is clearly contrary to justice where the consideration or property received & remaining in the hands of the minor can be identified-for here the infant can be compelled by a Court of Chancery to return it to the adult without injury to his patrimony.

Altho' it is regularly true that Contracts of Infants are not binding upon them, yet if they are made for necessaries, they are.

This rule however judges have considered as much too broad. For it is just laid down that infants are bound by their contracts for "necessaries," but they are bound at all events for those articles the term itself has a double signification, or must therefore specify those articles called necessaries. They are food, medicine, instruction & clothing and even for these they are not absolutely liable unless they actually...
Remarks...

3 Ps. 153.
Ps. 68.
Pep. 161.
Ps. 67.
3 Ps. 133.
68.
Ps. 161.
Ps. 67.
3 Ps. 133.
68.
Ps. 161.
Ps. 67.
Ps. 161.
Ps. 67.
Ps. 161.
Ps. 67.
Parent & Child

stand in need of them, for the law will not indulge any unnecessary or foolish extravagance in infants when by merchants may take advan-
tage of them. What necessaries are for the minor, must be determined
by the trier by the particular situation and circumstances of the Infant
in life.

It is indeed laid down in Cro. Eliz. 583. that it belongs to the judge to
determine only what articles according to law come under any of the
classes of necessaries, & of the Jury to determine whether these articles
were necessary for the immediate use of the minor.

An infant husband is bound for the necessaries of his wife, for as
he is allowed to contract marriage, it follows that he may subject him-
sell to all the consequences of the marriage contract. Besides he is bound
on the principle, that the necessaries of the Wife are the necessaries
of the Husband. And it is also laid down that he is liable for the
debts of the Wife contracted before marriage. The same, I apprehend to be
only a reasonable consequence of the marriage, for were the rule
otherwise, a female debtor by her own act might defeat the
just claims of her creditors. Barrie's Notes on Barnadiston 95.

But tho' it is regularly true, that an infant may bind himself for con-
tracts for necessaries, yet when he is under the actual government
or protection of a master or guardian or parent, and that government
is duly administered, he cannot bind himself by his contracts even for himself.
Remarks.
Parent & Child

There are three classes of cases where an infant can bind himself only. I. Where he has no parent, guardian or master, he never, unless it be for necessaries.

II. Where he is out of the reach of their government & protection. In this case it is a matter of necessity that he is bound, otherwise infants under such circumstances never would be trusted, but would be constrained to undergo the mortification of appearing naked in the streets.

III. Where the government is not duly administered. Even in this case the infant is not bound by the express terms of the contract, but by a contract implied in law, or by an assumpsit upon the ground of val. bat.

But an infant is not even bound to the extent of the value of the articles unless they were proper for him; then indeed he can be bound for them no further than they are useful to him, e.g. gr.

If an infant contract to give an exorbitant price for articles, he is only liable for their real value to himself or necessary to his use, which value must be determined by a jury.

In Connecticut, the Statute on this subject is believed to be only in a formance of the Commons law the thing is made a question.

An infant cannot bind himself in a penal bond, for necessaries, because a penal bond is not examinable, & therefore the court cannot
Determining whether the bond was given for necessaries or not...

An infant might formerly have bound himself in a single bill for formerly the consideration might be looked into; but now the consideration of a single bill is not examinable an infant there cannot be bound thereby.

An infant may bind himself by a negotiable note if it be not actually negotiable and for the reason that the consideration may be gone into, but the very moment it is negotiated that moment it ceases to be binding inasmuch as the consideration cannot be inquired into.

In Connecticut we have inadvertantly considered notes for necessaries given by minors whether negotiable or not, as good. But with us the consideration of notes of hand can no more be inquired into, than bonds in England. To preserve the law entire therefore, we ought to have considered such notes as void, or to have replaced the rule and suffered the consideration of notes to be gone. It is considered of law however that notes of hand these are considered here as not examinable, yet their consideration when against infants may be examined.

It is laid down that an infant is not bound by any instrument whatsoever for necessaries, the reason that supports this rule was that at Common Law an instrument for necessaries was no more examinable than a bond. This reason seems to have fallen; for the items of the account may now be examined.
Remarks

[Text illegible]
With regard to Bills of Exchange, the law and the reasons of it is the same as that of negotiable notes. An inference has, however, been drawn from a decision of a case in the 16th of Geo. III. that infants are not liable for bills of exchange tho' in the hands of the payee, but the decision does not warrant such an inference.

Although an infant is not liable on a penal bond or security, yet it is a question whether he is not liable on the simple original contract. The decision of this question must (I conceive) turn wholly on this point viz., is this penal bond strictly void or voidable only.

If the bond is void in the technical sense of the word, it does not merge the simple contract, which stands, of course, as if the penal bond had never existed. And it is judge New's opinion that the penal bond is absolutely void.

A promise to pay the debt after he becomes of full age attaches to, & confirms the original contract.

If the bond be merely voidable the simple contract is merged, and a ratification of the contract when the infant comes of age attaches to the bond and not to the original contract as in the case of a simple bill.

Whether a penal bond is void or voidable, will be considered hereafter. Mr. Reeves is of opinion that the bond is void, but this point is not settled.
Parent & Child...

An infant is not bound for money lent unless it is paid out in necessaries, & then only in Equity in order to bind the infant at law for money lent, the person who advances must himself procure the necessaries. In this case, the infant is bound only for the real value of the necessaries.

So also where the infant is bound in Equity for money borrowed and expended for necessaries, the lender is considered as standing in the place of the vendor & has a claim for the value of the necessaries only.

An infant is not bound for articles purchased to enable him to carry on his trade, for then, the law, does not consider necessaries. But he may bind himself for articles which are necessary to the acquisition of a trade or profession as there are incidents to his education which is necessary.

An infant is bound by a decree in Chancery the not to the extent of an adult. For he has six months allowed himself to become of full age to impeach it, for fraud or for mistake or for error.

An infant Plaintiff, according to Lord Mansfield is as much bound by a decree in Chancery, as an adult, unless his prochein ampy has been guilty of fraud or negligence but the rule must be considered with the qualification of Hardwicch (viz.) that he is bound as fully as an adult unless his prochein ampy has been guilty of fraud or negligence.
Parent & Child

Whenever an infant does an act which he would be compelled
to do in Chancery, it is well done & cannot rescind it, he is bound
thereby both in Equity and at Law.

For these contracts which are formativearies the infant is bound
at Law and in no other case is he.

The acts of an infant are binding, where he acts in auter droit
as by the authority of some other person as in the case of an infant
Officer or Executor of these acts are done in pursuance of that au-
thority, because such acts do not affect the infant's interest.

These contracts of an infant which are voidable only may be
ratified by him when he becomes of full age & and they will bind him.

Where an adult is sued upon a Contract entered into when an
infant, & pleadts infancy, & the Pfl. repelts a subsequent promise
when of full age, and sufficiently substantiates his replication pro-
ing a promise subsequent to the original contract, the onus probandi
lies on the Defendant, to shwo that he was not of full age when
the subsequent promise was made. The reason is because the Defe-
age is in his own mind.

Of the void & voidable Contracts of Infants.

All those Contracts of infants which are not binding are
either void or voidable, but of late Courts have been more inclined to declare
them voidable, but of late, courts have been more inclined to declare
them voidable only. To determine when the contract of an infant is
void & when voidable only, is extremely difficult. But Judge
Revely puts it down as a general rule that where an infant cannot enjoy
the full benefit of his privilege, without having the contract void, it shall be void.
But on the contrary, wherever he can, it shall be void.

They voidable only by an infant; for an infant can never void it. It has been said
that the contracts of infants respecting real property are void & those strictly
concerning personal property are voidable only. This chiefly regard
sales as no general rule. It may however be laid down, says Mr. Lord
as a general rule, that their contracts are voidable only concerning both
real and personal property. The criterion by this rule, by which
we are to determine whether a contract is void or voidable only is the
nominal or constructive delivery of the thing about which the con-
tract is made, or the want of such delivery. If there is such a delivery
the contract is voidable only, if not, it is strictly void. This rule is
also applicable to sales, and is deduced by Mr. Powell merely because
it was established by Lord Mansfield.

Agreeable to this rule, a fragment made by an infant is voidable
only. Also in a conveyance of a term, the delivery of the lease is construc-
tively a delivery of tenement, if there be no actual possession therein.

An infant's power of Attorney to convey a right to another is absolutely
void (vol. 362).
Parent & Child.

The grantee of a lease of an infant cannot disaffirm the grantor lease, which of course are voidable only. Altho a power of attorney by an infant to deliver a seisin is void, yet a power to accept is merely voidable.

In sale of Personal Estate as we have before mentioned, if the property is delivered, the contract is voidable; if not delivered void. Thus if an adult contract with an infant for a horse, and the infant delivers the horse, the contract is merely voidable; but if the horse is not delivered, the contract is strictly void. If the adult of he take the horse, he liable in action of trespass.

It is sometimes laid down that leases and grants and surrenders are void; this however is erroneous.

Contracts which are strictly void may be taken advantage of in any way by persons interested in them. Such contracts are mere nullities at initio, and things attempted to be conveyed by them are as liable to the creditors of the original promisor as the novus actus had been made. But if the contract is voidable, no one except the person in whose favor they are voidable or his representatives may take advantage of the voidable quality, for all other they are as the most valid contracts.

In case of an usurious contract therefore, which is strictly void, the original parol contract may be proceeded upon, and a recovery had. And in case of a fraudulent mortgage of lands a creditor of the mortgagee may attach them, even in the hands of the mortgagee, so an infant sell a horse to an adult & the latter take the horse without his being delivered.
Parent & Child

The creditor of the infant may attach the horse in the hands of
the adult, because the contract is strictly void; but if the horse had
been delivered the adult would have held him against all perils ex-
cept the infant in whose favor only the contract is voidable.

In case of a conveyance of lands, which is voidable, none except
those privy in blood to the original contractor, in whose favor the con-
tract was made, can take advantage of its voidable quality.

But in Personal Estate, his legal representatives whether privy
by blood or not can take advantage of it.

It is said to be a general rule, that where the contract is such
an one that from its nature it is not for, nor has the semblance of
benefit for the infant, it is absolutely void; but if either the benefit
or the semblance of it appear in the face of the instrument it is
voidable only. It seems however from a comparison of the decisions
on this point, that this is merely a qualification of the former rule.
The rule with this qualification is clearly a governing rule.

Whenever there is an actual or constructive delivery the con-
tract is voidable only, but where such actual or constructive delivery
is wanting, the contract is void notwithstanding the delivery of the thing.

If the contract is clearly against the interest of the infant, it is still
void on the ground of the second rule without any relation to the form.

The true rule of discrimination respecting void & voidable Contracts of
Parent & Child....

Infants appear to be this. That all gifts, grants, sales, conveyances and obligations made by infants which do not take effect by manual delivery are absolutely void, but those which do are only voidable... A power of attorney given by an infant to deliver or accept is only voidable.

It is said, however, that a power of attorney to give seignior to an infant is voidable only, but that an infant's power to give seignior to an adult is strictly void, and also in case an infant purchases, where there is no nominal delivery, the contract thus made is voidable only, on the ground of the latter part of the rule that the contract is void until it has the benefit or semblance of benefit to the infant.

It is said likewise that a lease made by an infant is void if there be no reservation of rent: this Mr. Gould thinks to be untrue. But Judge Neeve is of a different opinion, for where the infant cannot receive the full benefit of his privilege, the contract is utterly void. He observes a fiction: it is void in this case. But where an infant reserves to himself rent, it is otherwise.

The case of the young lady's hair mentioned in some of the books may come within the first rule when qualified by this second, but not otherwise, for there was an actual delivery of the hair to the barber, yet it being clearly against the infant's interest to have her head shaved, her contract was considered as void notwithstanding the delivery.
Remarks
The same reason operates where a horse is sold and delivered by an infant to a bankrupt, the contract being considered as absolutely void.

A penal bond is frequently treated of in this book as being absolutely void. But Lord Mansfield is evidently of a contrary opinion, viewing it as voidable only, and it is so laid down in many authorities.

But it is said that an obligation is voidable only. A penal bond is an obligation, therefore a penal bond is only voidable.

On the supposition that the general rule extends to this case, the bond is only voidable, for there is a manual delivery of the bond. In considering that rule however we consider in reference solely for void, the it is held by many to extend to other contracts of infants.

The bond also gave a right and not merely a power to give a right, and hence may be considered as being voidable only. And also if an infant wills that all the contract to which he has not his hand shall be performed, Chancery will enforce this will even in the case of a penal bond.

The perhaps it may be said that this may be done on the ground of a legal act designated by the bond. It is agreed by all, that non est factum cannot be plead by an infant to his forfeit contract, and hence it is inferred that it is voidable only, because a non covert whose bond is strictly void may plead the general issue of non est factum.

If we allow that the general rule applies, then the qualifying rule will not affect the cause, although an infant may not plead the
general issue, yet according to the opinion of Lord Hardwick he may plead a special general issue or a special instance factum.

But on the whole it remains doubtful whether the penal bond of an infant is strictly void or voidable, yet the balance of rules and authorities seem to favor the opinion that it is actually strictly void. The authorities however observable the judge will not support this construction; for in none of these cases did the question call for a decision, whether the bond was void or not, but whether the infant would avoid it by a plea of infancy. I am of opinion that a bond given by an infant is only voidable, for he may put it up by matter ex post facto, as by a promise when of full age - which could not be done if it was absolutely void, it cannot be avoided by a plea of non est factum, and Chancery will decree it paid when he bequeaths his property for the payment of his debts which they could not do, without considering the bond as voidable only; otherwise they would make a contract for the infant, which they are not authorized to do.

In Connecticut the penal bond of an infant is on the same footing as the promissory Note of the infant.

If an infant gives a warrant of attorney to confess judgment against himself, the Court in England will on motion vacate the judgment. But in Connecticut we have no such beneficial practice, as that of vacating judgments. However to preserve the principles of law
entire, such judgments ought to be considered as void, so that the infant might have the full benefit of his privilege.

In addition to what has already been said of distinguishing void from voidable contracts, it is to be observed, that voidable contracts may become valid by a subsequent assent as in the case of an infant's contract. But void contracts cannot be rendered valid even when the party becomes of full age, and it is a rule of law, that whenever a contract at its creation is void, it cannot be rendered valid by any subsequent assent, but not so of voidable, for they by assent may become valid. Thus, in the case of a purchase or sale of lands for a term by an infant, the payment of rent after he becomes of full age is a sufficient assent to confirm the contract; and in this case he is bound not only for the subsequent rent but for the antecedent rent in arrear.

The Law is the same where the assent is by his heir being dead, and any assent is sufficient which evidences an intention to confirm the contract on the part of him by whom it was voidable. Co.Lit. 295, 171.

These incidents and characteristics of void and voidable contracts are important to be remembered as they will enable us to determine what contracts which may arise, are void. If upon the examination of the books we find that a similar contract has been rendered valid
Remarks

[Handwritten text]

1. Mod. 25. 107.
2. Vent. 51.
4. Tit. 1.
5. Rom. 997.
Parent & Child.

By a subsequent event, we may conclude that such contracts are strictly void. If we find that any person can take advantage of its want of validity, it is void, but when no one can except the person in whose favor it is or his representatives it is voidable only.

It seems to be a general rule that executory contracts of infants are voidable only. This rule is not expressly laid down in the books, is plainly deducible from a comparison of decisions in the cases of Notes of hand or parcel promises against infants, and executory contracts do not in any conceivable case violate the privilege of infancy, as they merely convey a right of action.

A final bond seems to be an executory contract, for it merely professes a right of action, not in propria persona. Yet from its analogy to grants and deeds it is laid down as a Contract executed.

A surrender in law and an acceptance of a new lease according to the second rule is void, or voidable, according to the term of it. If it increases the term of the infant or decreases his rent, it is voidable only, but if neither of these, it is void.

When the voidable Contracts of Infants may be ratified or avoided.

There is some contradiction in the books relative to the time in which the voidable contracts of infants may be avoided.
Parent & Child

If an infant lose a fine or suffer a common recovery or enter into any other security or recognizances he must avoid them during his infancy or it cannot be done. The reason assigned for it is, that his nature by which they are to be avoided, is to be had by inspection, which it is said cannot be done after his full age; this rule is considered as a great hardship towards infantes.

A seoffment it is void can be avoided by the infans during infancy, but this is not true for where a voidable contract is avoided by an infant it is a mere nullity and not a consideration for a future contract. So that according to this rule, a seoffment avoided by an infant it is could not be confirmed by him when an adult. And yet it is certain that the the infant intended to avoid the seoffment during his minority, he may still confirm it when he comes of age.

So also in Connecticut in case of a lease and release the infant the he attempts to avoid it during his minority, may ratify it, when he comes of full age, which is a decisive proof that his attempt was insufficient.

The same rule obtains with respect to a lease: this rule is denied by Coke, but his doctrine on this subject is proved to be wholly untenable.

The infant when of full age may ratify a contract made by some other person in his behalf either by an express or an implied agent. — If an infant execute a power of attorn to confess a judgment, the judgment & execution issuing upon such judgment are void.
Parent & Child

But in both the practice is to stay proceedings by an injunction.

There seems to be no rule laid down in the books determining when
those contracts of infants which are voidable, & which respect personal
property may be avoided. I conclude however from this transitory
nature of property that they may be avoided at any time during
infancy. Equity cases exempt.

There are many cases in which an infant is bound by his con-
tracts in equity, tho not at law.

If an infant enter into a marriage settlement agreement, he is
bound by it, such an agreement being subordinate to the contract of
marriage. Whether a male infant can bind his real estate by a marriage
settlement agreement, is said as yet to be unsettled.

Whether he can bind his estate of inheritance is likewise unsettled.
but it has been decided that he cannot bind his estate for life.

That a female infant can bind her portion or her dower by
accepting a settlement of personal estate in the room of a jointure
seems not to be disputed.

So also it has been held that a wife is bound by accepting a
bond for the livelihood in lieu of her dower. And it is said to make
no difference in case the portion of the wife is in personal pro-
property, whether it be in actual possession or depending on some contingency.
So it has been held in Chancery that where there was no express agreement, the husband was entitled to the wife's portion in consequence of a settlement.

This is laid down by Lord Mansfield that if a male infant after attempts to convey an estate of which he is seized in fee in consequence of a marriage settlement, such agreement will be enforced by Chancery. This rule however has not been adopted in its full extent by subsequent Chancellors; Lord Mansfield is of opinion that he would not be bound in this case unless the settlement was adequate to the estate agreed to be conveyed but that she must have issue by him. And Brougham thinks that she must also avail herself by taking possession of her settlement. This opinion has however been questioned.

These agreements of young infants in order to be binding must be entered into before marriage.

If a male infant marry a female adult it is clear that he is bound by her contract to convey her real estate.

An agreement in consequence of marriage in order to be binding in Chancery must be reasonable, and the time in which such agreements are reasonable is pretty accurately drawn by Courts of Chancery.

A male infant as was before observed, cannot bind his estate of inheritance, but his leases with consent of guardian he can.

If an infant capable of disposing of his personal property by
Remarks

3 Pet. 1:4b.

5 Acts 7:60.
71:18.
1 Cor. 3:20.
2 Cor. 11:40.

1 Th. 2:30b.
1 Cor. 15:52.
2 Cor. 3:2.
2 Peter 3:2.

P.W. 225.

5:60.
Parent & Child

Will, make a bequest of his personal estate for the payment of
his debts. Chancery will compel the Executors to discharge them.
This rule has been confined to infants of the age of 17, but it
extends to those of any age who are capable of disposing of their per-
sonal property by Will.

How far infants are capable of exercising a power.

An infant cannot exercise a general power over real estate;
but he can a special one, such being not discretionary.

It seems, however, that he cannot execute a power over his own
inheritance as in this he is interested.

It is said by Lord Hardwicke that there is no precedent of a valid
power executed by an infant; but this is not true to the extent alleged.

It may be laid down as a general rule that where the power is
discretionary an infant cannot execute it, but where it is special
the line of execution is marked out. If not discretionary, he may
execute it. Although an infant be interested in the subject matter
about which the power is to operate, yet he may execute it
if it be of personal property and he be of sufficient age
to make a will.

But the it is generally true that an infant cannot
execute a power over his inheritance he may make joint
interest to his wife from an estate for life.
Remarks...

1. Mark 7:9.
2. Phil. 2:45.
3. 2 Thess. 2:16.
5. Psa. 48:106.
8. 2 Pet. 3:18.
10. 2 Tim. 4:46.
11. 2 Thess. 1:77.
12. 1 Pet. 4:29.
14. 1 Pet. 760.
15. 2 Thess. 117.
16. Ps. 80.
Parent & Child

Infants in utero are mere

Infants unborn or in utero are mere are in law for many purposes in effect.

The killing of such a child the child is not murder is a high misdemeanor
yet if a child in that situation be so injured or wounded as to die after
its birth in consequence of that wound or injury, the perpetrator
is guilty of murder. An infant in utero is mere may inherit an estate.

Such an infant may take by devise, but when a devise is made
to an unborn child, the estate devised goes until its birth to the
heir at law, and on its birth the heir is entitled to the estate vested
in the devisee. He may take under a term for raising portions for the children
living at the death of the parent.

So also on the death of the father, such child is entitled to a dis-
tributory share of the personal estate under the Statute of distribution.
If the distribution is made upon the faith that there is
but one child, when in fact there is another "extra" after its
birth the distribution will be revoked.

So he may take under a term for raising portions for
the children living at the death of the parent.

An infant in utero is mere may have an injunction
in its favor against any one who is committing waste upon
his inheritance, or application of his guardian or provisor, any he may also have a testamentary guardian appointed under the statute of Charles 2.

It was formerly held, that a devise to an infant in ventre sa mere should not be granted directly, but must vest in some other person till its birth. This opinion however is exploded and the devise may be made in direct terms to such infants.

A devise in these terms viz. "I devise to my unborn child, whosoever is born shall be good." is good.

It was enacted by statute 10 & 11 W." that infants unborn with respect to limitations should be the same as to infants born. In Connecticut an infant in ventre sa mere may take by deed: for hire a feoffment may be made to commence in future.

In England where the eldest son inherits the ancestors estate, the ancestor dying leaving only daughters to take the estate, but if there be a son in ventre sa mere, they are divested on his birth and the estate will vest in him.

If the owner of a fee, make an instrument stipulating that if his heirs will pay a certain sum it shall vest, it is said that if the daughters pay this sum they will hold the estate; the posthumous son is afterwards born.

But this rule holds only I conceive, in cases where the estate...
would not otherwise be redeemed within the time limited for its redemption. — Personal property of the ancestor who died has been allowed by the Statute of distributions to the infant in survivor.

So such posthumous Child may take a legacy upon the same principle.

A devise of real property to a child in ventre sa mere is now settled in France; on Remainder to be good, the law being the same unto real & personal property. [earne 1429]

Contingent remainders may be given to persons in ventre sa mere; for in this case, the Estate is given to A remainder over to B, so B may be in use before A's death.

Of Infants incapacity to hold Offices.

In England, infants may regularly hold ministerial Office, but not judicial ones.

It comes from some of the Books that an infant may be a Mayor for they say the acts of an infant mayor are binding. This instance is subordinate to a former rule, so that it is good only whereas the office is ministerial and not judicial. — An infant at seventeen years of age may be an Executor.

A ministerial Office in England may be granted in remainder to an infant and when it devolves on him if he is unable to execute it himself, he may appoint a deputy for that purpose, but a judicial one cannot.
be granted in remainder, for such office cannot be executed by Deputy.

In Infant it is said cannot hold the Office of Attorney because
say they an oath is necessary, and an infant is not adequate to accept it.

Neither can he be a juror for here also an oath is necessary, and the
office of a juror is a judicial one.

An infant cannot be bailiff, factor or receiver, because he is not liable
in an action of account.

It seems to be a general rule that an infant can hold no office that
cannot be exercised by Deputy, & ministerial, generally can be.

In England, an infant may be Guardian and like other Guardians is
liable to bounties in case of an escape.

It is indeed unsettled whether an infant can hold any Office
in Connecticut for it is not customary to appoint them to Offices. On the
principles of the English Law it seems they can hold none, except
that of Executor & whether even that is questionable.

How far Conditions are binding on Infants.

An infant is not bound by a condition when the breach of it,
would subject him to a penalty distinct from the forfeiture of the
Estate called a collateral penalty.

But although infants are not bound by conditions, when a breach of
them subjects them to a penalty distinct from a forfeiture of the Estate but upon
Remarks.

...
Parent & Child

condition yet where a breach of the condition subjects them to a forfeiture of the estate only, they are bound. To this rule however, there is an exception. All conditions fall under two general heads: first conditions expressed & secondly conditions implied.

Express conditions need no description, for being express, they describe themselves. It is a general rule that infants are bound by them unless a breach of non-performance subjects them to a collateral penalty.

This condition is generally annexed only to the tenure by which of fines are holden and by this, infants are bound.

The second kind includes all common law conditions, not found on hire and confidence. And on this condition all estates are holden a condition by which infants are not bound.

Conditions implied by statute are also of two kinds; the first are those where the statute on a breach of non-performance of the condition on which the estate was holden, gives a recovery of the estate. The 2d kind are those where the statute gives not a recovery against the person holding on condition for non-performance or breach thereof, but only a right of entry. By the first kind infants are bound by this, they are not. In what cases the statute of limitations runs against Infants.

According to the current of authorities, the statute of limitations runs against infants as well as adults in all cases when they are not
Parent & Child

The infants right to compel a trespasser to account as trustee in Chancery for the profits of the Estate is bound by the Statute of limitations. It is laid down as a general rule if an infant's executor, administrator or trustee, do not sue for the infant within the time allowed by the Statute of limitations the infant is bound. This rule I apprehend, applies to those cases where if the infant had no Executor he would not be bound, that is, to those cases where infant are excepted from the operation of these Statutes.

The rule amounts to this: if there be a person duly qualified to sue for the infant, the infant is bound, the heir or provision in favor of infant.

Legacies according to the English law are payable in one year from the testator's death, if there is no time specified for the payment of them; & if in favor of infants will draw interest from that time the there is no demand made. But a legatee who is an adult must make a demand of the payment of the legacy before interest will begin to accumulate.

When an Infant may sue by Prochein amy.

When an infant brings a suit he must appear by his guardian or prochein amy, for he cannot appear by Attorney, he not being of a capacity to make a power of Attorney.
Remarks
Parent & Child

A prochein amny is any person who will undertake an infant's case.

At common law when an infant was plaintiff he could appear by his Guardian only; but by statute he is enabled to appear by his prochein amny, which extends to four classes of cases:

I. Where he is estranged from his Guardian.

II. Where his Guardian will not permit his name to be used but assents to the institution of the action, in which case the defendant or the Guardian could have prevented the commencement of the action by anyone.

III. Where the infant brings the action against the Guardian.

IV. Where he has no Guardian. The reason of this Statute is adopted in Connec.

If an action is brought by the Husband and Wife, the being an infant both may appear by an Attorney. But when actions are brought against them, she must appear by Guardian.

When an infant sues by Guardian or next friend, the one by whom he sues, it liable for the cost for which he must give security.

In this case it has been said that the Guardian or prochein amny and infant are both liable. But this doctrine is denied, it seems now to be settled that the infant is not liable. Sta. 708. In the last authority it is considered as settled.

When a Guardian or prochein amny appears for an infant the Court must enter an allowance; that is, they must enter upon record that the
Parent & Child

Guardian or prochein amsy was allowed to appear.

But in Connecticut it has been held that a valid consent of the Court that the guardian or prochein amsy may appear for the infant is a sufficient demijion.

It is laid down that any one and next friend may bring a bill for an infant, this without his consent, but the Court in the case, must see the infant's rights preserved, and inquire into the qualifications and dura of the person bringing the bill.

Although an infant when Plaintiff is not liable for costs yet when Defendant, he is liable for costs as an adult.

An infant when sued must always appear by his guardian, & never by his prochein amsy. This rule remains the same as at common law, the statute having altered those cases only where the infant is a Defendant.

If an infant when sued has no guardian, the Court must appoint one. In England, the Guardian in England, is usually some Officer of the Court, who is supposed to be capable of supporting the infant's rights. In Connecticut the infant's father, & in Connecticut the infant's ally, is usually appointed by the Court.

By appearing by Guardian or prochein amsy, he must resign higher.

It is generally true that where there is a guardian in being, a Court can not appoint one. But to this rule there are exceptions in two cases: Where the infant is released from the Guardian & Where the Guardian has demanded himself.
Parent & Child...

When an infant is sued it is customary to summon the guardian in a clause of the writ, but the guardian is not thus summoned the circumstance in no case of albatism because the court may stay proceeding: Order him to be summoned.

If an infant is sued with an adult he appearing by an attorney and entire damages are given, the whole judgment is erroneous. But of the different parts of the judgment which are erroneous, are severed from those which are not, those only which are severed are erroneous.

It is a point however frequently in dispute whether such part of a judgment are in particular recoverable.

In the State of Connecticut it has been held that if the entire damages are given in a case like the one supposed, the judgment is erroneous as to the infant only.

If in England a fine is levied against an adult, and an infant it will stand good against the adult & erroneous against the infant.

When a judgment is erroneous as to both only it may be reversed as to them; and stand good as to the debt or damages.

Illegitimacy...

A legitimate child is one born during lawful wedlock or within a competent after its determination.
Parent & Child

But it is not to be understood that every person born within lawful wedlock or a competent time afterwards legitimate; such a birth is only prima facie evidence of legitimacy, a presumption, like all others, liable to be rebutted.

An illegitimate child is one not only begotten but born out of lawful wedlock. This definition the laid down by Blackstone is yet plainly deficient, for a child may be both begotten and born out of lawful wedlock and yet be legitimate. Thus, the child may be begotten and the parents afterwards intermarry, & the father die before the birth of the child, This child would doubtless be legitimate, tho' begotten and born out of lawful wedlock. A more complete definition is 'an illegitimate is one begotten out of, and not within wedlock or within a competent time after the determination of marriage.'

A child born agreeable to the definition of legitimacy, is only presumptive evidence of legitimacy; but formerly this presumption could not be rebutted only by impossibility of access on the part of the husband or incapacity on his part. And in those times by Common Law, nothing short of the husband's being beyond the seas during the whole time of gestation was considered as proof of impossibility of access. And impotency was provable by the husband, want of age only. The age in which impotency ceases is not settled.
Parent & Child.

in the Books, some say at 8, others at 14. — — — — — — — — — — — — — — — — — — — — — — — — — — — — —

So it appears that if the husband has been beyond the 4 years even 40 years, yet if he returned before the birth of the Child it would be legitimate. The law was the same of the husband had been ever so long beyond the 4 years if he returned he should marry and on the 2nd day after his wife should be delivered of a child; because on inquiry it was said, would open a door to such a disagreeable retrospection that the law will not permit in any case. — — — — — — — — — — — — — — — — — — — — — — — — — — — — —

The rule that impossibility of access could be proved only by the fact of the Husband being beyond the four years, and that impotency for want of age, in time gave way to a more easy mode of proof; after this change any facts which in the minds of a jury proved an impossibility of access were deemed sufficient. — — — — — — — — — — — — — — — — — — — — — — — — — — — — —

And the habit of a man body, as a defect in the organ of generation was admitted as a sufficient proof of impotency. — — — — — — — — — — — — — — — — — — — — — — — — — — — — —

Still it continued a rule that if there was any possibility of access, and generation on the part of the husband, the child was considered as legitimate; tho the want of either might be more clearly shown than in any of the former periods of which we have been speaking. At length it became established that other proof than that of physical impossibility of access, or generation might be admitted to rebut the presumption of legitimacy.
Remarks.

1 Sam. 35:8.
Eph. 4:84.

1 Sam. 49:5.
Eph. 4:28.

Or 28.

1 Pet. 3:38.
Col. 4:15.

1 Pet. 3:36b.
Col. 4:12.

1 Pet. 3:36b.
Col. 4:12.

1 Pet. 3:34.
Col. 4:12.

1 Pet. 3:34.
Col. 4:12.

1 Pet. 3:34.
Col. 4:12.

1 Pet. 3:34.
Col. 4:12.

1 Pet. 3:34.
Col. 4:12.

1 Pet. 3:34.
Col. 4:12.

1 Pet. 3:34.
Col. 4:12.

1 Pet. 3:34.
Col. 4:12.
Parent & Child...

As in the case of a Wife who lived with an adulterer, born human & was reputed to be his, such being the fact, this child was held legitimate notwithstanding that the husband lived within the kingdom. 

In Connecticut we have no such mode of proof, that the husband must be extra quatuor menses. It is now settled that if a marriage is void from the beginning, the issue of such marriage is illegitimate.

By divorce a vinculo matrimonii the issue of that marriage if within the lictorial degree either by affinity or corporeal uncleanness, are bastardized. In Connecticut such marriage are void ab initio; therefore the issue are bastards. In England, pre contract was formerly a good ground for a total divorce, but this law is abrogated.

A child born during divorce a mensa et thoro is presumptively illegitimate, the this presumption may be rebutted.

But after a voluntary separation the presumption is that the child is legitimate, yet this presumption is rebuttable.

The wife is not an admisible witness to prove that there was no consent, but she is to the want of continency.

Subsequent marriage according to the civil and cannon law legitimate the children born before the marriage but this rule does not obtain in Eng. or Bon. A divorce a vinculo matrimonii can only be obtained during the lives of the parties, for such divorce are granted for the purpose of separating the Offenders pro salute animarum, and not for the purpose of bastardizing the issue.
Remarks...

Ps. 7.
Ps. 336.
Ps. 312.

No. 312.

B.N.P. 114.
C.N.P. 295.

co. Lit. 8.

Ps. 357.
Ps. 312.
co. Lit. 8.

[Handwritten notes and remarks]
When a Child is legitimate the born out of lawful wedlock.

Within what time a child born after a wedlock is prima facie evidence of the legitimacy, or how long a time must elapse from the dissolution of the marriage to render the infant prima facie legitimate is a point about which the books differ, but they are generally good.

But whatever be the usual time of the child is born by or after that time it is presumptively legitimate, for there is no doubt but that circumstances may either lengthen or shorten the period of gestation and it is usual in such cases to have the opinion of physicians on the subject. It has been decided that when the period was 9 months and 20 days, the child was legitimate. These cases were decided upon their own peculiar and special circumstances.

But when the question arose when the child was born 11 months after the death of the husband, it was decided in the negative.

If a wife on the death of her first husband immediately marries and have a child at such a period of time that according to the usual course of generation he may belong to either husband, it has been a question to which he shall belong, but it is now settled that the child may have his election.

It has been decided that a child born 9 months and 10 days after the death of the husband may elect but the opinion was upon the ground that 9 months 10 days was the usual time of gestation.
Remarks

...
But if the rule be true, that a Child born 9 months and 10 days after the death of the first husband belongs to him; it is also true that one born 9 months and 11 days after the death of the first husband belongs to the second husband, born in 9 months and 9 days to the first.

There seems to be no proper precise time fixed at which a child may be born after the death of the husband, in order to be prima facie legitimate; for the usual time of gestation remains unsettled. It however lately believed to be 9 months.

To prevent any doubt as to the rightful father of a child, the Common Law forbade the marriage of a widow until the expiration of one year from the death of the husband— their year consisted only of nine months. The same rule obtained in England under the Saxon & Danish governments, whose year consisted of 12 months. According to the present common law, the heir of a person may have a suit de ventre impensis to examine whether the Widow be with child or not, and if she be found pregnant he may keep her under due restraint till delivery. In Gothic times she might be hurled off to a castle and there be confined and examined.

The rule that Parents shall bastardize their issue extends to one instance only (viz.) Children born before marriage; for either parent may attest to the truth of a Child before marriage and the wife may testify to her own incontinence of action on the part of the Husband.
Remarks...

Comm. 180.

1810. 183.
183. 184.
3° 8. 8°
Comm. 589.
52° 64
Com. El. 510.

Com. El. 510.

Comm. 10.

Com. 26.
6 60.
Parent & Child...

So also a Wife's declaration in an answer in Chancery concerning the illegitimacy of the child may after her death be given in Court as testimony.

In Connecticut, it is presumed that the declarations & answers of the husband would be admitted. Thought to be remarked that these rules relative to bastardizing children do not extend to those who are dead.

Of the rights & capacities of Bastards...

Those rights of an illegitimate child says Judge Blackstone, are but very few, being such only as he can acquire, for he inherits nothing being looked upon as the child of nobody; yet he may acquire a name by reputation, and by this he may take by purchase. This amount of time is necessary to acquire a name by reputation.

An illegitimate child it is said, cannot take under the description of his Father's issue. But this rule wants some qualifications: he cannot indeed take under the description of his Father's issue.

It is laid down in Moore that an illegitimate child may take under the description of a child when the words of the instrument or will are "all my children &c." This rule however is particularly questionable when there are legitimate children.

It has already been observed that an illegitimate child may take by
Remarks

3 Luke 11:44.

Gen. 8:31.
Deut. 527.
2 Sam. 12:4.
2 Kings 3:5.
1 Kings 17:10.

Nah. 3:9.
Isa. 3:19.

1 Chron. 4:42.
2 Sam. 4:10.
name of reputation: so also having acquired the reputation of being one's child, he may take under the description of bastard, 

It is laid down that a limitation to the unborn illegitimate child of a man is not good, for it is said that the law will not intend the birth of an illegitimate child; therefore the event is too remote. 

Besides it is urged that to suffer such a limitation to take effect, would be countenancing an illicit correspondence between the sexes, which is contrary to the policy of society. 

But on the other hand it is said that a limitation to the first born child of a woman is good, that the child be a bastard for here the child is certain as soon as born: as a bastard immediately on his birth acquires the reputation of being his mother's child; yet here the reason found against the former rule viz, that to allow such limitations to take effect is contrary to the policy of society, applies with as much force in the former case. 

An illegitimate person cannot be heir to any person, neither can he have heirs but of his own body. 

The rule that a person can be bastardized after his death holds true in one case only, & seems to be rather an exception, than a rule. 

The case wherein an illegitimate child may be bastardized after his death is that of a bastard eigne. 

When a man begets a bastard & after its birth marries its mother
Remarks.

Col. 44.
Jen. 268.
Col. 27, 32, 246.

Col. 244.
112, 316.

Jn. 121, 427.

15, 283.
Parent & Child.

And by his has a 2nd child, the bastard in Norman French called
called bastard signe, & the legitimate child mater signe

When there is a bastard signe & a mater signe if on the death
of the Father, the former entitles upon the Estate and enjoys it uninterruptedly till his own death if what descend to his issue to the total exclusion of the mater signe & his heirs of whatever description for in
this case it seems that a bastard shall not be bastardised after his death.
But this case must be taken strictly, the bastard signe must have had
undisturbed possession till his death, he must have had issue in
and not in ventre sanae only, otherwise the legitimate child would
not be excluded from his father's estate.

The settlement of a bastard in England is the place of its birth,
unless fraud has been practiced by one parish upon another by impresing
the children in which case, the child's settlement shall be in the
parish of its mother.

But in the State of Connecticut the settlement of the mother is the
settlement of the child, by the adjudication of our superior Court.

Of the Mother's & putative Father's liability for the
support of their bastard children and the mode of
enforcing that support.

The mother and putative father according to this statute are
equally liable for the support of their illegitimate children.
Remarks.

5 Thess. 279.

13 L. 424.
Parent & Child

The oath of a mother is admitted to prove a man the father of a bastard child and this oath may be before or after the birth in order to render him liable to the support of such a child.

The Mother oath is prima facie evidence that the person charged is the Father; but the presumption arising from the evidence may be rebutted or overbalanced by more weighty proofs; yet it has been found it is said in only three instances in Connecticut.

Altho' this rule may seem hard upon the person charged, yet the necessity of the case, there being rarely any other proof, it is said ought to be law.

Altho' the object of this suit is wholly civil, yet the form is criminal; so also is the form of the judgment, which obliges the Father to find security for the damages awarded, and if required to save the town harm (to which the mother belongs in case of fraud practiced) in which the child was born. But neither of these securities were required of the Mother.

It is held, that whatever a mother has sworn before her death will be sufficient to charge the Father with the support of the child after her death. This is agreeable to the general rule of evidence.

If the Woman marry or die before delivering or miscarry or prove not to be with child the person charged is of course discharged.

It is settled that the Mother of a bastard child is competent to testify to the Father.
Remarks
Parent & Child...

It is not within a month after its birth...

It is a settled rule in trials of this kind that depositions may be admitted in evidence notwithstanding these trials proceed of a criminal nature & notwithstanding the rule that deposition may be admitted only in civil suits...

Of the reciprocal duty of maintenance between Parent and Child...

Parents of sufficient ability are bound to support such of their poor impotent children as are unable to support themselves and on the other hand children of sufficient ability are liable for the support of their Parents in all those cases where they are unable to support themselves...

Whether a Grand Parent or Grand child is liable for the support of the other, is a questionable point, although it would seem clear from the Statutes that neither is liable for the maintenance of the other: yet a contrary opinion is entertained by some, Mr. niece is of opinion is entertained they would be liable...

If persons who are liable to this duty neglect it, they encourage of 20/ monthly a sum which may sometimes be sufficient for the paupers support and sometimes not. The regulation therefore appears to be defective. When there is more than one person liable the proportion of maintenance will be equal according to their respective abilities to support.
Parent & Child

It is a rule that the man who marries a woman having children is not liable for their support even the the mother was herself able and therefore liable at the time of the intermarriage to support them. In...

The reasons assigned for this rule are, that the statute commands none to support another where the law of nature commands no one to support another's children. This rule is wrong I apprehend on this ground, the husband takes his wife's name, so that he is liable in all those cases only, where she was liable at the time of marriage. Had she not have been competent to the support of her children, then I suppose he would not have been liable to the support of them. But it is clear that a man is not liable for the support of the parents or Grand Parents of the Wife. This rule is said to be taken out of domestic policy, but seems to be opposed to the idea, that the husband is to bear the burden of his wife, as the latter at the time of marriage was liable for the support of her parents (and according to the opinion of some) Grand Parents.

If a pauper has both Parents and Children it is questionable which shall support him, whether the parents or children, or whether all who are of sufficient ability shall contribute each a proportionable share to his support. On a slight glance of the question, it would seem that each should contribute a share proportionate to his ability; but on a nearer view, it will appear I conceive that the children ought to be
Remarks

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Parent & Child

solely liable. On the one hand, the children according to the common course of things are becoming more and more able, and on the other, the parents are becoming less and less able to discharge their duty of maintenance.

The children owe their existence and support in infancy to their parents i.e. to the person who are now helpless, and are bound in their turn to administer to his wants. However do not know that there has been any decision on the question.

Of the Parents duty to protect his Child

A parent is not only bound to maintain but also to protect his children; & this duty the law rather permits than enjoins; the dictates of nature rendering any legal provision on the subject as unnecessary.

It is a question as old as the year books, and one which doubtless origi- from this duty, that a man may justify a battery in defence of his child and the child in defence of his father. But neither can justify a battery under a pretence of defending the other unless it is actually necessary for the defence of the latter. A concurrent battery is never justifiable.

Three bare in point of the rule, is, that a father may justify a battery in defence of his child, in those cases only in which the child might himself justify it, and vice versa.

And such indulgence does the law show to the workings of parent-
Remarks...
Parent & Child...

Father went near a mile to find him & then reveng'd his son quarrel by beating the other boy of which beating he afterwards died, he was held guilty of manslaughter only.

The Parent may maintain & upheld his children in their law suits, and vice versa without being guilty of the legal crime of maintaunce.

Of the Parent's liability for the torts of the Child...

A parent is liable for the torts of his child in the same cases that a master is liable not for those of his servants, and is not liable not as parent, but as master, for a minor is the servant of his parent.

A general rule that if a child while in the business of the parent do an injury which arises directly from an act necessary to the performance of the business, the parent, and sometimes the child is liable. But if the injury does not arise directly out of performance, the child only is liable.

Thus if a child be employed by his Parent in driving a Team, and while driving according to the parent's direction runs over an infant and injures him, the parent is liable. But if the child instead of driving the team according to the parent's directions should leave it, and go to a neigh. bowing field & beat another boy, the parent would not be liable.

And it appears to be a general rule, that in cases where human prudence could not provide against the accident which caused the injury, neither the parent nor the child is liable.
Remarks.

[Handwritten text not legible]
Of the Parent's Liability for the Contracts of his Child.

It has been already remarked that the Parent is bound by the contracts of his child for necessaries, and for these he is bound as parent, it being the duty of a Parent to provide necessaries for his child.

But there are four classes of cases in which he is bound, not as parent but as Master, for the contracts of his child.

These are first where the child is expressly empowered by his parent to contract; 2. Where he has a general licence to contract; 3. Where the article purchased comes to the parent's use, a use in which the parent by applying the article to his own use or use of his family, is said to give an implied subsequent agent to the contract; and 4. Where the child has a general licence to trade for himself.

There is however one case not yet mentioned which seems to be an exempt one, wherein the parent is bound by the contract of his child as parent tho' that contract be not entered into for necessaries. If the parent has occasionally ratified and discharged the contracts of his child, notably for necessaries, not in the character of servant to his parents, he will in futur be bound by Contracts, provided the ratification or discharge implied an approbation of them and such approbation will generally be presumed, until the contracts are contra bonum moris. In all cases where the parent is liable for the torts of the child, he is not considered in law as the immediate wrong doer or party to the torts. But when an action is brought on the contract, the declaration declares upon the contract without ever mentioning the Child.
Parent & Child

Of the Parent's duty to educate his Child.

A parent is not only bound to maintain and protect, but also to educate his children in those particulars which are the principal duties of parents to their children.

It is laid down that parents are bound to give their children an education suitable to their situation in life. But the Law has made no provision to enforce this duty, except one by which overseers of the poor and two justices are enabled to bind out the children of poor parents till they are 12 years of age & another which prohibits parents sending their children abroad to educate them in the Popish religion.

Of an Infant's capacity to acquire property.

An infant is as much entitled as an adult to all the property which he acquires in any way whatever except by his service and he can acquire property in any other way as the he were an adult. But the parent is entitled to the services of the infant and cannot even give him his earnings so as to defeat the claims of those who were creditors and assignee to the gift.

Of the Parent's right of Action for an injury to his Child.

A parent may have an action for an injury done to his child provided the injury in its consequences be injurious to himself; but for an injury to the child which causes him neither loss of service, nor expense, nor disfigure
of himself or his family, he can have no action.

The parent when his child is injured in order to recover for
consequential injury to himself, must state his damages specially
and prove them on trial, which if he does, he will recover as master to
his child. The action for an injury sustained by the parent in
consequence of an injury done to the child has been without but it
clearly ought to be an action on the case for the injury sustained by
the parent is merely the consequence of the tort committed upon the infant.

The parent also is entitled to an action per quod solet actionem
against a person who has debauched his daughter, begotten her with child.
In this action, loss of service is the principal ground or gist of the action.
The expense and inconvenience of the wounding are however allowed to
aggravate the damage, tho' these I apprehend would not constitute a good
foundation for a distinct and separate action.

Where the action for the injury of trespass is out at arms, the nominal
ground in the illegal entry of the defendant on to the land or into the house
of the Plaintiff as the case may be.

When the action is for loss of service is the only ground of damage
The incidental expense, the disgrace of the parents family, her situation
and character and her conduct are each an aggravation, and the verdict
with the award as well as with the jury.

It is laid down that an action on the case for loss of service without
Remarks

2 May, 1839.
2. 1 Sam. 168.
1. 1 Sam. 168.
unless the parent can in any way prove the child to be his servant....

But where it is necessary to prove her to be his servant, the slightest evidence is sufficient, as that she milked his cow &c...

If a daughter be a minor, she is of course his servant, though she lives from home, and has no wages, or having wages is allowed to appropriate them to her own use or purpose, and therefore the rule that the daughter may be proved to be the servant of her parents, seems to apply only in the case of an adult...

It is a question which has not lately been decided, and which may perhaps now be considered as unsettled, whether a parent can maintain an action for the expense at which he has been put in consequence of the injury done to his child where there is no loss of service, or when there is a loss and he omits to state it in his declaration. However, it was once held by two judges against one, that he might maintain such an action; I should have no doubt that this decision settled the question, were it not frequently laid down that there must be a loss of service to entitle the parent to an action. But this rule is perhaps originated from another which is, that there must be a pecuniary or temporal loss, without a loss of service: Alf it became in time to be inaccurately stated that there must be a loss of service which therefore probably amounts to no more in meaning than there must be a temporal loss; and how it is presumed that the action will be
where the daughter is a minor or where she is an adult and unable to maintain herself.

It is said by Caprara that the daughter must be a minor and also that she must reside with her parents in order to entitle him to maintain his action but neither of these positions are true.

It is a settled rule that in this action the daughter is a legal agent for her parent. This action also lies as for the real parent, for any one standing in loco parentis.

When there is an illegal entry or invasion of the parents house or land the action may be in it self, the gist of the action and proof of that fact and that alone will entitle him to a verdict in his favor notwithstanding he fail to prove the consequent expenses and loss of service circumstances which go greatly to aggravate the damage. But if he fail to prove such illegal entry, he will not support his declaration, the he prove even so much expense and loss of service and therefore the action will fail. When there is no such illegal entry, an action on this in the proper one — is the opinion of Judge Beene that the debauchery and consequent disgrace of infancy of a child is sufficient ground for the parent to found an action upon.

The damage in this case are regulated by the character and reputation of the female. The parent may also have an action for good servilium amiss in against any one who entrusts away his child.

But it is perhaps unsettled whether he may have an action, when thre
Remarks

[Handwritten text]

[Handwritten text]

[Handwritten text]
Parent & Child

is no loss of service, tho' there is little doubt of a question charged, that it would be decided in the affirmative.

Of the Parents right of correction.

A parent has a right to correct his child reasonably and the right is founded upon Parental duties, for to enable him to discharge those duties it is necessary that he have a control over his child.

This right continues no longer in the parent no longer than till the child obtains the age of 21. But the Roman law was much more rigorous; according to that the parent through life had the power of life and death over his children.

But if the parent exercises that right unreasonably and with a vindictive mind, the child has a right of action against him, which he may commence by his promise, any yet the Parent is not liable for every excess.

If the mistake relative to the conduct of the child or carry to exasperation unreasonably his punishment, the parent is not liable, for the right is merely discretionary, and therefore there must be both malice and unreasonable force to render the parent liable. Malice however in its legal sense, is not in its vulgar signification acting with an ill will to any particular person but acting maladroitly from improper motives. So that the malice in the case be not express yet the jury may imply it from the unreasonable or manner of correction, as from a beating with a stick. If a parent in correcting his child is not obviously unreasonable but him he is only guilty of homicide by misadventure, but if the correction be obviously unreasonable he is guilty of manslaughter at least, as the case may be murder.
Guardian & Ward.

A guardian is defined to be a temporary parent; a person standing for the time "in loco parentis" at law. It is said that the office is the guardian of the Roman law, in the person of the guardian. But this is not universally true, for times at law and always by the Roman law, the two offices are kept distinct.

The several species of Guardians.

Guardian by Nature, in Chivalry, in Sence, for certain testamentary guardians, guardians by special statute, in the infant, by the appointment of the Chancellor, &c. &c.

Of Guardians in Chivalry.

Guardians in Chivalry obtain only when the ward had an estate vested in him by descent and held by the tenure of right service. If therefore the descent be broken, or is broken by fragmentation or by any other means; the lord of whom the land was held lost his guardianship, he being...
The person who would be otherwise entitled to it—

His guardianship ceased if the ward were a male, at the age of 21; if a female, at the age of 16, or at her marriage, and the superior was entitled to no guardianship over a female if she were of the age of 14 at the death of the ancestor of whom she was to inherit the estate.

A guardian in chivalry was not accountable to the ward for the rents and profits of his estate; his only duty was to maintain the ward.

As this was a guardianship arising from a particular tenure, the guardian was entitled to a particular power, in consequence of the wardship, only over the person of the ward, much of the ward had as lay within his seignory.

This guardianship was transferable from one to another—for it was not a matter of trust or confidence, but merely a privilege or incident of the feudal system, a system of slavery which prevailed over all parts of Europe, after the decline of the Roman empire and particularly after the Norman conquest. But this with many other such privileges were done away by statute. Ch. 2, 12 at the new franchise.
II. Guardians by Nature

Some books speak of this kind of guardianship as tho' it belonged exclusively to the father; and others as tho' it were confined to the father & mother: but the truth is, that it extends to any of the infant's ancestors, and where there are two ancestors of equal degree and equally entitled that one who first gains possession of the infant's person shall be Guardian.

This guardianship extends only to their offspring; therefore younger brothers and bastard are not entitled to it, and it is doubtful whether a daughter in case the son, is entitled to it, she being not heir apparent but presumptive only.

This species of Guardian extends only to the person; it may be suspended by the appointment of a testamentary guardian, by the Father, and ends when the infant attains the age of 21.

When an infant is subject to this kind of guardianship & that in Chivalry, the former gives place to the latter, unless the father is the natural Guardian, in which case the custody of the ward's person...
Guardian & Ward.

... will still fall to the Guardian by nature.

It may happen that a guardianship by nature and vis a visage may rest in the same person. If so, the Guardian in vis a visage shall have the custody of the wards person. That is the person on whom both guardianship devolves shall be considered as guardian in vis a visage and such person shall have power over the infant's person for that time will be accounted for the "vuln mare tâge".

By Stat. 12 "Ch. 2" the father may be Guardian of all his children till they attain the age of 21, or his power extends to both, their persons and estates. The word Guardian by nature in the Stat. but he is not so according to the intent of the terms of the Com. Law; the Stat. means only that, he is pointed out as the Guardian of his children by the law of nature & the same is meant when it is frequently done, he is titled guardian by nature in Chancery.

III. Guardians in Viz a Viz a.

Guardians in vis a visage arise from vis a visage tenure; and obtains only when an infant under the age of 14 has by descent, land or tenements holden in vis a visage tenure.
Co. Lit. 87.

Co. Lit. 87, 88.

Co. Lit. 88, note 13.

note 13.

Note 40. Co. Lit.

89, note 13.
Guardian & Ward

The Guardian must be next of kin who is competent and who cannot by propriety inherit the estate.

When there are two persons in the same degree, he who first obtains possession of the infant person shall be Guardian.

But the rule has two exceptions: First where half-brother and sister be preferred, so are there two or more half-sisters. Second where the infant has legal ancestor, male or equal degree with females, the male shall be preferred.

A Guardian in socage may exercise a higher power over the ward's estate than the Guardian in chivalry only; for he may dispose it till the ward arrive at the age of 14.

It may happen that there shall be no person of kin to the infant (who may not by propriety inherit his estate). In this case it would seem there could be no Guardianship in socage.

If one entitled to Guardianship in socage be himself a ward, his guardian is entitled to the custody of both.

The power of the Guardian in socage extends not only to the person of the ward but estate held in socage tenure but also to any other lands.
Guardian & Ward.

or tenements, but it be copyhold, to be sold or leased, provided there is not a special custom of the manor to appoint a guardian for them, some thinks that this power extends even to the ward's personalty.

This Guardianship cannot be assigned, transferred, transmitted, it being a personal trust.

Guardianships in Scioce continue only to the age of 14 years.

The Guardian is bound to reasonable expenses; and on the other hand is allowed accountable for the use to and profits of the lands and estate of the ward; yet he cannot be sued till the ward arrive to the age of 14.

A Guardian in socage may be superseded by the fathers, appointing a Testamentary guardian.

Those who claim this species of Guardianship claim it under the Common Law as a right and a thing of course.

Couns of Ch. have taken it upon them to remedy the evils arising from this; and now they will compel the Guardian to give bonds and account annually, or even discharge him. This power was not given by any statute; but wholly assumed by the
Guardians & Ward

Court IV. Guardians for Minors

There can be no such thing as a guardian by mere

state of fact, where the infant has no other and where he

is not heir apparent.

Younger male children therefore are subjects
to this kind of guardianship Co. L. 84, 58, § 9 note 18.

This guardianship belongs to father and mother
only, but if they be dead, the Chancellor will ap

point one to stand in their stead. When an infant
whether male or female reaches the age of 14, thisgu

dianship determines and before that time it ex

tends to the custody of the infant only.

When the Guardianship devolves upon the mother
the ward being a male, the Chancellor may appoint

another guardian but not so if the ward be a female with

out clause hereon.

V. Testamentary Guardians

The power of appointing testamentary guardian

derived from these statutes two statutes, the 4th of

Mar. & May 12th, & the 12th Ch. 2., but the law on the subject

is chiefly found in the latter.
Guardian & Ward

These Guardians may be appointed either by deed or by will, if the instrument of appointment be signed by two witnesses, and this may be done tho' the father be a minor.

This power of the father extends to all the child's income, even to a child "in ventre sa mere". The appointment may be either in propension or remainder and may be to continue to full age or to marriage, or to any time short of full age.

The guardian has the custody of the person and estate both real & personal of the ward by this any other guardianship is suspended.

But this guardianship is not assignable it being founded on a perpetual trust or confidence which the father reposed in the guardian.

These Guardians are liable to the control of Chancery.

VI. Guardians by special custom

Guardianships of this kind are derived from habits that have a local and limited operation and not from the universal laws of the realm.
Guardian & Ward

We shall therefore pass them over as a particular acquaintance with them would be useless.

VII. Guardians by the Election of the Infant.

A guardian by the election of the infant, only where there is no other, a case in which an infant may elect his own guardian.

This kind of guardianship seems to have originated since the restoration.

There has been no particular form settled of appointment settled, the an appointment by 1/2 of the infant was held good in the case of Lord Botetmore. Whether a trust appointment would be good is doubtful.

The age at which an infant might elect an infant this guardian is doubtful, some say 14 others at or before that period.

VIII. Guardians by the Appointment of the Chancelor

This kind of guardianship is of a late date and
Col. lit. 59, note 16. 9 Dec. 1779.
4 July. 1776.

9 Oct. 631.
4 Dec. 167176.
3 Comm. 418.
Burr 1496.
Col. lit. 131 4.
132.

Comm. 36441
Col. lit. 84.
note 16.

2 Cent. 393.
3 Oct. 399.
Guardian & Ward—

can happen only where there is no other.

The right of the Chancellor to appoint devolves
him from the King, who is "pater patriæ" and has
the care of all the infants throughout the kingdom.

The time when this guardianship originated is not
certain; but the Chancellor acquired the power,
which is now indubitably settled, by gradual in-
creasements.

Ecclesiastical Courts have also claimed the
right of appointing Guardians; and it now seems
that they can appoint them "ad litteram" only, so
may every other court "pro e re "

IX. Guardians ad Litem—

A Guardian ad litem is one who is appointed to
manage a particular cause. Every Court, even a juris-
diction of the peace, has a right to appoint such a
Guardian, there being no other Guardian to manage the case
of the Infant.

The father or mother when Guardian cannot dis-
pose of the estate of the infant for the purpose of
giving him an education, for it is the duty of the
Guardian & Ward

parents to educate their children & of course to bear
the expenses of their education—

Yet if a parent in consequence of his child's
property should give him an education, which but
for that property would be unavailing to his situa-
tion in life, as if a poor man his son having a large
estate, should give him a liberal education then,
will allow the charges and deduct them from the
infant's estate—

But a stranger Guardian may deprive of the
estate of his ward, for the purpose of educating him.
If a Guardian conducts with care and pru-
dence he is not liable for casualties, as he otherwise
would be—

Every act which an infant is not compellable
to do in Chancery (as if an infant Mortgagor in securing
the mortgage money necessary) is binding,

If the Guardian keeps the ward's money in his
hands he is accountable for the interest unless
he shou'd that he could not safely put it out at
interest, for as the Guardian is bound to contract
with fidelity conduct with prudence it is right that
he should account for all which he might have
2 Cor. 2:3.
Ch. 14 6.

2 Cor. 2:3a.

2 Cor. 2:3f.

1 Cor. 4:9 5.
2 Cor. 2:31.

1 Cor. 4:9 5.
4:35 —

2 Cor. 3:29.
made from the estate.

It is the duty of the Guardian to pay the ward's debts out of his own property, but if this is for preventing any loss or hazard, otherwise if any loss happen it shall fall on the Guardian.

Guardians may not beateate with the property of their ward, if it be put to any beneficial use to the ward shall have the advantage of it.

If the ward holds a mortgage, it is the Guardian's duty to make payment of the debt, out of the rents and profits of the land mortgaged premises.

A Guardian has power to vest his ward's money in lands; but if he do so the ward when he comes of full age may have his election of the money or the land, but if he elect choose the land money then must reassoy the land to the Guardian which he purchased in his name.

But this right of election is personal therefore on the death of the ward, his representative must take the money and his Guardian the land.

It is the duty of the Guardian in general to account with the ward for the principal and interest of the ward's money. But if the wards
money was put into his hands for a particular purpose and he applies it to some other use, so to a lunatic trade the ward when he comes of age may have his election to take either money, interest or the money and profits accumulated by his guardian.

Guardians are usually made to account with their wards by preferring a bill in Chancery. There is however no doubt but that an action at law might be sustained. The remedy by a bill in Chancery is more expensive than by an action at law for in Chancery they lay the suit on his oath.

In ch. the guardian may be compelled to account annually or at any period, concerning the ward's estate or he may even be displaced.

But Chan. have a particular jurisdiction over the marriage of infants, entered into without the consent of Guardians as they have power to inflict certain punishments for such marriages.

The Chancellor when he appoints a guardian requires him to enter into an aguise, that he will not marry his ward undutifully. If a marriage is the place, after being prohibited by Chancery.
Guardian & Ward.

The court will punish the offender for contumacy; they will punish by indictment, or for a misdemeanor. Bring them over to answer for an information, to be lodged against them in some court of criminal jurisdiction or indictment.

Chancery will also punish a Guardian in case the suffer an unequal or disadvantageous marriage to be entered into by his ward.

And even upon the apprehension of the ward's intention to enter into a disadvantageous marriage, they will secure the marriage person so that he cannot enter into the marriage, and by a prohibition on the opposite party; if the opposite party be also a ward, his Guardian with a suitable penalty, namely, joined to the prohibition.

I apprehend that it is customary for Guardian to bind out their wards into apprentices.

If a Guardian who has care of the real property of the ward commits waste, Chancery will compel him to refund the damages committed.

Infants have one principal privilege, which is that if a stranger trespass upon their estates, the trespass may be sued and the trespasser called to account, with
Of the Settlement of Minors.

It is regularly true that the settlement of the Father is the settlement of the Child, and that a change of the Father's settlement is a change of the Child's settlement.

It is a general rule that the acquisition of a new settlement in the Room of the Old settlement—

But this does not hold true where the settlement by virtue of the freehold, such settlement nothing lost by the acquisition of another; Indeed the case holds only in cases of settlements acquired by birth, by residence or by derivation from parents.

If neither Father or Mother have any settlement the place of the Child's birth is the place of his settlement.

A free residence may in some cases be acquired by an infant. If however the Infant residing abroad be considered one of his Father's family he gains no settlement by such a residence. But, if he be removed from his Father's family and of course emancipated from paternal authority, he gains a settlement as when he was an adult.

Yet after such an emancipation he gains no
Guardian & Ward

settlement by derivation of his parents.

A child may be emancipated by either of the following causes:

I. By attaining full age.
II. By marriage.
III. By gaining a settlement of his own.
IV. By contracting any relation inconsistent with judicial subordination.

We have remarked that the settlement of the father is the settlement of the child, but if the father be dead and the mother be living, its settlement is that of the mother.

So also if the father has no settlement and the mother has, hers will be the settlement of the children.

A widow, having children, on marriage gains her husband's settlement, but her children retain their old settlement, and do not derive one from their father-in-law; for a husband is not bound to support his wife's children by a former husband.

However if the child of the widow be under 14 at the time of the marriage, he may go with
his mother she being his Guardian by nature & remain with her until the age of 7, when he may be removed to the parish, where the widow was formerly settled.

As by a marriage a woman regularly goes with her husband's settlement, so also she keeps her own, but if her husband at his death have none her own receives. The following is a case directly in point:

**Question**

"A woman having a settlement
Married a man with none
The question was she being dead
If that she had gone?"

**Answer**

"Quoth sir John, that her settlement
Suspended did remain
Living the husband, but him dead
It with revenues again!!!

Comes by the pruine judge
"Living the husband, but him dead
It with revenues again!!!

And it is now settled that fully on his death
Guardian & Ward.

But also on his leaving the realm, not remaining with or not supporting her, she may be removed to her proper settlement.
Master & Servant.

A servant is said to be one subject to the authority of another generally by force of contract.

A master is the one who exercises that authority from this definition it would seem that a wife or a child is a servant as they are considered as such at law.

The relation of master and servant is founded on convenience, whereby a man is enabled to call in the assistance of others when his own skill and labour will be insufficient. 108.

Of the different species of Servants.

The law of England recognizes but four species of servants:

Among the four mentioned species of servants, it is not to be found absolute slavery, which has certainly been legalized in this country. Absolute slavery must either be founded on the laws of nature, the laws of England, or on our own local laws or usages.

As slavery is not a natural right, nor supported
Master & Servant.

by the common laws of Eng. It must in this country depend on our own local laws, or usages which have been sanctioned by Congress.

There are in all countries what are called public slaves. A public slave is one, who for some offence against the laws of his country, is judicially condemned to confinement & labour for a certain term of time or for life.

I. Of Apprentices

Apprentices derive their name from the word "apprentice" to learn. Under the name import, they are such persons as are bound for a term, to their masters generally for the purpose of learning an art or trade.

In order to be apprentices, they must be bound and the contract by which the relation of master & apprentice subsists must be by deed.

This seems to be the rule of Com. Law and is the only case where at common law an original contract must be in writing (Nov. 18th).

All other species of master and servant may subsist by force of a verbal contract.

The children of poor parents may be bound out
in apprenticeships, by their own overseers, with consent of two justices, till the age of 24, to such persons as were thought proper, who are compulsable to take them.

There is a difference between the age of males and females, the latter excepted only till they are 17 years old.

Apprentices are entitled to no wages, but all other servants are entitled to their stipulated wages except day laborers whose wages are settled by the justice of the session, or the sheriff of the county. If any person either gives or receiveth more than the wages, he setteth himself in a forfeiture.

There is a statute declaring that minors shall be bound by their own deeds of indenture to all intents and purposes. But notwithstanding the strong terms in which the statute is couched, courts have determined that such deeds are voidable as against the minor and that he is not liable to an action for a breach of the covenants in the deed.

If, however he continues with his master, and serves his term out, he becomes free of the trade and acquires a settlement in the parish where he served the last forty days.
Master & Servant

Where the father joins with his son in such a deed, the father is liable to the covenants therein.

The master has a right to misuse his apprentice, and if he does it is good for departure for which the master has no action on the covenant of the deed.

According to the Law, an apprentice must be bound, so also he must be discharged by deed for at least a contract dissolving a former one must be of as high a nature as that which is dissolved but the rule does not extend so far as it did at former times.

Apprentices may be discharged by one justice with appeal to the quarter sessions or by the quarter sessions, for any reasonable cause either at their own or their master's request.

At Law, Law apprentices cannot be assigned the contract being founded on a present trust personal trust. On the same ground is the master's death his executors cannot hold the apprentices for the additional reason that the master might lie of a different trade or none at all; in either of which cases the consideration of the contract would have failed.
Mastir & Grant.

So if a submission is entered into by the parent and master of the apprentice, & an award of assignment of the apprentice is made such an award is not binding, with the minor apprentice apsects to it.

Whether an E. is bound to supply the defeasance apprentices with necessities is questionable. At this juncture, which is generally necessary, to all contracts, it being wanting, the apprentice being liable to no duty in return, yet the authorities support the principle that the E. is bound.

But when a premium is given with the apprentice, the E. ought to refund a part of it proportional to the time remaining, at the death of the master and the Ch. will enforce.

Even where a certain portion is stipulated at the time between the parties, to be refunded if the master dies before the expiration of the term of apprenticeship, chance and a greater than the stipulated portion to be refunded, the master's death happening almost immediately on the conclusion of the term.

So also when an apprentice is discharged, the Justice who discharges him may order a proportion.
able part of the premium refunded, unless the master's bankruptcy.

And although the master is not dead, yet if an accident happens, then his circumstances by which the relationship is dissolved. Chancing will order a proportionable part of the premium refunded, as in case of the master's bankruptcy. But hence the apprentice or his father will stand in the place of a creditor for the part refunded, and be entitled only to an average there of.

Although there can be no valid assignment of an apprentice except by the custom of London, yet an attempt to assign will bind the master to the covenants in the deed of assignment, and if the word of the deed be words of assignment by grant or covenant will be implied if the assignor will be liable to the apprentice, but if the apprentice according to the terms of the assignment serve out the time with the apprentice he acquires all the privileges thereby, which he would have acquired by serving his time with the assignor.

It is the duty of a master to keep his apprentice here in this case. He may not send them abroad.
Master & Servant.

without an express determination, unless it be necessary from the nature of his business, where one is bound to a reason for the purpose of becoming a marine.

Whatever an apprentice earns either in the service of his master, or of any other person is his master's unless he waives his right to it.

Property thus acquired must be may be recovered by an action of assumpsit, or any action proper to try the same.

These rules apply to all other species of servants except Bailiffs & factors; but they apply to acquisitions of the servant only by labour only. To entitle the master to such property, acquired by the apprentice it is sufficient, if the be an apprentice de facto.

When a minor river with a man as an apprentice it is sufficient without being bound, by indenture, the apprentices may leave his master, or the master may turn off the apprentice at pleasure. Yet so long as they continue together, all the equitable duties of Master & Servant exist between them.

And of such apprentice serve out his time, he is entitled all the privilages of any other apprentice.
Master & Servant.

By the statute 4 of Eliz, a minor may bind himself out
an apprentice, where he has no parent guardian & paying
such apprentice escape he may be retaken but would
not be liable to account.

There is a material difference between appren-
tices and other servants in this respect. If an appren-
tice acquire property by his labour while in the
service of a stranger & with his master's consent, the
master is entitled to it even tho' the labour be of
a different kind to that from that to which the ap-
prentice was bound. But on retaking labourers the
master is not entitled to the property which they ac-
suine by their labour, yet he has his remedy ag-
ainst them for detention.

If an apprentice or any other servant be taken
from his master, the master may have an action per
quod remoti amicile against the master; and so
in the case of a journeyman, who works by the piece.

If the servant be forcibly taken away trespass
vi et armis is the proper action, if without any

So also trespass on the case is the proper action
for the master, where he sustains the a loss of servi-
Seth. 350. 22. 9.
1116—

co. lit. 48.
Master & Servant.

service by the battery of his servant.

II. Of Mural Servants.

They are called mural servants from their being within the walls or intra mensa being employed within doors.

The contract between them and their master arises from their hiring. If the hiring be general without any particular time specified, the law construes it to be a hiring for a year, upon a principle of natural equity that the servant should serve and the master maintain him throughout all the vicissitudes of the respective seasons, as who well when there is work to be done as when there is none. But the contract may be made for any greater or less time.

If their hiring be for a specific time, yet at the expiration of that time, a master cannot send away his servant, or the servant quit the master except by mutual consent or a quarter's warning being given previously; or upon a reasonable cause allowed by a Justice
Master & Servant.

of the peace; or where a special contract has been made that they shall part at such a time.

III. Of Labours.

This species of servants, to whom they are called, are generally properly included amongst servants for a week, a month, or a year; there are no general rules exclusively applicable to this class of servants.

But there are a number of statute regulations concerning them, directing how long they must keep at work in summer or winter, empowering the Justices of the Peace or the sheriff of the county to settle their wages, punishing such or leave their employment, and if they neglect their duties upon such as either give or take more wages than are so settled.

IV. Of Agents, Factors, Bailiffs &c.

These are servants of a higher order than any of the former but they are never the less considered as servants so far as their acts affect their employers.
Master & Servant.

property.

It is very difficult to lay down any rules that are general with regard to the duties arising from this relationship, there being such a diversity of wants, that fall under this species, of their employment, being so infinitely various—

It is however a rule, that every agent is bound strictly to pursue his commission—

To act so that a factor may retain his employer's or principal's goods to satisfy any demands which he may have against his principal—

And this rule also applies to attorneys but extends no farther: yet if the factor once gives up his principal's goods to satisfy any demands which he may have, he bears specific lien upon them, but stands upon the same footing as other creditors—

If a factor either buys more or gives more, than his commission warrant to him, his principal may disclaim the purchase—

So if he takes less for the principal's goods, he is liable to the principal—

If a loss happen to the goods while in possession of the.
Master & Servant.

of his factor he is not liable if he has conformed to his
commission and conducted with fidelity & prudence, but oth-
wise he is liable.

The factor has no right to pawn the goods of the
principal, for his own debts and no pawnee acquires
since a lien upon the goods so pawned, not even the
lien that the pawnee had upon them, for it is a
maxim that a personal trust cannot be assigned
transferred, but the principal must satisfy the
pawnee for his lien upon the goods before he can
have his action against the pawnee for them.

The possession of the goods must be actual
not constructive only to entitle the factor to lien
upon them.

Where the master is liable for the acts of his
servants, or may take advantage of them, and
also of the servants liability.

Many acts of the servant are considered
acts of the Master, but for those acts only that are
performed by the servant, in the business of the
master, is he liable.

It is laid down that the master's liability.
Master & Servant.

arises from a command either express or implied. This doctrine is in many cases the ground of his liability, but the principle clearly is not broad enough to support all the cases. Thus if a servant accidentally does a wrong while in his master's business without doubt his master is liable. But can his liability arise from his having commanded the servant to do the act?

The case supposed is, where it is impossible there should be a command, the act not being foreseeably but involuntarily accidental.

In this case & in many others the liability is founded upon the maxim: that where one of two innocent persons must suffer, that one of the two that interested or enabled a third person to do the injury shall sustain the loss.

Any contract made by the servant, the servant having authority to enter into it, is considered as if it were made directly by the master and as such may be declared on, as the act of the master without naming the servant.

If a servant be cheated of his master's property, the

master may sustain an action therefore.
Master & Servant

The master is liable, not only where he commands, but where he permits his servant to do an act injurious to another.

If an innkeeper's servant, not his guest, the innkeeper is liable because it is said, nisi prohiberet, non prohibebit, but non prohibet, non jurabit. But the presumption that the insurer commanded because he did not prohibit the robbery is illiberal, it is making a person who we know to be innocent guilty of felony. Indeed the innkeeper can be considered liable only on the ground of the maxim mentioned above.

The authorities are very contradictory on the question whether the master is liable civitatis from the French of the persons serving committit in the ordinary course of his business. Holf. Part 14. B. 371.

Where there are authorities, we should not hesitate, for surely it is reasonable that one who employs a knave should suffer by him rather than an innocent stranger.

If a servant sells hard wine whereby the health of the guest is injured, the innkeeper is liable. There not being prohibited the sale of that
wine he may fairly be presumed to have commanded it.

So also an innkeeper is liable, if his servant provide bad food, for food is of so changeable a nature, that what yesterday was good wholesome to one may be in a putrid state.

It is said that the servant is not liable for any damages that arise from the sale of such impair wine or food, because he acted in conformity to a command. But command do not authorize a tort. For if it is a general rule, that where a principal is not empowered to do an act no one is justifiable in doing it by his command, then if I command my servant to sell wine and provisions which are poisoned, is he justifiable in doing it, because he acted in pursuance of my command?

If a servant be robbed of his master's goods, either the servant or master may have an action for the redress of the civil injury. But robbery is a felony so that there is therefore the civil injury is merged in the public crime, so that neither can have redress for the private injury or wrong, unless it be against the humanitarian the
robery was committed on failure to convict the robber

But if the master has recovered the servant his no right of action and a convey. So, if it is
said if one of the two have commenced an acti-
ion the other is barred

It is laid down in various authorities that both
master and servant are liable for acts committed
by the servant. Ex. 580 - 6 -

If money be illegally gotten from a servant
the master may recover it by an action of Pub-
Aet. even tho' the servant was party to crime
with him who retained the money. But had
the master been equally guilty with him who de-
tained the money he could not support the acti-
ion such an action - for it is requisite thereto
that the fault should be void of offence

Where money is taken wrongfully from the ser-
vant - he being a partaker of the guilt - the master that
good faith. For which good faith does not apinie
the master of his remedy.

But if the servant has foolishly surrendered
away his master's money, the master can
have no remedy of those who obtained it illegally.
Master & Servant.

The folly of the servant.

In some cases, the master is liable for the acts of the servant, not done by his command either express or implied.

If a servant do an injury while in pursuance of the business of the master, either wilfully through negligence or thro' want of skill the master is liable.

Thus, for example, if the servant of a blacksmith while shoeing a horse drives a nail designed by the quick of the foot or hoof and injure the leg both master and servant are liable. If he had so driven the nail thro' carelessness the master only would be liable and so if thro' want of skill.

For in each of these cases if the master had done the act himself, he would be liable and ought therefore the servant to be liable when done by his servant.

The blacksmith is here liable on the ground of an implied contract, which he and all other mechanics are under, to perform the business of their trade in a workmanlike manner.

A rule anciently laid down by the Court of King's Bench is that if a master directs his
Master & Servant

servant to sell a worthless horse for a good one at a price he was not liable unless he pointed out the person to whom the servant should sell the horse, and the servant actually sold the horse to the person pointed out.

The rule was ridiculous and is exploded eno. 7, 468.

If one employ another to drive a team to a certain place, and the driver then carelessly injure another, the employer is liable, having injured another by having employed the driver.

If a servant injure another not while he was in the direct employment of his master's business, the master is not liable unless it was done by his command expres or implied.

There is no distinction between the acts of a servant wilfully committed and third negligence.

If the servant directly engaged in the business of the master did an injury, the cause of the master is always liable.

The servant, however, is not liable where the transaction in which he was engaged was founded on contract between the master and party injured.
I'm not sure why we are discussing this, but to the rule there is one exception founded on its own peculiar circumstances, this is where the master of a ship who is servant to the owner, injures the freight, through his carelessness or negligence in which case the master is liable to the owner of the freight, for they are hardly ever known to each other; they may be at Bengal and the other at Hartford, and the master acts more independently of the owner than other servants of their masters, indeed it is necessary for the convenience of trade that the master of a ship should be liable to the owner.

But where the contract is not founded on a contract between the master and party injured, as in the case of the servant who carelessly stow the team to the injury of another the servant is liable.

But on the other hand where a servant willfully commits an injury he is, in every case liable, tho' it be done while in the performance of a transaction founded on contract, between the master and the party injured, as in the case where the servant willfully lamed the horse in showing him.

If a servant desert from a master, and so on...
Master & Servant.

Injuring the servant only is liable, or if one go employed to drive a team go to a distant place and heat another.

It is laid down that a master is no in no capable for the wilfull acts of another who is his servant.

But this is merely a doctrine of the reporter and instan

The master is always liable for the wilfull acts of his servant, when done in the immediate employment of his business, but when the servant quits the business or the master either wilfully or through neglect, the master is not liable.

Of the servant's liability to his master.

In certain cases the servant is liable to his master (for acts by him committed). And it is a general rule that for all those acts, whether voluntary or negl fret, by which the master is injured he is liable, but when an injury arises for want of skill or strength, the servant is not liable, for he is bound only to be diligent and faithful.

The servant is liable also to his master, to the damages to which the master has been subjected.
in consequence of an injury to a third person, by an act of the servant, whether voluntary or negligent.

And here we will remark once for all that not only those are usually called servants, but also a wife a son a friend is regard as a servant that, while acting under authority and are subject to all the rules of master and servant, except in that a wife cannot be liable to her husband in damages—

Where a servant is obedient to his master's commands, ignobly commits a wrong in the abstract which considered in the abstract is no wrong, he is not liable to his master. But if the act absolutely considered is a tortious act he would be liable—

It has been laid down that if an attorney witness a release or discharge of a debt and afterwards prosecute and recover on the debt he is not liable but this rule probably originated in the brain of an attorney—

And it has been determined, that an attorney knowing of a new suit is liable if he prosecute—

Stat. 186. 27, 618.
Master & Servant

Of the master's liability on the contracts of the servant

The master is bound by those contracts made by the servant, acting within the scope of a general or special authority, either express or implied.

An express authority needs no description. By an implied general authority is one, by which a servant acts, who is usually employed in contracting for his master. Com. 450. 2 Vern. 643. 2 Ry. 224.

A public agent or servant contracting for the public is not liable on those contracts that he may make himself personally liable.

So an implied special authority is one by which a servant acts, in a special case, where he contracts in the name and presence of the master whose intent it is. 3 Vern. 842. 2 Vern. 243. or 843. 1 Vern. 94.

If a servant without authority buy goods which his master applies to his use, he is liable on the ground of a subsequent implied assent.

It is laid down that if a servant never having authority to contract, have money put into his hands, by the master, for the purpose
Master & Servant

of buying goods, which goods he buys upon trust, converting the money to his own use, and the master converts the goods so bought to his use, he is liable.

A master giving his servant a general authority to buy goods in one way is not bound if he do it in another, for by the supposition he acts without the general authority.

Altho' the master is generally bound by the acts of the servant within the scope of a general authority implied, yet he may put an end to that authority, for by giving public information that it has ended but after the relationship has ended or dissolved, the master will be bound still. And the dissolution be sufficient if known within 24 hours of time or by advertisement.

If a servant having authority to sell his master's property, make a warranty thereof, the master is bound by that warranty, unless he expressly prohibits his servant to warrant.

But where the scope of his authority was, or when the servant acts within the scope of his authority, the master is bound by his use.
Master & Servant.

A case generally cited when the master's baleful authority is called in question is the following:  
A having a quantity of counterfeit jewels, directs B. his servant to go to Barbary and sell them to the king or some other person without letting him to conceal to or make prima facie the defects, D. being in Barbary and employs C. to sell them to the king of Algiers to whom he pretends that they are real jewels. C. accordingly sells them as such to the king B. takes the gains of the sale and returns to England. The king discovers the jewels to be counterfeit and imprisons C. for the imposition. C. on being liberated returns to England and commences a suit against A. for the imposition of his servant, but the court held that an action would not lie, because in the first place A. did not direct B. to impose on any particular person. It was a mere indescribable reason, as if to discharge a musket in a crowd and kill a person were his criminal then to discharge it at a particular person and kill him.
Master & Servant.

And in the second place the master did not tell him (his servant) to impose on anyone, that he did not make known the defects in the jewels is sufficient, for supersession over is illegal or suggestive falsify.

It was a settled rule of law that the concurrence of defects amounts to a warranty and according to some authorities an express warranty.

On principle it is clear that the master is liable for the fraud of his servant committed in the transaction of his master's business. But this subject we have already noted—

If a servant employed in his master's business will employ a third person, who either voluntarily the negligence or as the case may be, this want of skill to an injury, such in immediate person who hires the second servant is not liable; for if he be liable, he must be liable either as master or servant. But he is notauce the one cannot be liable as servant for he did not perform the injurious act.

To the general rule that masters are liable.
Master & Servant.

For defaults of their servants there is an exception in the case of postmasters who are not liable for the defaults of their subordinate officers. This exception is taken on the ground of policy, for if postmasters are made liable, the fear of responsibility would be so great that no one would accept the office of postmaster. Besides they must be liable if at all as common carriers whom they resemble in no material point as they are public servants. Persons and have no hinge from others who vitiate their capacity in the mail.

A postmaster however is liable for his own defaults on the same ground that masters are liable for the defaults of their servants. Sheriffs are liable similarly for both the nonperformance and the misperformance of their subordinate officers. As deputy sheriffs go by the Act Com. Laws under sheriffs are liable not for mere negligence or omission but for wilful fault only.

A servant acting for his master may if he pleases make such a contract as will bind
Master & Servant

himself only.

When the Servant is guilty of Larceny by Embezzling his Master Goods.

At Com. Law a servant having the oversight of his master's goods or the charge or care of them but not being in actual possession of them was guilty of larceny by taking them w/o pretense.

But by the Com. Law if the goods had been delivered to one to carry the carrier would not have been guilty of larceny, tho' he took them animo furandi until the fraudulent or felonious intent were precedent to the delivery. If he procured the bailment of the articles with an intent to steal them, this intent rendered the contract fraudulent from the beginning, so that if he takes them he is guilty as tho' they had never been bailed.

And by st. 21. 3b. If any servant embezzles the master's goods, to the value of forty shillings it is made felony, except in appren
Master & Servant

...tices and servants under the age of 16 years.

By this statute no waste of the master's goods
however small, if committed amounting to a sum
of more than 20 shillings be committed of a theft in
action.

Such persons only are included in the require-
ments of this statute, as were servants, at the time
both of the taking and delivering of the goods.

So the statute is confined to goods delivered to be
kept and such as the master can identify.

A servant receiving the goods of an other serv-
ant comes within the statute. By a subsequent
statute of 1667 benefit of clergy is taken away
in this crime.

Of the Master's right of correction

A master's right of correction is the same
as that of a parent.

The species of servants called agents, factors,
be are excluded from the following rules, such
servants, not being liable to correction and in this country
day-labourers are also exempted.
«The legal signification of the word wound, is not defined or properly defined in the books...»

Kebe. 628.
1 Thes. 130.
Ces. Ch. 179.
2 Thes. 289.
3 Bae. 566.
2 Mc. 167.
8 De. 10.0.
3 Bae. 566.
1 S. 177.
2 Mc. 167.
3 De. 120, 218.
330. 3 Bae.
566. 567-
3 Bae. 566.
9 Co. 105.
3 Bae. 569.
Master & Servant.

Apprentices of any age and it is said menials and labourers may be corrected. But this is understood of those only who are under the age of 15 years. Nut. 40. 1694.

The master may correct his servant for abusive language for he is entitled to respect.

*But if he should correct him unreasonably or immoderately or wound him the master is liable.*

*If such action of this kind brought by the servant the master must plead not guilty* and from the facts given in evidence the jury must determine whether the master has been unreasonable in modirste or wound the servant in chastising him.

The master must show the plaint to be his servant, to what class of servants he belongs and in what manner he is his servant.

Where it is the master's duty only to correct he cannot delegate the power to another to correct the servant for him.

Miscellaneous Rules.
Master & Servant.

It is admitted that a servant may justify an assault in presence of his master. But whether a master may justify an assault in defence of his servant seems unsettled. The weight of authorities however inclines to the negative, still it is believed that a contrary opinion is the true one; for may not any person justify an assault in defence of another?

A servant may not it is said justify an assault in defence of his master's goods or child; but this is thought to be a questionable rule. 3 B. & C. 568.

Where a master correcting a child apparently with moderation unfortunately kill him, he is guilty of homicide only by misadventure only. But if the correction were obviously unreasonable either in the manner or the quantity the master would be guilty of manslaughter at least & as the case might be murder.

If the servant in defence of his master or master in defence of the servant kill an other the nature of the defence will depend on the nature of the case and its attendant
circumstances, but the offence will be of the same
magnitude whether the master or the servant be
the homicide.

It is laid down that a servant cannot avoid a
deed obtained from him by his master, thereby
which is meant that a servant cannot avoid a deed ob-
tained by his master merely because the is his servant
the master may respect and fear him. 3 Bl. 367, 3 Bl. 368, 2 S. 276.

A full recovery against a servant who has been
enticed away for loss of service is a bar to an
action against the master. 1 Bl. 347, 32 Bl. 380. 2 Bl. 387.

But whether judgment without satisfaction
would bar is a question. This question however was
decided by the rule that a judgment against two
or more tortious persons is a bar to an action
against the others. 3 Bl. 347, 384.

With regard to settlements to which servants
gain by residence it may be observed that ap-
prentices gain a settlement in the place where
they served the first forty days and other servants
by being hired for a year when unmarried
and childless and serving a year in the same ser-
vise 13 Bl. 109.
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<td>2</td>
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<td>3</td>
<td>delivered to Morgan to distribute</td>
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