Lectures On Law
Delivered in Litchfield (Conn.)
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In 1809 & 1810
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Municipal Law

"Law" is a rule of action prescribed by some superior. "Law of Nature" is the uncreated law of God or rule of God; it is universal. "Moral Law" is the revealed law of God. "Law of nations" is an example of the law of nature adapted to nations.

1st. It is a rule which is authoritative. It is contradistinguished from what is termed advice. Counsel is temporary order. Council acts only on the meeting. Law is the will of the will of the will of the committals. It is a rule to which a compact is directed. It is not discovered from us. It is a rule because it is a permanent, uniform, and universal; i.e., it is universal so far as it extends. But it is not meant that it must exist over a whole state. Particular customs are laws as general and particular as far as they extend. Now the Custom of Smoking extends generally, thus the County of Kent, is a permanent and universal rule.

2d. It is a rule of civil conduct. In this it is distinguished from natural and moral law. Natural law is a rule of conduct: moral law is a rule of moral conduct: moral law is a rule of moral conduct, etc. Municipal law regards men as members of society; natural and moral law regard them as individuals.

3d. This rule must be prescribed. This in the two things. First, that the law must be promulgated: second, that is the promulgation before it has an effect. Conversely, a retrospective rule in order is not Law; a retrospective law is one which has a retroactive operation, but upon general principles, it is a fallacy for the sovereign power has a right to make a law which in its operations will be retroactive, because it wants the means of being promulgated. There is a difference between a retrospective and an ex post facto law. The former is one which has a future operation; the latter is a penal law which has a retrospective operation. Of course, they cannot make an ex post facto law (i.e.) a penal law which has a retrospective operation. This difference is not generally known.
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The law of the U.S. recognizes this distinction. It declares that no act not
First, it must be prescribed by the executive authority. This is the
The words must be understood in their usual, common or particular signific.

2. If the terms of a law are ambiguous, it is imperative to consult the

3. When there are several Laws made on the same subject, it is proper to

4. The effects, consequences, of different constructions are to be considered,

5. The cardinal rule is, that if the reason of the law is not clear, the law

Municipal Law is divided into two kinds:

1. Lex non scripta, customary or unwritten Law.

2. Lex scripta, or statutory Law. The former consists of these principal

Terms

1. General Customs

2. Particular Customs

3. Statutory Laws
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The time of "legal memory" extends as far back as the 12th century, to the reign of Edward I, and in the latter part of the 13th century. Therefore, at any time since his accession, this custom can be proved as to exist in law. It is not Common Law, but a good custom. This rule was adopted when the statute Westminster 1 (B. Eliz., 16th 53) was made. The time of limitation was a year and a day. 3 Bl. 37 note 3 Roll 269.

Common Law is to be found in legal decisions, books of reports, and treatises of jurists. It is to be enforced by judges, who are conscious of its subsistence always to exist. They are the living sources of the law. The books of cases are not themselves law, but only evidence of what the law is. They are not law in the same manner as the Rolls of Parliament are law. If they were, a decision could never be overruled except by act of Parliament.

The highest evidence of what the Common Law is is the decision of a Court of Record, as in a case directly in point. Books of Reports differ from recorded cases on the latter can never be contradicted; the former may be as some decisions are not law (Dole, Rob. case, 12th 58, 11th 59, 10th 58, most of 10th 58). Little law is all law for 50, it is never contradicted.

A Precedent, is a former judicial decision on the point in question. This is always high evidence of what the law is. The law was set with regard to the authority of precedents are.

1st. A precedent is always to be followed in all similar cases unless it be clearly shown, or clearly unjust, or inexpedient. An uniform system of jurisprudence can never be as such unless it is followed. It is true to be swallowed quite because the reasons on which it is founded are not seen. The best script is no reason for any man who argues a case: it presupposes the absurd "this is precedent" is on the other party.

2nd. A Precedent ought never to be set aside unless it may work injustice. It is to a man's marks. Counsel will not know how to argue its client. Judges will not know how to determine cases. It is legislative or judicial action. It is to be used in all cases in all cases, because it takes effect only from the time the act was made. But to destroy them by a judicial decision is to make it retroactive. The decision of Council of Justice is continuously the same. From the decision of Council of Justice, and from the decision of Council of Justice, to the former; it must attend any new case.

Contemporary evidence of what the Common Law has been immemorially in the minds of the Judges. It is the direct application of the principles. These cases had anciently occurred; they would have been decided in the same manner.
Lecture 2  April 18th 1803

We have considered general customs, we now come to that of particular customs.

1. Particular customs are local laws founded on usage. A particular custom differs from a general one inasmuch as the latter extends to the whole state. The former only that part of it.

2. These particular customs are the remains of provincial customs, out of which King Alfred formed the Common Law, as it is called.

3. If plaintiff relies on them, he must set them in his declaration. If defendant must not plead them specially. He must show that his case is within them. The reason is, the judge and jury are of course to take notice of general customs, but particular customs they are not supposed to know, judicially. The existence of a particular custom is always considered as a matter of fact. It is to be specially pleaded, must be more precise, in the decision of the jury. With regard then to a particular custom, it must be tried by a jury, unless it be before tried, determined and recorded in the same court. It is then sufficient to produce the record on a second trial.

4. There is an exception to this rule in the case of Gaveling. Borough English custom, they being taken notice of by the court, and not set down as general customs. They have been so long known that their novelty is an evident as any general custom can be.

5. Blackstone says the Law merchant is a particular custom. But this is not true. It entirely appears from his own definition. He has no such custom in the English Customary Book. The whole kingdom is not confined to local limits. The Law merchant is a broad and general one. The Common Law. It need not be specially pleaded, but a particular custom. It must be true. The Law merchant cannot be tried by a jury or proved by custom. To be one sufficient, it must be sometimes consulted. Consult a custom and it is a statute anywhere. To afford the judge information as to the law. Indeed the custom may in the same way consult a lawyer as to other branches of the law. When a custom is to be proved, it is necessary to state the provisions of it, but this is never done as to the law merchant. Its provisions are not stated. They are in the minds of the judges.
To make a good custom it must be, 1st. Immemorial, i.e. it must have been in use for a long time, so long as the memory of man can stretch back to the contrary.

2. It must be continued & unintermitted; this is to be understood with regard to the time only, not the posterior.

3. It must be peacefully acquired, in that is not immemorially so.

4. It must be reasonable, i.e. it must be a rule of law.

5. It must be certain; yet, at certain est quad est tum est; i.e., to ascertain if it is the northwesterly of another's land.

6. Customary, a custom that of customs must be consistent with each other. One custom cannot be set up in opposition to another. Customs in derogation of the common law are to be construed strictly, that is, the common law is to be used to include that which is not within the letter of the law.

Thus, the custom of Gavelkind on infant's may by deposition, alienate his land in fee simple, yet an infant shall not be permitted to make a lease for years. In England all special customs subject to the king's prerogative so if the purchaser of Gavelkind land, they will descend according to the common law.

3. Certain particular laws are in common with civil & ecclesiastical laws of the Roman Empire. These particular laws are binding by adoption only. This adoption may be by immemorial usage in Court of Law, & by acts of Parliament. The common law & statute law of England, as far as they are binding in our Courts of Justice, the U.S.A. derive their binding power from a similar adoption. They are prima facie binding in all cases; our Courts therefore are not now at liberty to reject the common law of England except it is unjust, absurd, or inapplicable to our circumstances. In general, all the speculations growing out of their monarchical form of government are to be rejected. Its prima facie binding, because it has been used here, our citizens have considered it as the rule of their civil conduct & that they were to be governed by it. It has been questioned whether the common law can exist in this country independent of & distinct from the common law of England. I think this explains that whereas the common law is inapplicable to particular cases, we must have a common law of our own to reach those cases, & whereas the common law of England is unjust, absurd, or inapplicable, we have a right to a common law of our own. In objection to this, we have no immemorial usage. This country was not in existence as an independent state at the time of the accession of Richard I. Consequently, every custom will fall within the time of legal memory. Answer: If we adopt this rule, we have Dodsell, according to the reason of the custom having 60 years usage, why then may we
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not say a custom law 80 years old is good? Then the objection is against a public law, as civilized states can exist without a customary law of its own. Nor to say it must have a customary law of a foreign state imposed upon it, is to say the state is not a sovereign one.

Lecture 3

2d. Leges scriptæ, written laws consists of legislative acts, said to be written, because originally set down in writing. It is supported by jurists that some parts of the common law were derived from the ancient English statute. It is said this written law is binding upon us as far as the common law is.

Colonists who emigrating from an independent state carry so much of the common law as was then extant with them in their right.

The written law is then Trinacria laws, our law, in the same manner as the common law. We often practice upon the ancient English statute law without even enquiring at all as to any binding force. Therefore I say the Judges of our Courts are at liberty to consider the ancient statute law of England as our law in any case which comes before them, unless the statutes of our own Country are opposed to them. The English statute of frauds & presumptions does not bind the States of Barbadoes, because it was made after it had been settled. We adopt the reasons of their statutes.

All statutes are either public in general, private or special. A public statute is one which regards the interest of the whole community. A private statute is one which regards particular person or private concern only. The application of this distinction is not very obvious. Most written statutes directly or immediately regard the whole community. Our penal statutes must always be public statutes. But written statutes which relate to particular classes or bodies of men are public statutes. The rule as laid down in the Book to determine whether a statute is public or private is this: If the class to whom the statute is applicable to amount by a great number, it is a public statute; when it relates only to the individual. This rule requires explanation: when the class of persons is capable of being divided into distinct classes or species, it is then a general or public statute. When it is capable of division only to individuals, it is a private or special statute. Thus a law respecting marriages is a general statute, because it may be divided into several species. But a law respecting taylors is a private statute. One respecting all men capable of steering process is a public statute. One respecting constables is a private statute. But when it is doubtful whether public or private it is always best to place it specially as can be done above. A statute respecting the King is a public one; a statute respecting an individual in a public capacity is a public one, as the Secretary of State. A statute giving a preference to the King by analogy is always done to the community in a public statute, although it operates only when an individual is a officer of honor, any statute which concerns the public revenue in a public statute, for its provisions are calculated for the good of the community.
Statutes are again divided into those declaration of the Common Law, those remedial or some parts of it, or new definitions. The term declares that the Common Law is always has been. The latter always introduce some new law or some new rule. This may be done by supplying some defining or abridging some substantiality.

Again, not a statute an either penal or beneficial, but both.

A penal statute is one which inflicts a penalty or punishment of any kind. Penalty the most usual sense signifies the same as fine. A statute of restitution itself means a pecuniary punishment. In the limited or restrictive sense it means a pecuniary punishment. Statutes not inflicting any kind of punishment are beneficial statutes according to Lord Coke.

Statutes giving costs in England are supposed to be penal because costs were not known at Common Law. They originated in the last year of the reign of Edward I. The first by Statute of Gloucester. They are a substitute for what was formerly considered as special vicissitudes, therefore they are said to be penal.

An action being by an individual on a penal statute to recover the penalty with interest is a civil action. The Law is civil, but the action is civil. This distinction is important, because the method of proceeding in a Criminal prosecution, in a civil action are wholly different. It is a civil action because it is a suit between A and B for money. It is a civil action in its foundation, because it is a common law process of always proceeding in a bundle.

A Quaker cannot testify in a Criminal suit, as in a civil action.

Pleadings are not admissible as in a civil action.

The jurisdiction of our Courts in civil cases is very different from what is in Criminal ones. Hence arise, much of the misunderstanding of pleading.

All Statutes are either affirmative or negative. This distinction is of no consequence, except to the rules of construction. By the former is meant, one couched in affirmative terms, by the latter one couched in negative terms.

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 specified. It is now very usual to specify some day in which the statute commences. If this is done, they are in fact retroactive. The most in-judgment of laws, because the whole session is considered as one day. If the last day of Parliament is put to each other, neither can claim priority. Each repeats the other by provoking to their respective damages. In this reasoning, it is by the reluctance of the Lord Chancellor
Lecture 4

Construction of Statute Law. In the construction of Statute Law, several rules & distinctions are to be observed. To construe a Statute is to discover the intent & meaning of the Law Maker. And the object of all rules relating to the construction of Statutes is to assist the mind in finding the true intent & meaning of the Law Maker.

The Construction then of all & more especially of Beneficial Statutes, these things are to be considered - 1st. the Old Law, 2nd. The mischief & 3rd. the Remedy.

The mischief is the making a new Law, whereas there is an old one on the same subject. Suppose some subject in the Old one -

1. the first point then, you are to see what the Old Law was at the time of making the new act - 2nd. what was the mischief existing under the Old Law - 3rd. what was the remedy intended in the enactment of the new Act. suppose a statute made all cases by ecclesiastical bodies for longer terms than 21 years. Now the mischief was that they let long unreasonable leases - to the impoverishment of their successors, accordingly it was decided that a lease for the life of the Bishop, the it should last for more than 21 years was not with the Statute.

With regard to General Statutes it is a settled rule that they are to be continued strictly, as according to the letter or literal meaning - as laid down in the Books. As inconsistent. It should be then. They are to be continued strictly as against the person to be affected by them, or equitably for them. The consequence of this rule is, that you can never depart from the literal meaning of a statute to bring the subject within it, but you may consider the reason of it to bring harm without it. Consequently no person can be punished under a general statute unless he is within the letter or spirit of it.

This is a general rule that the universality of the expression of a general statute, does not include persons mentioned, those who are excepted from laws of a similar operation. As in England, if a new statute is made, it is rule of construction that, if the person is to be punished corporally in reference to persons under 21 years unless mentioned are excepted. Modern decision have however reform this rule. Lord Mansfield observes that, the plain intention of the legislative act is to be observed in the construction of statutes. Lord King on the same in the legislation of amount is to be followed in all cases. Judges have however always continued general laws accordingly. It is a general rule that if the statute do not except a case in the same, unless it be made & known to
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Second penalty, when judgment has been given against him for the first
offense as is convicted of the second offense before the second offense is
committed. This rule of construction has not always been followed.

Another rule is that general laws are strictly local law, i.e.
when strictly construed within the sovereign realm over which the
laws operate. No notice of the local laws of one state foreign to the
laws is without notice. The reason is the sovereign in the person of the
sovereign state. No sovereign state can punish a man for an offense
committed against any other sovereign state. But it is otherwise with
the laws of another country. A question is asked whether a judge of England is to administer
the laws of another country? It is clearly not, but it is a part
of the laws of another country. Therefore, the English judge as
well as of every civilized country. The law as it is in the
state of decision should be the rule of decision — the law as it applies only to the

There a penalty is frequently occurred by the repetition of
an offense, only one penalty can be sued for at a time. This is the
law of our country, but I find nothing of it in the English books. The reason is
obvious. The intention of the legislature is repeanding the penalty is to give
the offender a second chance to discontinue his offense; but he loses the benefit
of the voluntary regulation unless he has been convicted once.

Beneficial statutes are to be construed liberally; according to
the spirit and equity of the law; so they may be restrained or enlarged so as to
the letter of them.

But a statute taking away a common law remedy is
construed strictly, because it abridges the rights of the citizen for the
statute of limitations. The words of an explanatory act are not within the
general rule. They are not to be extended or abridged by construction law.
They are presumed to refer precisely the intention of the legislature. Any
Explanatory statute in itself a matter of construction, if you could
conceive this, you might construe in an equivalent.

Where a statute is partly general and partly remedial, the
distinction between them is regularly kept up, as to the remedies, etc.,
according to the foregoing rule, so the statutes against frauds are to be
interpreted strictly against the offender, liberally against the offense (i.e., note
the fraudulent contract).

Different parts of a statute can be construed
if possible so that the whole may stand together. This applies to contracts,
will, or conveyancing agreements as well as to contracts. Each is to be given to the
whole, if possible, and such that if there be a saving or qualification, it is to be
interpreted to the whole of the statute. It is, I think, generally true of nearly all
acts of the Legislature.
If two different statutes repugnant to each other are made on the same subject, the latter repeals the former, for "leges posteriores priores contrarii abrogant." Then the common law & statute law differ from each other in form, always giving place to the latter on two grounds: first, the statute is a denial of the common law, an abrogation of its principle; 2dly, on the same ground, that a later statute abrogates a former one. So that if the latter part of a statute is irreconcilable with the former part of it, the latter abrogates the former as far as the irreconcilability extends.

Every statute is in its nature repealable. If it were not so, the courts would be that the Common Law would so far limit the legislative that it could not abrogate any part of it. A statute is in a statute nothing is to be supposed to be of itself and the statute creates the right. It is abridging the power of a subsequent legislature & generally all acts in derogation of a subsequent legislature and.

The law never possesses the repeal of a statute by any implication. Although it often does thus repeal it, as in the case of two inconsistent clauses in the same statute.

It is said in some books that an affirmative statute does not abrogate the Common Law. From no reason in the case nor does it say it is correct. It does not abrogate the Common Law if inconsistent with it. Suppose the Common Law says, the debt shall have 5 days notice. A statute says, he shall have 12 days. The statute here evidently repeals the Common Law.

A statute is called cumulative when that it the Common Law cannot the party may have his remedy under either. Again, it is said that an affirmative statute does not repeal an affirmative statute. It is based on a reason. It is said to be only where there is an inherent remedy in Common Law, that an affirmative statute concerning anything which was not at Common Law to give a negative of all things. This answer is true, but in the nature of things an affirmative statute can repeal an affirmative statute. The true question is whether the two statutes are inconsistent with each other. The great cardinal rule is to seek the intention of the legislature if you find what the Law is. These rules to act only where there is an express clause of repeal.

In special statutes of a higher or lower degree of punishment is inflicted for any given offense than was inflicted in general.
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An Act of Congress, under the authority of the Constitution, being a law, is not subject to amendment by the House of Representatives. A law of Congress, being a law, is not subject to amendment by the Senate. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the Supreme Court. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President.

When a repealing Act is itself repealed, the Act is not repealed, but a new Act is made. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President.

All Acts dependent on a repealing Act, before it is repealed, are good in law. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President.

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Where one statute is repealed expressly by authority which makes different provisions on the same subject, to continue in force for a limited time, the person does not receive all the provisions of the latter statute, unless to express by the legislature.

It is a general rule that a statute cannot have a retrospective operation. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President. A law of Congress, being a law, is not subject to amendment by the President.

There are certain cases in which statutes may be continued in force, but they are exceptions. They are not contemplated by the law. As in the case of a statute having no direct operation upon the thing or act committed. If one contract to do an act which the law afterward forbids him to do, the contract is annulled. But if one contract not to do an unlawful act, if a statute afterward makes it lawful, the contract is not annulled, for the law never makes Contracts for the subject.

If a contract declared illegal by statute is made while the statute is in force, a subsequent repeal of that statute will not make the contract good. It is void at its inception. This new law does not make a contract good for the practice, which it must do, else there is more. As if a note had been given on unsecured paper, while the stipulated term was in force, the repeal of the statute did not make the note good. The complete performance cannot be made without violating a statute then made a part of the contract as consistent with the law. The whole performance of a contract thus made to become consistent with the law may cancel a contract.
Court of Law as is in a Court of Equity. The principle is equally reigning.

2d. 41. — in both. When the legal limitation is so framed that it cannot be carried into complete effect, this rule will apply in a Court of Law.

S lecture 6th.

It is said by ancient writers a judge that a statute contrary to reason, or law of God is void. W. G. thinks this rule altogether indefensible. If the legislature intend to make an unjust or wicked law, the judge is bound to inform the King's Bench. The judge must inform it. Any other rule will not answer. This rule is to determine such laws so contrary to reason that the King is bound to inform the legislature.

14th. 41. 91.

2d. 41. 297.

It has been decided that Statute Laws contrary to the written Constitution of the State are void. The Constitution is the Law of the Land, and the object of it is to put bounds to the supreme authority. Now this written Constitution is paramount to all Statute Laws. But no other person can determine them. These Statute Laws are contrary to the written Constitution and the Judges, who are appointed for the purpose of administering Law. It is a general rule, that whenever a statute enables a Court to do a matter of justice to a party, it leaves the Court to do it in all cases without the statute. This is the reason why "May" is construed as "Shall" in a statute. This rule is not universal as Governor has decided. The Court must consult the true sense of the statute as the statute in England saying the Court may give costs, they have always considered themselves bound to give them.

Whenever a statute, makes a new Law concerning an old offense, it points a new jurisdiction to have cognizance of it, the Courts of ordinary. 960. 118. Civil jurisdiction are not exclusive, for their Courts cannot be excluded by 564. 3d. 34. by implication. So if a statute ordains that a particular crime shall be punished by a certain jurisdiction, this does not vest the Courts of Kings Bench from their jurisdiction.
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But if a statute makes a new offence, it creates a new jurisdiction. The jurisdiction of the ordinary Inferior Courts is exclusive. Where there is an authority affecting the rights of individuals, by statute, the authority is strictly construed. Where it is an agency respecting individual rights, as in municipal reform, the authority to make a rule is because it affects the right of individuals, it is a rule that all statutes in derogation of the rights of individuals are to be strictly construed.

Where a statute makes a majority of a certain body to do certain acts for the whole, or constitutes a certain number a quorum to do their acts, it has been decided in questions whether a majority of the quorum can live the whole. In the case of the United States, it has been decided that they cannot, and in the case of a majority of the whole body, for such a power is not necessary to the existence of the society if they have no power but what is obviously given them or necessarily incident to the.

Another general rule is that an authority conferred by statute on two or more persons is joined only in several, unless expressly mentioned in the statute. So if one is the authority vests it in the foreman. Likewise the rule is to authorize several to be done, or a majority of the whole number of the whole number, although in some cases, unless there be an express provision. On the contrary, it is to be construed as in some cases, unless there be an express provision. It is the contrary, as in those cases, a majority of the whole body, for such a power is not necessary to the existence of the society if they have no power but what is obviously given them or necessarily incident to the.

In the language of State Law, there is one word often used which has introduced great confusion: "void". It is that which is void ab initio. A new entity, that which is voidable remains until set aside by an act of Law. The rule of construction is this: if the intention of the legislature cannot be carried into effect without rendering the whole void, the rule will be strictly followed; or if the contrary when the intention of the legislature cannot be carried into effect without rendering the whole valid, it will consider it void.

The rule of Construction confers the same in Equity as in Law. It can be used only as the judge differs in Opinion. The only difference between these Courts in the subject is that the mode of relief in some of enforcing the Law are different.
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Pleading Statutes, or the mode of proceeding upon them.

To plead a statute is to state upon the record those facts which bring the case within it. There is no need of mentioning the statute in the pleading. Pleading is to state upon the record those facts which show the sufficiency of the plaintiff's demand, or the defendant's dispute. Pleading upon a statute is a distinct thing from pleading it. To count upon a statute is to refer to the statute in writing. The statute must always be pleaded before you count upon it. In counting upon a statute, the form is: 'Contrary to the statute in such case made or provided,' or by virtue of the statute so and such provided: To recite a statute is to quote its context in the recital. But in general there is no reason in this. The statute includes the law. And in pleading, we never quote laws. Pleading is by judicial logic.

It is a general rule that, as to public statutes, the judge, when he is called to the bar, may be presumed to know the law. But we have refused to private statute courts to put to officers the notice of them, but at common law, they must be specially pleaded. In Connecticut, a private statute may be given upon the face of the defendant's written specially pleading it within the general issue. This is owing to one of these statutes, namely, pleading which allows every thing to be given in evidence under the general issue, except some act of the plaintiff by which he is barred of recovery.

But here as well as in England it must be pleaded specially on giving in evidence. Because the private statute is a mere private document as much as a deed or any other instrument.

In England, in Connecticut, if an action is founded on a private statute, it must be declared upon. A public statute when required to be pleaded must not be recited. Indeed, a public statute must be recited, but private statute must be recited. By this it is meant that I should write it in full before I proceed to do it. I may state the substance of it, if I please. It is necessary to write a private statute for the same reason that it is necessary to write any private instrument. If the latter is to write it, literally, the former must do it completely.

Miscreant. Where there is a miscreant in a public statute, it is said to be fatal to the party pleading it, even when verified. The reason is to have an undertaking stated, the law forbidding one who shall suffer for it...
The present is a law which has no exceptions. This rule is qualified
by others thus: A misprint of a fact not material is not fatal unless
cured by a verdict. Once according to Wadd the minor rule of statute
is not fatal until the party他自己 files proof. The statute quotes as when
she declare against former statutes and practices. The modern cases notice
all their distinctions. I do not see why Lord Denio's opinion is not
the accurate one. The minor rule may be cured by a more fuller
case, since enough is stated in the record to settle the same. Yet
after all I find the former rules more often recognized than any other.

But the minor of a private statute does not vitiate the pleadings
after verdict, nor even on demurrer. The reason is the Court know
nothing of this private statute. Consequently they cannot judicially know
there has been a minor rule. But advantage may be taken of
the minor of as 1st. By the trial of "and tells record," 2ndly by a plea in
abatement and 3rdly by praying "open of the statute" transcribing
it on the record, then demanding it. The advantage of a
minor rule is taken in this case, in the same way as a deed.

When a public statute is improved to defeat a private or
legal solemnity, it must be pleaded specifically. In this case it is
not pleaded for the purpose of informing the court that this
law is, but because the law holds a greater in so high estimation
that it will not allow it not to be admitted, unless the statute
appears on the record. Indeed another reason is, that the practice to
this case, that the defendant ought not to be surprised. It necessary in
cases under the statutes against using gambling contracts.

I am declaiming therefore on a public statute distinct
necessary to recite them substantially or literally.

If a statute is for public & private the distinction is
to be kept up; one is recited separately, the other not.

It is in no case necessary to recite the title of a statute or the
assembly. Neither of them is any part of the Law.

It has been held, that the minor of the title of a public statute
was not fatal even in demurrer. But a title after a contrary rule was
held. The former rule held that title was the latter one because it is founded
on principle. The mistake is made in mere surplusage, which could vitiate.
Municipal Law.

46. 26. 8028.
Cox. 256.
2 Mod. 57.
7. 18. 85.

Another essential difference between the mode of procuring upon a prior Statute and a Public Statute is, that when one party pleads a prior Statute, the other party may plead "real and record" as it is a mere matter of fact; but in the case of a Public Statute there be admitted because it is a mere matter of Fact. In England, the citation of a Statute when it is necessary must contain its date, place where enacted, otherwise it will not be admitted.

Be declaring a Statute public, it is a general rule, that you must not count upon it, for the judge as count as official to notice it as an exception to the rule, it is said by Lomax, if upon the use of Common Law & Statute both at the same time, if the party wishes to found his claim upon the Statute, he must count upon it, that the other party may know whether he founded his action upon the Statute or upon the Common Law. Bacon holds the contrary opinion. The former rule, considers the facts of the case are different, the mode of proceeding, the rule of evidence are different; consequently it ought to appear on the record what kind of remedy he intends to secure.

If the rule, I believe to be true, its declaration would be considered as a declaration of the Common Law unless he counts upon the Statute. It will therefore be necessary to count upon it and the declaration be good at Common Law. There are some priorities on, some Statutes in some courts upon the Statute on which he found his claim. He is public. This is a more positive rule, it applies in all cases in which penalties are inflicted it action on proceedings to recover an enforce them.

If a public statute gives a new action unknown to the Common Law, it is necessary to count upon it. This rule has not been followed hitherto in all cases. Depending on the case was unknown to the Common Law. Yet Statute of Westminster enacting it was never count upon where a statute exists on the same or a new case, it is not necessary to count upon it. For this is 8, 85.

6th 505.
Full 34.
again 4034.

Therefore in the case 117, in the case of A. 456.
Lecture 8

There are cases in which statutes are merely prohibitory, i.e., they require the punishment, but do not prohibit the thing from being done. Other cases in which the statute, the crime is prohibited, but a penalty is insufficient for a violation of it. In both cases, each statute must be counted upon, for this reason, that one is but part of the law.

It is a rule in pleading that the same offense may be laid in the same indictment as shown in the Common Law or in Statute. But it must be done in two counts. The offense laid in one count is supposed to be a different offense from the one laid in another count, the act is the same. And unless the statute is counted upon, the offense is supposed to be at Common Law. It will give some answer to count upon the Common Law. It cannot be laid in one Count, because it would seem as if the person was prosecuted both at Common Law and under the statute for the same offense.

If a temporary statute having expired, is revived or continued by a subsequent one, if the statute is required to be counted upon, it is sufficient to count upon the former one; because the law is contained in the former statute if the latter only extends the continuance of it.

An indictment counting upon a Statute may be sustained at Common Law, although there is no statute to support it. The words "contra formam statum" may be introduced as mere surplusage, because there is a mere offense at Common Law.

If an contract in agreement being good at Common Law without writing, is by statute required in order to be valid, if it is in writing, in declaring upon the contract it is not necessary that it should be annexed to the declaration that the contract is in writing. It is sufficient if it appears in evidence. This reason in the statute has only introduced a new rule of evidence, but has not abrogated the old common law form of pleading. This rule is well exemplified in the statute of frauds.
Municipal Law

But whereas the writing was necessary at Common Law, the valuation of the contract, it is indispensably necessary in pleading upon the contract to aver that it is in writing. Because the act of writing is a Common Law rule, and therefore the party must aver that the Law has been complied with... as a release of a Bond.

Any of a statute makes writing necessary to the validity of a contract, unknown at Common Law, in pleading that contract at law. 5th, 6th, 656. Must be averred that it is in writing. The same reason exists here as in the former case.

It is an universal rule in declaring that a statute

That exceptions in the enacting clause of the statute must always be negatives of the fact of making a contract in a particular aspect, which cannot be cured even by a contract for any make part of the description of the offence. But those exceptions which occur in a separate statute the clause need not be negatived. As a statute in Connecticut prohibiting a breach of the peace, all persons are to be found in a certain sum for doing secular business, except works of necessity or mercy: now in an information under this statute it must be averred that the acts in question were not acts of necessity or mercy. But in another clause of this statute, it is said all prosecutions for breaches 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, but is founded on the reason that the exceptions in the enacting clause enter into the description of the offence. In the other case it is a mere matter of defense on the part of the defendant.

If the party who has a remedy at common Law founds his claim upon statute X, cannot obtain the action, and wants to bring an action in the same cause, X action want to be remedy at Common Law, X he can only have this case may recover under the Common Law as he may pursue within remedy. This rule is the same in criminal as in civil cause. The former holds different terminating Criminal causes, and that he may be notwithstanding the conviction is entirely barred by the statute. The same rule has been settled in Connecticut.
Municipal Law

It is said, if that which was no offence at Common Law is made so by statute, and a particular mode of prosecuting when it is provided by the statute, that made only can be followed. But the rule is to be understood with qualifications—It holds true in two cases at two only—First, where the particular mode of prosecuting is prescribed in the statute as a prohibitory clause, it is secondly where there is no prohibitory clause at all, as if statute says whenever any person shall have been guilty of X, then he shall be punished. This is true. In both these cases the mode of prosecuting is so intravenous with the creation of the offence that they ought not to be separated. If then a statute creates a new offence and specifies the mode of prosecuting in a distinct substantive clause, any Common Law method of prosecuting may be pursued.

And if that which was prohibited by statute was before punishable by a Common Law mode of procedure, this mode as well as the other may be pursued unless the statute specifies a particular form, because the statute is merely cumulative. The Common Law method is not to be destroyed by mere implication. This is a case in which the statute does not create the offence.

If a statute creates a right on an offence & gives no remedy, for the right, non-imply the punishment for the offence. The Common Law will lend it aid to enforce the right given & punish the offence proscribed as a misdemeanour. This rule is necessary as the case is that a statute is made giving a right on prohibiting an offence without furnishing a remedy or sanction. If then an offence thus created is to be punished, the offender is proceeded against for a misdemeanour in violating the wholesome regulations of the state. If a civil remedy is to be sought it is by action on the statute, the right to be enforced is given by the statute; the remedy is furnished by the Common Law. To obstruct the execution of powers granted by statute is an offence punishable at Common Law; & the declaration need not in fact be sought, not to conclude with a 'Contrary to Common Statute.'
Who may prosecute on penal statutes.

It is a general principle of the Common Law, that a public offense cannot be prosecuted by a private individual in his own right or private capacity. An offense is no injury to an individual as such. It is an injury to the public only, considered as a crime, and it must be in all cases a violation of civil rights, consequently the party injured is the only person who can bring the action. In every case, the party injured by any public offense— in general, the State, public or community. In England, a private person do not prosecute offenders for the king in his name, but only by commission in cases of felony where no part of the penalty belongs to them.

The party prosecuting is called the prosecutor or informer. But the prosecution is in the king's name—the prosecutor is only the agent for the Crown. In Connecticut there is no

qui tam actions of qui tam informations. The former is carried on by a civil lawsuit, the latter by a criminal proceeding. The former is in the nature of an action of debt, the latter, strictly speaking, being attended with a path with

Hiby 177. Sect 382. 118.
These qui tam actions are brought on some penal statute for the purpose of enforcing some penalty or forfeiture inflicted by the statute. So they are creatures of penal statutes invariably, not known at Common Law (yet it seems so in some cases).

A popular action is one in which is given to any individual who will sue for a penalty inflicted by a penal statute. It is called a popular action because it is given to any one who will sue for it. Sometimes the whole penalty is given to the prosecutor for it. Sometimes he alone, and sometimes jointly with the prosecutor. Sometimes to him and the king jointly. The money goes to some public Treasury. Where the whole penalty is given to the prosecutor it is a popular and not a qui tam action.

But a qui tam action is not of course a popular action. They are distinct actions. The

For Confounded in Common Practice. This is evident from the fact that the whole penalty is sometimes given to the prosecutor sometimes a part of it and sometimes the whole is given to the party aggrieved. It seems a general rule that when even an individual receives a civil injury by an act prohibited by statute, the statute implies a remedy by action. On the case, all the there is no express provision for it. The way grows his action on the statute, the he has his remedy afforded by Common Law. But the injury being prohibited by statute his remedy grows out of it. It seems to be the better opinion that a qui tam action would be.

Another general rule is that whenever a statute prohibits or commands a thing for the benefit of an individual he may have an action on the statute for any injury he receives under it. Also the remedy is not expressly given in the statute which is grounds in this case a qui tam action will lie. Wherever a statute implies any penalty for the prescribing another of a right that penalty is not expressly given the party aggrieved shall have the whole penalty. He shall have
...an action on the statute to recover it, e.g., for not setting out the.

The principal cases in which qui tam actions will lie

2. 2 Rev. 265.

3. 7. 4. 15. 13.

Dyer 95.

1. 10. 37.

2. Bank 37.

2. 18. 37.

A. 7.

If a statute prohibits an offense injurious to an individual as well as to the public, it is said the


12. 2. 50. 34.

19. 1. 93.


191. 193.


4. B. 92.

5. 2. 52.

...due for it in a qui tam action. If a statute expressly gives a penalty to the party aggrieved, he may sue without

joining the public with him. In general, qui tam actions are

brought for recovery paying the forfeit.

This is a rule of the Common Law that when a fine is

given to the public for an offense, a civil remedy to the party injured.

The fine may be inflicted of course on conviction of the defendant

in the civil action brought by the party injured. This rule has been

once recognized by our Courts. This is analogous to another princi-

ple of the Common Law, that where there has been a breach of

the peace & an action brought for redress by the party injured

after conviction of the defendant in the trespass the fine shall be

court inflicted “capitis titum fines.” According to the practice fines

are not inflicted unless in such cases the party in the civil suit

joins the

2. Wilde Commission 457. 182. 111. 7.

K. Wilde Commission 457. 182. 111. 7.

G. Wilde Commission 457. 182. 111. 7.

5. Wilde Commission 457. 182. 111. 7.

with no form of actions is

prescribed for the recovery of a statute penalty. The proper form is

Debts...
Municipal Law

It has been one determined in Connecticut, that an action of

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21. 2. 25

21. 2. 25
Municipal Law

That before a prosecution is brought the king may pardon or
release the penalty; this will bar any prosecution. But after
prosecution brought the king cannot release that part which
belongs to the party prosecuting, because he has acquired an
indefinite right to it; he may indeed release his own part, but
as to the other part he cannot discharge or suspend the right.

But there is distinction to be observed between a statute which
gives a part of the penalty to any one prosecuting & a statute
which gives it to the party aggrieved. For in the latter case
the king cannot pardon or release before action brought
because the law gives the party injured this compensation
for the injury he has received. The statute is in a certain
degree connected with the right of the individual in antecedent
to the action.

The prosecutor might at common law release
a part of the penalty after conviction of the defendant, but as
there were frequent collisions between prosecutors & defendants,
certain statutes have taken away the power of the prosecutor
to release his part of the penalty. As by statute 38. Eliz.
which enacted that no continuous prosecution in a quitclaim shall be a bar
to another for the same offence, & that no release during the pendency
of suit shall be a bar to the action. Even a bona fide release
would not at common law bar the king's right to prosecute. It
would any other individual if given after conviction.

If the plaintiff in the prosecution dies, releases, withdraws or suffers
41 Geo. 6. 3 Be6. 526. a ressort, the king may proceed in that action to judgment, or a
41 Geo. 6. 3 Be6. 162. new trial may be commenced by the attorney general in person
The rule would be the same here. The king is in these cases of
qui tam virtually a party, although he is not named in the record.
If several persons are convicted in a regular action for one given offence, one penalty only is inflicted. But if several are convicted in a petit prosecution under a penal statute, the
penalty is inflicted on each. The reason is said to be, the first is founded on debt; the second on a crime which is severable. The true reason is, in one case they are considered as debts; in the other, they are considered as criminal; therefore severable.

Several prohibition acts of the same kind when committed in continuity amount to but one offence; consequently only one penalty can be inflicted. So if a person labours five days on the Sabbath, this is only one offence.

There is an essential difference in the consequence of a conviction on a regular action in England, as in America (con't). In the former, the prosecution never recovers costs, except they are expressly given him by statute. Here if the Off— recovers he always recovers his costs.

But when the penalty is given to the party approved he recovers costs in England as well as here.


Private Relations.

The objects of the Law are Rights & Wrongs. These rights are divided into several kinds, as rights of persons & rights of things. The former are again divided into such as are absolute & such as are relative. Relative rights are such as men acquire by their relation to society, which includes what are usually called the "domestic relations." First of

Master & Servant.

A servant is one who is subject to the personal authority of another. A master is one who exercises this authority.

To constitute a person a servant in the true sense of the word, it is necessary that the authority have of whom it should be personal. He who is subject to civil authority is not a servant. The authority exercised by the master generally arises from some compact made with the servant or some one who has the command over him.

In Connecticut this is not always true. For here there are two kinds of servants—First, Slaves; secondly, Apprentices, Thirdly, Menial Servants, Fourthly, Day Laborers, Fifthly, Agents of any kind, Sixthly, Debtors assigned to service, and so on.

Statute Law of the State. The first & last of these kinds are unknown to the Common Law. The only recognizes the four remaining ones first specified.

I. Slaves. It has been much doubted whether slavery has ever been authorized in Connecticut. If legitimate slavery does exist in Connecticut at all, it must depend upon either Natural Law or Common Law, or upon Local Law.

1. I argue: natural law does not allow slavery. If it does, it must arise either from a state of slavery in war or contract or upon being born a slave. First. It is said natural law allows slavery in case of neutrality, for war, because as every one has a right to kill his enemy in justifiable war, so certainly in
a right to take him into captivity. If the premises were aboves
the conclusion would perhaps follow. But one enemy has not
a right to kill another enemy except this necessity which
happens in self defence. Now when a man is taken prisoner
his captor has no right to kill him, according to the subposition
because it is not necessary for his preservation.

Secondly. On principles of natural or general Law, can
one man become a slave by contract? Every sale requires
a quick passage; but the property of the servant devolves on the sale
true facts on his master. Strictly speaking slavery gives
the master a power over the life, the liberty or the property of
the servant. But this power can never be given by contract.
No man has a right to take away his own life: consequently
he can never by contract give this right to another. Again,
strict slavery involves the notion of unqualified submission
to the will of the master. But no man can make a servant
of his moral agency to another. Again, strict slavery
involves a complete power over the property of the slave.
How this contract is not mutual, because if there is no mutual
reward for the submission, this reward goes immediately to
the master. The one may by contract agree to serve
another, he cannot by contract agree to become his slave.

Thirdly. Can slavery be created by birth? There are
no previous state of slavery. Slavery by birth is derivative, but if
there is no slavery at first there can be none which is derivative.
On the principles of natural Law then there can be no
slavery authorized.

110. 424. 2. If slavery warranted by the Common Law, it clearly
2. It will not suffer any species of private slavery. The decisions from
the fact, that the local Laws of any Country in favour of slavery.
Master and Servant.

Cannot be enforced in England. If further, the moment a foreign slave touches the soil of Great Britain, he is considered a free man.

There were in England under the feudal system servants called villains, but they were not absolute slaves, because the law could not hold in England. Bull villerius has ceased in England. It was abolished at the restoration in 1660 by virtue of the Statute of 12. Charles the 2d., at which time there were but two villains in England - a villain was the ancient name for slave, as known was for servant, as in ancient versions of the Bible, it was "Paul the slave." 

3d. slavery legalized under our own local laws. I think this is evident when we have no statute expressly authorizing the holding of slaves in the United States, yet we have statutes counting upon the existence of slavery, making provisions for slaves to remain exclusively. These statutes were made by the Supreme Legislature, power of course, slaves were recognized by the power in their own statutes. It has been urged by the opponents of this idea that we have no judicial decision in favor. True, no slave has brought a habeas corpus to try his case, but the courts have manifested an opinion that slavery was legalized. They have decided that a slave may be sold, so they agree that a master cannot maintain a suit for his slave. I have determined that a slave may be taken in execution, sold at the foot, a qualified wage. The right exists in Connecticut at this moment, but it is not absolute: this was never pretended. It has been, after all, in Connecticut that when a slave is taken or reduced away, the proper action is the same as it would have been had the person been an apprentice. The master has no control over the slave's life.
In one case in Connecticut, a slave who had a family brought an action against his master for selling him to a man in New York. Upon examining him from his master, the Court, however, advised a compromise. We doubt whether the action would lie.

A slave may hold property; he may sue for it by his next friend; he may be a devisee or legatee; or inherit an estate, he cannot take sure, make contracts, for this is forbidden by statute. But if he makes and takes away the property, is it does an action, lies in favor of the slave against his master. If a slave marries with the consent of his master, his interest immediately emancipates. This point has lately been decided in Connecticut. No ground is, he has a new relation promoted, with his former one. If he still remains a slave, he cannot assert his rights, nor in any case perform his duties. The master, if he consents to the marriage, must consent to consume all those rights which are superior with him arising by the consent by his master.

A minor child is emancipated from his father when he is married. Whenever then any individual in the character of a slave contracts a new relation, the duties of which are inconsistent with his former condition, he is discharged from his former condition.

It is true that a slave cannot be freed from his servitude by marriage, if done without consent of his master, according to the ancient idea that a child of a female slave is not freed from servitude by marrying another slave. But if the master agrees to the marriage, the slave is discharged on giving coverture. If the master refuses, she is forever free.

It has been a question whether (in law) an illegitimate child can become a slave by birth. Uniform usage has decided this point according to the civil laws, the offspring follows the condition of the mother. This law on this subject has been received in Connecticut, and the old English law theFeat is the condition of the father.
Master and Servant

A legitimate child cannot be a slave by birth, because it is born in lawful wedlock — at the birth of the child the natural parent can be a slave. Having is almost entirely abolished in Connecticut. A statute is made forbidding the importation of slaves into another providing that all children born of slaves after March 1784 before Augt 1797 shall be free at the age of twenty one years —

On the principles of the Common Law, apprentices may be judicially condemned to slavery for crimes. As is the case with those confined to hard labour — This is a qualified civil slavery. They are made slaves to the public, if those who have the management of them are the agents of the public —

Lecture II

Apprentices. These constitute the second class of servants. At common law they are the first. They are so called from the French word 'apprentis' to learn — as they are usually bound to their masters for the purpose of being instructed. They are commonly bound to the practice of some mechanical art. But not always, as they may be bound to serve in husbandry.

An apprentice can be bound in so many ways as by Deed. This at Common Law, for a formal contract of apprenticeship is not good at Common Law. This is the only condition in which a contract creating a right is not good at Common Law by statute.

And it has lately been decided in England that where a contract of apprenticeship is defective, no other contract can be made out of it as a living by the year.

It has been formerly held that the relation of master and apprentice cannot be created unless the person is retained by the name of apprentice.
Master and Servant.

All other servants may be retained by favour. There is no reason given in the Books for this distinction between apprentices and other servants, but I conclude it must be this. An apprentice is bound to a much stricter kind of service than any other servant. And the master has much more important duties to perform in this case than in any other.

Therefore the contract is of so high a nature that it ought not to be proved by formal evidence.

Minors or Infants may be bound out as apprentices by their parents or guardians. In England the children of paupers may be apprentices and by virtue of several statutes by the overseers of the poor with the consent of two justices until they arrive at full age. And by these statutes those who leave these poor children are obliged to offer them apprentices as apprenticed and obliged to take them.

In Connecticut there are two statutes that provide that the children of poor parents being otherwise destitute of food and care, may be bound out by the overseers of the poor with the consent of two justices until they arrive at the age of 18.

All other servants except apprentices are entitled to wages. The wages of servile servants are settled in England by contract of apprenticeship and by the law on apprenticeships.

Here they are all settled by contract.

In truth an apprentice may by express reservation in the contract have wages, there is nothing illegal in it. Yet the law will never imply an obligation of the master to pay wages to his apprentice. But it will in the case of servile servants.

Let it be remembered how at the moment leaving for misconduct is for being absent when ordered to return home at night with certain promises. But the case is not the same if they wander out of the time of the discharge.
Master and Servant

It is enacted by the Statute 5 & 6 Eliz. that Minors may bind themselves by indentures of apprenticeships. Yet under the statute it has been uniformly held, that the minor is not bound to perform the contract. All that is effective by the statute is, that while the relation does in fact continue, all the rights & duties on both parts are enjoyed & performed.

If the apprenticeship continues during the term prescribed by law, the minor be free of his trade.

But when the father or guardian joins in the indenture, he is bound by it. Both usually sign it, when they do not, the minor is not bound, but the father is both by the statute & the Common Law. To have no such rule & the rule of the Common Law prevail, there are a minor cannot bind himself by an indenture.

There are several ways in which an apprentice may be discharged from the service of his master. 1st.

May be discharged by the service of his master at his discretion. The master in many respects stands in loco parentis to his minor; greatly abusing the apprentice in his government, or giving him such a course of life as renders the life of the servant uncomfortable is cause for his leaving his service. 2nd. He may be discharged by the Master. It is often said in the Books that he cannot be discharged by deed, but this is meant where the discharge is to be effected by contract. 3rd. By non-renewing, delivering up or canceling the indenture, because the original contract is by these means virtually destroyed. And Lin. it has been determined that a master having discharged the servant by deed could not maintain an action on the covenant against the apprentice's master. The ground of this decision was that the master was guilty of a wrong in discharging the apprentice without the father knowing it, & consequent on this case the father might have had an action against the master. In the case in question it was not discharged & that the master might afterwards have claimed him & that if he had sued for his not returning, he might have recovered.
In Connecticut, an apprentice may be discharged by the court for the default or misconduct of the master. The law states:

And the same thing may be done in England by the quarter sessions, or two justices, or one with a right of appeal to the judges, but this is done by the justices only when the contract is made by them. The master may also be discharged by default of the apprentice.

Lecture 12th

This is a rule of the Common Law that a master cannot assign his apprentice. He cannot sell his right or interest in him, to as to bind the apprentice. For the contract is altogether personal.

Therefore, the interest cannot be assigned. This is founded on the best of reasons; for the master reposes confidence in the master whom he has chosen to live with him only. Indeed it is a general rule, that a personal trust or confidence cannot be assigned. (See the Custom of London, by Agreement of Apprentices.)

On this principle, it was held that where a submission was made to arbitrators by parties to an indenture, if the arbitrators awarded that the apprentice should be assigned to another in service, the award was held not to be good. Yet the contract of assignment shall be good as it respects the assignee, because he may make a contract as it respects himself, but not as it respects the apprentice; if the master is liable for a breach of covenant, where there are no express words used at all.

(Both of the person assigning does serve as an apprentice.

He gains the rights and duties of an apprentice. Beyond

In mean that it does not bind the apprentice the master is bound to regularly to keep the apprentice under his own care, and not to send him abroad even for the purpose of improvement, except an agreement made in the contract, or the nature of the business requires it, and his object is to learn the real meaning business.

Upon the same principle it is held that the executor or administrator

of the master cannot hold the apprentice after the master death because

as the right of holding is not transferable so it is not

transferable, and further the executor may not be able to instruct him.
Master and Servant.

Yet it has been once held that the execution of the master in bonds 177.

11th 216. 12th. to teach him, or procure some one to teach him. This is in


296. 216. 11th. direct opposition to the general rule. It is now denied to the Law

It has been much questioned whether the execution of a

11th 761. 820. master is bound to furnish diet, clothing, &c. for the apprentice during

3d 555. time for which he is bound. By the current of authorities

Se 50 .

I think these decisions have all been had on the form of

the indenture, which is that "the apprentice shall be furnished

1st 216. with necessaries during the after paid term," and this the judge

constitute strictly; this is very frequently the case in England that

11th 460. the master receives a premium for instructing the apprentice. And the

Free Brick. out of Chancery. 376

two courts of Chancery have ordered a restoration of part of the premium

11th 149. 2. Term there was an express stipulation in the indenture that in the event

64.

11th 149. 6. Term there was an express stipulation in the indenture that in the event

the master died a part of the premium should be retained; they decreed

11th 552. a large portion should be returned on account of the master's

dying soon after the relation commenced. So if the master turns

11th 67. 490. away the apprentice or becomes a bankrupt, part of the premium is

11th 552. to be restored. Bankruptcy is not for itself a discharge, but the

several will discharge in such cases. And in certain cases the court

11th 410. of the place discharging an apprentice they may order the master to repay a part

11th 552. of the premium.

Whenever an apprentice earns during his apprenticeship

11th 552. belongs to his master absolutely; who may recover it in any prosecution

1st 117. 1. As it is not in the power of the apprentice to earn any thing by his labour

11th 216. for himself during the apprenticeship. This is also true of an apprentice

2. Mod. 117. 11th 68. As facts. If then the apprentice earns property in possession during

11th 28. 23. The apprenticeship, the property belongs to the master who may sue

11th 32. 69. for it. So if a debt is created for the labour of the apprentice during

3. 508. 332. the apprenticeship. The debt due to the master who may sue for the

11th 68. 28. It is true that the labour is performed without the consent

of the master it yet in the line of his usual business. --
Master and Servant.

I do not find that any of these rules hold in the case of any other servant except slaves, if they are not known at common law. Very few other servants may be so understood. What remedy is an action on the case against the employer for loss of service provided in the employer knows of the detainee, or as the case may be against the servant for a breach of contract, if he be a minor, against the father guardian?

The situation of a servant resembles in this respect that of a minor child. The parent is entitled to all his wages during his minority. In case of these servants, particular hours are generally agreed upon for the benefit of the master. If a servant earns wages out of these hours, the master has no right to them; so a servant may have what he earns late at night.

If however a servant of any kind (with) is carried away from his master service an action will lie against the parties entering and this rule has been held, extended to journeys who are hired by the day or month. But if the party secures leave of the master, or cannot be supposed to have the means of knowing no action will lie against him.

The action which is to be brought by the master is different in different cases. If the servant is taken away by force, an action of trespass will lie. If he is enticed away an action on the case is the proper action. Yet in danger, for enticing as a servant, the action is called trespass. I think there must be a mistake in this report. Trespass on the case is the proper action.

Under an English statute the apprentice gains a settlement in the place where he resides the last 30 days of his apprenticeship. Here we have no such statute; on the contrary it seems a settled principle that no apprentice gains a right not by mere residence with his master.

In Connecticut, if a servant unexcusably absents himself or of age, he shall be liable to serve his master twelve times his absence, and under a warrant there, may be impressed to strike a servant running away from his master.
Master & Servant.

Lecture 13th.

156. 425.

1. General Servants. By these are meant those servants, hire who are employed to be at work within
the town, "extra muros."

In England in the case of menial servants when the time of service is not specified it is presumed to be one year. This
is founded on the presumption that one shall serve in the household. This is the general rule of the Common
Law in such cases, but by the statute 3 Eliz. in certain cases
a master cannot dismiss his menial servant or the servant leaves
his master's service before or at the end of the time agreed upon
without three months notice unless by a dispensation from a
majoritate. We have no statute here of this kind.

2. Day Labourers. There are no general rules by
the Common Law applicable to this class of servants, exclusively.

But by the statute 3 Eliz. 46 Geo. 1, all persons having no
visible agents, may be compelled to labour. A justice of the peace
may settle their wages at the sessions. Those masters who give
more or those servants who exact more are liable to a penalty.

3. Agents. This class of servants is various as
factor, attorneys, bailiffs, stewards, clerks in conveyances,
brokers, etc. The only difference between a factor and a broker
is this that the former lives in the same country with the
principal, the latter in a foreign country.

The employer has not the same general control over
the agent that a master has over his servant. The agent, as bound
by law to act on the employer, according to their contract,
But in general the employers have no personal control
over them. So an agent acts with respect to the property of the
principal by virtue of his authority, they are considered
as his servants.
Master and Servant.

The rules with regard to the person of a servant are that every agent is bound by law strictly to perform his commission. He is responsible to do it, for if he departs from his commission & causes he is, liable for it, but when he does not depart from it, but follows it strictly, he is not liable for any casual loss.

A factor may retain the goods of his principal not only to satisfy a particular debt a general balance in his own favour. The balance due for an agency as it relates to certain specific articles is called a particular balance; but when there is a balance due for his agency as it relates to all goods which have come to his hands in the line of his business, it is called a general balance.

But when a factor gives up these goods to the principal, he can never afterwards reclaim them. The lien created by law is gone, a lien in a general balance in his favour. The broker has also the same lien when the price of the goods is in the hands of any one to whom he has sold them. Having sold the goods of the principal, he may order the purchaser to pay the amount to him & not to the principal. If the purchaser does pay the money over to the principal, he does it at his peril, for if the factor cannot recover it of the principal, he may have an action against the purchaser to recover.

But the factor has no lien upon the goods of the principal, unless they come to his actual possession. He cannot retain a lien for he never comes to his hands. A constructive possession is not sufficient to create this lien or to cause them to become a pledge.

So far as it respects this lien the goods that are in the hands of the factor are in the nature of a pledge.

But how can there be a pledge when the goods remain in the hands of the debtor? It is the duty of all agents as we have before observed to conform strictly to their instructions. This is a rule that if the factor gives more than he was authorized to give or carries
Master v. Servant

Then his commission warrants this principal may divide
the purchase - if he buys more the principal may divest
as to the excess purchased, but is bound as to the same to fol-
be instructed - so if the factor sells for less than he
is authorized to do, the employee may recover for the sum
specific in his instructions - And this the factor finds that
he has acted reasonably & that the principal has
suffered less than he otherwise would have done, claims
justification

As for business of a factor interfering
in selling - but the factor has no right to recover the goods
of his principal. The act of buying does not fall within
his authority - if the principal may maintain recover
against the factor, on tendering to the factor the balance
of account due to him, I take it for granted he must give
the factor notice. The factor is answerable even for goods
that the factor acts in a representative capacity & there is
the fee requalification to this rule.

If the factor sells the principal's goods for less than his
instructions authorize, the goods have been sold. The
factor may have an action against vendee in his own name
so also an auctioneer may sue for goods sold at an auction
in his own name if this be, may be altered the purchaser
know at the time of the purchase that he was the doing
in one particular, an auctioneer is not liable for a loss
where an agent would be for he is not liable to sell to
the highest bidder for a less price than he was directed to by
the principal - for there is an implied contract on the
part of the auctioneer that the highest bidder shall be
have the goods -
But if the principal orders him to set up the goods in the first instance at a particular price, & he sells for less he is liable.

An attorney has a lien upon the property subject of his client for his fees, & he may direct the owner to pay the money to him, & not to his client, & if he does it is within his power. But this lien is subject to the equitable claims of the estate party, as a set off.

An attorney who executes an instrument for a principal shall do it in the principal's name, not in his own, for if he does it in his own name & not as attorney, he binds himself & his principal. The usual form is 1st, by his attorney &c.

A Deed can never bind his principal by Deed unless he is authorized to do it by Deed. He is supposed to do it in his own name for a man may do it for another in his own name. When the instrument on the face of it appears to be done by the principal himself.

On the same principle one partner cannot bind another by Deed except by Deed authorized.

An agent for the public contracting as such is usually liable on the Contract, which he makes, as when a Commissioner General makes a Contract, it gives his own note or Bond. If it appears on the face of it that it was given in the time of his duty, this was decided in the Supreme Court of the United States, in the case of Mr. Deering.
Master and Servant.

Lecture 11th.

Under a statute in service is there an unknown? The Common Law and the statute of Connecticut. The statute provides that a debtor commits a breach of contract by not paying debts. The court, upon this, may be accused in service by the superior court of the creditor. The court judges it reasonable. The court may be accused to some inhabitant of the State usually to the creditor.

In construing this statute, the courts have decided that it must be a joint & some ride one, if the judgment is recovered. The court will look into the duties or cause of action to see if it be a notorious one; between the parties free from fraud or respects these persons. The assignment is for a time certain, during which the labour will amount to the debt. The court will consider the joint of the labour to be fixed by the court. The court will make an indefinite assignment. This proceeding, however, is very unusual. Some courts have discontinued it — for they will apply the case, the health, the domestic relations of the debtor as well as the Character & claims of the creditor.

This assignment cannot be made to one & lien, etc., to one & lien, assigns. It must be strictly personal to A. B. by name, because the court repays a confidence in the person to whom it is assigned to no other.

Rules applying to master & servant generally:

When the master is bound by the acts of the servant, while he can take advantage of those acts.

The general principle is that these acts of the servant, which done by the command of the master either express or implied, are in legal contemplation the acts of the master himself. Regularly those acts which are done by the servant in the course of business in which the master has employed him are done by the command of this master in accordance with the principle of the law.
Our first six articles, joint secon The questions then returns, what sorts of acts of the servants are done by the command of the master? If, may he laid down as law.

That whatever the servant does by express command of his master, is the act of the master. For whenever the master permits the servant to do in the course of his business, he implicitly orders him to do, "qui non prohibet, semper puts prohibere potest.

By whatever the servant does within the scope of a general authority given by the master, is done by the master himself, because it is done by the implied command of the master. These three classes will include all the cases in which the acts of the servant, since the master is from this follows, that a contract made with a servant as such having authority from the master, is in judgment of the law, made with the master, is an action grounded upon it. It is alleged that the contract was made by the master himself, and not for the master by his servant. And would he undertake like he of the master money or anything taken from the servant by fraud, it is a wrong done to the master who may sue in person. If a servant is robbed of his master the). As in the absence of his master, servant, a master may have an action against his servant. And for the reason, why a servant may have an action in his own name in this case, is said to be because it is liable over to his master. This is not true. The presumption of law is directly contrary. This is not true. The presumption of law is directly contrary. The true reason is the goods are the goods of the servant as against all other persons except the master; and this reason founds in policy in that unless the servant has an action, the goods may be forever lost. A recovery by either in this case has the action of the other that
Master and Servant

The commencement of an action by one party prevents the other from presenting for the same act.

When the servient brings the action in this case he must sue upon the possession of his own goods, because they are in his against all the world but his master. Universally Baileys have a better right than any body but the master. The servient is not deemed an a Bailey.

But if the servient in title of his master goods, in the latter presence, the master alone can sue, because the taking is deemed to be from the person of the master.

If the master judiciously gains from the servient by an illegal contract as Gambling, the master can recover it back again, for the doctrine is guilty of a violation of law.

But if the servient wickedly squanders away the master's property, the receiver who is not supposed to know that it is squandered away, shall hold it as being a general principle of law that when one of two innocent parties must suffer by the act of a third, he who first it into the power of the third to do the wrong act shall suffer.

In case of an Innkeeper his liability for his fault is higher than common masters, for the acts of their servants. There is a good reason for this. Innkeepers are such as establish Inns or houses of entertainment for the accommodation of Travellers who are generally strangers, who are necessitated to trust their property with them. If there is an express contract on the part of the Innkeeper with the public that the property of the guest shall be kept safely.

It is a general rule that if the servant of an Innkeeper commits an act which is an exempt case
Master and Servant.

for the servant cannot be supposed to act by the command of
his master.

If one sells bad wine or provisions to the guest, the
 Innkeeper is liable, because it is done in pursuance of his
business. In this case it is said the servant is himself liable,
he knew the provisions were bad, & the reason given in that
he is a servant, a person acting under the command of his
master. I see no reason in this rule. Suppose a servant should infuse
arsenic into wine, would it be an excuse in an indictment
for murder, that he was a servant? But he is liable, because
he does an unlawful act wilfully.

This is a general principle of Law that when a man
has no lawful power to do an act, the person doing it by
his command is a wrong doer. Now the servant is bound
to do only those acts which are honest & lawful. But he
does an unlawful act & that knowingly. Why then is he
not bound? Indeed, it is a general principle of Law that if
the servant does an unlawful act by the command of the master
both are liable.

But it is said in some of the Books that if a servant
acts in obedience to the command of his master, of
which himself is ignorant, he is not liable to the injured party.
The master only is liable. This rule requires qualification
for if the fact is in itself unlawful, or if it is lawful, yet
accompanied with force, the servant is liable; the commands
of the master to the contrary notwithstanding. The Law
to the same will not be subject Law criminally. But it
will subject him civilly. E.g. To cut down a tree - the Law of
Justice does not regard the intention.
Master and Servant.

Lecture 15th.

Those acts of the servant which are not done by the command of the master express or implied, are not ordinarily consistent with acts of the master. Hence, therefore, the servant acts without the command of the master, and in a manner in which he is generally or expressly instructed, the acts are not the acts of the master.

From this it follows that when any injury is done by the servant by these acts, the master is not liable; neither would he be liable in a contract made in this manner.

Upon this principle it has lately been decided that if a servant while actually engaged in the master's business commits a wilful injury to another, the master is not liable.

On the other hand, if the servant wilfully drives his master's carriage against another's door and breaks it, the master is not liable; because the wilful act is not in furtherance of his master's business. Therefore no command, express or implied. This case was a novel one at first. The law, however, seemed to be clear on the opinion that the master should be liable. The servant committed the wilful injury he left his master's service. They considered the wilful act itself to be an abandonment of the master's service. It was not in furtherance or promiscuous of his master's business, express or implied.

But if the servant in furtherance of his master's business does an act injurious to another, this negligence or want of skill.

Thus the master is liable; on the principle that the law requires that the master should at his own expense remove that act of skill if and when employed by the master, the master is liable.

2. If the apprentice of a surgeon injures a woman this negligence or want of skill when employed by the master, the master is liable.

The master is liable.
An action on the case was brought for the service
wittingly driving his master's carriage against another
of breaking it. The action was brought against the master
of the carriage, and the court gave as the only reason, that
the service of the carriage was not to be done for the court,
and that the master as such case, became the injured.
The action should be brought against the master,
and not to lie for the court, gave as the only reason, that
the service of the carriage was not to be done for the court,
and that the master as such case, became the injured.

Soon after an action of trespass was brought in the Court of
Common Pleas for negligently driving master's carriage & the court held
that the master had no occasion to bring the action, for the
injury was not to the carriage, but to the person
in the carriage, after which, in 1700, an action was brought in
Kings Bench for wittingly driving carriage, & the court decided that
no action at all would lie. This is now law, founded on
reversion principle. This action against the master should
not be taken.

If it were otherwise, it would lead to the conclusion,
that the master may be served with a capital, whether
a criminal be compelled to pay a fine. But the master
is not liable in criminal cases for the acts of the servant done
without his command. If it were brought against the
servant it would be treason.

It has been decided by the Court of Common Pleas in
England, that if one servant enlists another servant, the
latter one is guilty of an injury, that the master is liable.
This is not in accordance with the prevailing idea of the profession, it
appears to me inconsistent with the principles of law.
In this case the action lies only against the master or immediate
agent. The intermediate servant is not liable, because he
does not commit the injury. This rule has been carried so far
as third or fourth servants. I think it is questionable or principle.
for the 3rd may be willing to employ the 2nd, or may not employ the 3rd.
When the 1st will not act, the servant amounts to
a violation of a contract between the master & the injured party,
the master. I think it is liable, for he is answerable against the wrong done.
Question for discussion by Mr. Green. — His opinion.

Can the principal be taken, by bail, in New York, on a bail-peace issuing from Connecticut?

It arises in an action of False imprisonment.

In Connecticut it has been decided, in case of a person being an escape servant, so bonded by a magistrate in another state, which makes no difference, for the taking entirely void that it was lawful to take him.

This question has several times arisen in the United States.

It never has arisen, I believe, even in England, on account of its local situation. I know that any such thing as a bail-peace is known there.

In Virginia, it was decided in the Court of Common Pleas, that the principal could not be taken in another state on such bail-peace.

In the circuit court of the U.S. the question came up before Judge Patterson. I am doubtful whether any decision was had, except an opinion expressed by Judge Patterson against the action of false imprisonment. But I am told that, on general principles, I think the bail can take the principal. True, the process issuing in one state cannot run into another.
It has no authority here any more than land has. If so, we must suppose that the jurisdiction of one State extends over that of another. But this is not the case. It is not an authority like a prison. It is not a house, but a certain record or memorial that is a basic charter of a State.

Now, with such evidence to take him to New York. Under the Constitution of the United States, records of one State are good evidence in another. Then the question arises—can the sureties be principal with this evidence? Can a man whom they hold can be principal with it? If so, he can force him as well as goods upon which he has a lien. I have been told that it is a breach of the peace to take him in New York. But the same objection may be applied as well to taking him in Connecticut.

If one takes goods go into New York, I may force him to take them—so it is taking his house. In the case of Bail—The principal is in the friendly custody of the Bail. The sureties are in the Bail's custody of the Bail. The sureties are in the Bail's custody. The Bail may imprison a co-conspirator. He has a lien on the goods of the principal. If so, you may lawfully take him wherever you may find him, so long as you lawfully detain him in her name, assistance. So arrest woman in one State. The Governor issues a warrant to the Executive of the other to which he is. He lacks the warrant. That is just Dr. Monroe on it to him, then the person can be taken. This is by Statute of the United States.
A Sheriff is liable civilly for torts or defaults committed by his under-sheriff or officer in the execution of his business.

For mere neglect of duty in the under-sheriff, the Sheriff only is liable to the party injured. But for positive torts, the under-sheriff as well as the Sheriff himself is liable.

From the analogy of Master & Servant, there have been two attempts made in England to subject a Postmaster. But it settles that he is not liable for the actions of his servants. The reason given is that he has no hire from the party injured. He makes no contract with the individual who uses the letter. The post master contracts with the public to receive the pay from the public. It would be inexpedient to subject him, because it would place him under an enormous responsibility, so great indeed that no person would undertake the duties of the office. Indeed there is a general principle of the Common Law, which would discharge the Postmaster if he has one servant employs another to do his master's business. If any injury arise, the intermediate servant is not liable, so it is in this case.

The Postmaster is an intermediate servant. Same rule holds with regard to Deputy Postmaster.

But the Postmaster is liable for his own actual defaults, as to it is with Deputy Postmaster, or all other servants employed in his department.

If a Postmaster receives more money to himself than the Law entitles him to, an action of seduction assumpsit will lie against him. Thus far of the torts of the servants for which the master are liable.

He now come to his Contracts.
Master and Servant

As the Master lived many years for the taxes, so
in some cases, being the owner of the servant.
The general rule is, that those contracts made for the master by the
servant, within the scope of an authority delegated to him by the
master, bind the master.

The authority may be either general or special,
express or implied. A general authority to contract is one
which is not confined to any individual contract, but which
extends to all contracts generally, or all contracts of a certain
kind. As a broker who has a discretionary power over the
principal's property. He has a general authority, because
he has authority to make contracts of a certain kind. So if
a steward who is usually employed in purchasing necessaries
for a family acts under a general authority to make
contracts of that nature — so a steward.

A special authority is one which confines to one
or more specific individual transactions. As where a
man orders his servant to sell his horse — as long as the
authority extends no further than to secure contracts it is
a special one. A general authority is often implied from
a master frequent or usual practice — as in the case of
the master frequent or usual practice — as in the case of
necessary before mentioned. A special authority may also
be implied, so it is seldom the case. Whenever the master
is bound by virtue of a special authority, it is most always
necessary to prove this special authority — yet sometimes
it is implied — as when a servant makes a contract in
presence of his master, who says nothing against the

From these distinctions between special —
general authority, it follows, that if it has been usual for the
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made to send the servant with money to purchase whatever
he hath permitted him to buy in any other way, the master
is not liable of the servant taking goods on his credit,

there is no implied authority in him, if he has frequently
the servant permission to trade on trust for him, to give him credit.

This general authority may be implied as between

and any particular individual for between the master and the

public in general—as if I have usually entrusted my servant
to make contracts on my account with him, only
I give him no credit with the public, but if I permit him
to trade with the public generally, I give him a discretion
the public.

While that is no authority when an express indication
of the servant's purchases articles, they come to the master.

Because the master is bound, because the subsequent agent is

equivalent to an antecedent authority.

But there have been doubts whether implied the

This general rule to a particular case, as if a servant purchases
an article on credit, without any prior authority, having the
money given him by his master to purchase at the best

to his master, who receives it on it, supposing the money
have been paid for it. Unless the master bound?

if he is bound, it is on the ground of a subsequent agent

But how can he be bound by a contract in which he ignorant?

The step for the master to have paid the money. There is

clearly no subsequent agent.

When a master has permitted a servant to trade for him

of course given him a general authority, he may determine

that authority it discharge himself from future contracts
of a similar nature. This he may do by forbidding the
Masters and Servants

...advice on the public in general from trusting the servant.
(And he cannot discharge himself by any other between himself
of the servant only.) The prohibition must be a public one.
This discharge should not be effective immediately
when the dissolution of the relation between himself and
a reasonable time must be allowed for the public to gain knowledge
of this dissolution.

If a servant in selling property which has previously
authorized to be by the master makes a warranty, the master is bound
by it unless the authority was expressly restricted in this particular.
The permission to warrant is presented until the contrary appears.

If the master does retain the servant with respect to a
warranty, the servant makes one the master is not bound.

Out of the servant acts within the scope of a general authority
in selling even an express restriction with respect to warranty
of goods, make public as known to the purchaser. The master
is not required, e.g., to warrant a horse to be sound.
When the master is bound by the warranty for the
slave acts under general authority, the power of warranty is implied.

If a servant employed in a living house, whose ordering
business is to sell his master house & warrant them. The master
would be bound by the warranty even the warranty forbidden in
a particular instance. For what difference does this express
restriction between the master & the servant in a particular
instance make between the servant & the public? Clearly none.

But in case of special authority & a restriction on warranty
the master has given the warrant & credit to the purchaser.
The master has given the warrant & credit to the purchaser.

Hence to sue from even at every questionable authority, the it
has never been apparently wrong. I think it inadmissible
with modern decisions — Another case laid down in the
Books which I think equally questionable, when a
Master and Servant

Servant sells an unsound horse at a Fair. It is said the master is not answerable, unless he directs the servant to sell to a particular person. Rule: A justice in his own case, in a full answer there is between selling him to a particular person or setting the mischief of fraud by putting the fraud upon an individual or on the public.

If a merchant deals in goods warranted, he is bound to warrant them goods.

The master is liable even the he supplies goods being on the restriction of private or the credit public.

Lecture 17th

The servant regularly is not liable for the contracts he makes for his master, because they are not made on his own account. He is not regularly bound yet he may personally subject himself even when he is transacting his master's business, if there be an express stipulation to that effect. He here subjects his own credit or does not act as a servant.

Thus necessarily if a servant makes a contract in his master's name, without any authority from the master, he is himself liable as well as the master. This liability is likely to be implied in any contract, because he made it in another person's name, and the action may be founded on precise or an imputation.

Any one who acts for another, under his authority in his name, is his servant. A man, Wife or children are often considered as servants on the principle for the purpose of making a contract binding, it comes under the general rules.
Master and Servant

A statute of Connecticut has intimated there would entirely remove a unknown to the Common Law. It provides that if any one under the government of a master is authorized by him to make a contract in his own name & even in his own name the master is bound. It has been determined under it that any contract which the servant makes in his own name on his own account shall bind the master, that unless the servant is authorized by the master to make a contract it shall not be binding. The statute does not extend to all servants. The 13th says, "persons under the government of" That is persons under the domestic government of masters. It seems to extend even to personal servants of they are over age, but only to slaves. Personal servants are excluded under age. The contracts on the part of the infant without notice are void.

How far the servant himself is liable for his acts and default to strangers to his master

The general principle is that those acts of the servant which are not done by the master's command are not in law an act in judgment of law. The acts of the master. Therefore, for these acts the servant is himself personally liable. This with the relation of the former one as the master and liable, it follows that the servant is the wrong has been done by the servant, the relation to the master does not excuse that the servant can therefore avoid. Those acts which are done not in pursuance of any business or authority with which the master has contract has been, are not regularly done by the master's command. I guess must not lead for which she is.

There is another class of cases in which the master

1568, 1st is. a servant agrees the liable to the action may be brought against a servant agrees the liable for the action may be brought against his master if the servant in the performance of the master's business does any injury. It is very by case of want of that. The servant as 411, 125.

138, 431. 410. 420. Last 603. 386. is a violation of the contract between the master and the servant. When he made by the hand of his apprentice, without the consent of
Master and Servant.

There is an exception to this last rule, which is in the case of a ship's master. He is bound to his freights and in any contract with the master, the owners are not bound. It would, therefore, be unreasonable to compel freights to seek a remedy against the owners, who are not known to them, who may live at a great distance. When the contract is made by the owners, or their agents, General convenience and sound policy seem to require this rule, even when the contract is made by the owners or their agents.

On the other hand, if a servant commits a wilful loss, it is always liable to the party injured. This is, then, the transaction was founded on a contract, between the master and party injured—i.e., in this case, the act is not in pursuance of the master's business, but the thing contracted to be done.

It is a distinct collateral wrong.

An action of indemnity as assumpsit will not lie against the owner of the revenue for an over payment. The whole of the money is spent already for his own use. This is in strict analogy with the rule above—where the act for himself and as a servant.

There an attorney knew of the release of a cause of action between two of whom he was a witness to the release. Afterwards, he brought an action founded on that original cause of action. He is not liable. The reason is, it is not for him to decide whether his client has a cause for action or not. He may advise, but the client must decide whether it will

[Further text not legible]
Master and Servant

There are many cases in which the servant is liable to the master — and it is a general rule that he is liable for all willful wrong or default, or in other words all violations of his duty by which the master is injured. But no action will lie for a mere breach of promise, no damage is sustained nor for the manner in which any remedy here is wholesome condition.

The violation of duty on the part of the servant need not consist in breaking an express command — it is liable for a breach of an implied one — so an attorney is liable for neglecting his client's case — so also where a merchant's clerk caused damage to the goods, before the duties were paid in consequence thereof they were forfeited. Here the servant was held to be liable to the master.

The general rule is, that whatever a servant, undertaking to do, he undertakes to do with diligence and fidelity, not with negligence or ill will. Here is the doctrine generally to his master for injuries to the master for injuries caused from want of diligence or fidelity.

Whatever one undertake to do for another in the line of his business or occupation, he in fact obligatory engage himself to use all necessary diligence and skill in performing. From this it follows that no servant is not liable for the loss of land master goods affected by dishonesty. This proposition rests of excutions as in the case of a Bader; if he wantonly or inhumanly exposes himself in a situation where robbery might be expected he is liable.

Generally then, the servant is not liable for the loss occasioned by accident. Against which ordinary diligence and fidelity are not sufficient. Of course, he is not liable for any of those accidents which are beyond human contrivance. But the jury are the judges.
Master and Servant

The servant is in general liable to the master's corroboration of his master, having been subject to their power, for injuries done by the servant in negligence or want of fidelity. This does not extend to cases where the master

is not liable. The rule supposes the master not to have been actually a party in the wrong commitment, unless he has no claim upon the servant; for this, they are both tortious parties with the maxim of policy in

"ut retribuitur nocente aut ut sit et coactum". Of the Masters authority over

the Servant.

The master has by law a right to chastise his servant for any breach or neglect of duty, as disobedience, negligence or incivility. The has the same right to correct his servants that he has his common children. The for domestic government

But this correction must be reasonable or it cannot be justified. The chastisement however must be unreasonable i.e. clearly without cause, or excessive in degree, to subject the master.

And in an action brought by the servant, the jury under the direction of the Court, will judge whether the correction be reasonable. Same rule obtains between a school master and his scholars.

But this general rule cannot apply to a servant. Servants of the 3rd class are not in general liable to correction. I would judge, whether the master has a right of correction without over his servants except those who are in his family. The right is like one's right to correct his

children, and from the person to be under the domestic government of the
Master and Servant

There is however very little on this subject in the Books. The distinctions are not made.

But a master has a right to chastise his slave if necessary. As menial servant, or the case may be, a servant who has been assigned to him in service. But when respects other servants, I doubt whether this right exists.

It is said by Blackstone that a master has any other servant of full age, except in cases of emergency, he is not justified in that he may on the account leave his service. This cannot extend to menial servants. If the force instead of the master gave the conviction the servant may have his master's service.

The master can never justly wounding his servant. The correction must be reasonable and moderate, in his judgment of law. It is not so when it amounts to a wounding. By this term is meant a laceration or contusion.

If then the servant does for an assault, battery, threatening the master may plead as special justification as to the two former, but as to the wounding, his only plea is not guilty.

By statute 4th term, the master may plead double jeopardy as to the whole, or as justification (moderate chastisement) as to part.

In pleading this justification it is necessary to state

The 117. Statute 56th that the Master was retained in his service, the place where retained or the business in which the work is employed for there are all matters of fact which are essential.

This right of correction is strictly personal belonging to him therefore can by no means delegate it to anyone.

He cannot employ a third person to do the service.
Master and Servant

There is a case, however, in which a master may be liable by another servant—i.e., that is the case of a school-master. This is no exception of qualification of the rule. It is no delegation of authority. The right of the school-master is distinct from the right of the master of the boy. The chartist wins in his own right.

If the master in chartering his servant should kill him, he would be guilty of excessive homicide, manslaughter, or murder, according to the circumstances of the case.

It has been formerly questioned whether a servant who accepts a deed to discharge his master from service can avoid it as the law now is to be amended.

Lecture 18th

If the master remedies against third persons for injuries done to himself in relation to his servant.

The master, in general, has an action against any one who instantiates his servants, in which case the

"servant" or "pest" of the action is the "host of service".

Of course, it must be laid with a "good quid pro quo".

"Quid pro quo" must be a consideration, he is not interested in the point.

If one servant be jointly taken away, an action of

For such acts of service may be maintained by the master. This

should however be laid with a "good quid pro quo" for the he declare

when a possible taking, he must show what the injury is that he

has received. If no force be used, case is the proper action to be pursued in England.
To every servant without being enticed voluntarily
leaves his master's service, the person retaining him is liable
to an action upon the case for favour of the master.

But if he still owes does not know of the former retainer,
he is not liable to the former master for it is a "damnum
sine injuria".

If a servant is forcibly taken away from
his master, the person taking him, may be indicted for
a Penal offence, or because the forcible taking involves a
breach of the peace — But no one can be indicted for
entering a servant away, because the injury is entirely
a civil one.

When a servant is beaten by a stranger,
the action for the same Battery can be brought by the servant
only. The master cannot maintain an action for the same
Battery, as such. But if by it he loses the service
of his servant, he may maintain an action in his own
name: one is injured in person, the other in his interest.

Consequently a recovery in one action is no bar to the other.

But in this case, the master must declare with a plea quasi
antis. Thus, there has been no actual loss, he cannot recover.
The plea good in the gift of the action without the declaration in

A minor child is a servant within all these
cases, an adult child may help as well as any other

See Little v. Tate Case.

25. 7, 5, 6th and 7th.
3 days, 1778.
In 1732, 178, 179, 175, 176.
In 1752, 176, 178, 179, 175, 176.
Master and Servant

But if a stranger beats the servant of another so that he dies, the master has no remedy in his own satisfaction for the civil wrong; the private wrong is in this case merged in the public wrong. The master cannot in judgment of law have any recovery, because by the felony the life of the stranger is taken; and as the felony is perfect, of course a recovery would be unavailing; but referring to our law-courts of satisfaction an Act that justice is not perfected so that there is here no remedy.

If one's servant is injured by the wrongful conduct of another, or a stranger, the master may maintain an action with a jury against his master's agent or servant. But I think in cases of this sort the servant would be entitled to an action in both cases. The general rule is that he who does an unlawful act is liable for all the consequences of it.

In the case of a servant venturing away on a voluntary leaving his master's service, the master may have an action against the servant or the retainer. But I cannot have both for a recovery against one is a bar to the other.
Master and Servant.

What acts Master and Servant can justify against third persons in each other's defence.

To ask assistance of a third person in a law suit, amounts at common law to maintenance; yet a master may assist his servant in an action against a stranger and not be guilty of the offence of maintenance.

A servant may justify an assault in defence of his master's person, and in the duty thus to defend his master he can do what his master otherwise would do in his own defence.

But a servant cannot justify a battery in defence of his master's goods; this right is personal and attach'd only to the master.

But whether a master can justify a battery in defence of his servant has been much questioned by the opinions, are flatly contradictory. It appears to me that he cannot, for the rights are reciprocal; the master has an interest in the soundness of his servant, therefore he ought to be entitled to defend him. The only reason given in support of the contrary opinion is that the master can have an action for the cost of the servant's service. But this is good reason why he should be justified in defending him.

Besides the remedy is precarious, the person who commits the battery may be a stranger to the servant, and no recovery can be had.

A master may justify battery in defence of his goods, subject to certain conditions.
As to the master's liability to provide medicine, &c., see 1 Esp. R. 739, where Lord Mansfield held that the master was not liable that the servant was bound to provide for accident.

The next decision is in 3 Esp. R. 270 cited in 3 Bom. & R. 248 where Lord Kenyon at the river held that the master was liable. But in the last decision in 3 Bom. & R. 247 the whole court in discharging a motion to set aside a verdict held that the master was not liable that the servant was alone liable unless there had been an agreement on the part of the master to pay the servant with necessary victuals.
The word Sheriff is derived from the Saxon words "Shaft" and "Gerf," which mean the Governor or Keeper of the Peace or County. In Modern language the word "County" has supplanted that of Peace.

The Sheriff is the highest office in the County. In England it is appointed by the King from a nomination of three persons from each county selected by the twelve sheriffs and other high officers of the State. Formerly they were chosen by the inhabitants of the several counties. By virtue of several old Statutes, the sheriffs are to continue in the office no longer than one year. This rule however is frequently advanced with the object of securing certain "durable tenure platico" such as the term of the feudal tenure. In some new common for the King to appoint what are called "Pocket Sheriffs" "duarante bene placito."

In Connecticut they are appointed by the Governor & Council, one for each county. They hold their offices during the will of their appointers — so that this office determines only by death, resignation or removal.

At Common Law the Sheriff must reside in the County for which he is appointed. If he resides out of it he forfeits his office. It is superceded by the Sheriff of that county. Hence this rule would be adopted in Connecticut.

The sheriff has exactly the jurisdiction over his own County, unless necessary to act out of it for the purposes of confining an official, or for authority as to do that particular service. E.g., if it should become necessary to take prisoners, etc. by habeas corpus. In
Sheriff.

The sheriff in every respect must act as a minister of justice in the county for which he is appointed. He may appoint a general deputy without the approval of the court of common pleas for the county for which he is appointed. But he may without such authority appoint special deputies. A special deputy is an appointee for a specific task or purpose and may have limited authority to execute only the specific task for which he was appointed. However, such a deputy, in acting, must have the authority of the sheriff and the court of common pleas.

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The sheriff of one county may not appoint the sheriff of another county in a special capacity without the authority of the county court.
But this deputy cannot act out of his greater county. Whither anyone else than the sheriff can be appointed as the county comptroller, whose duties are set out in a statute.

The sheriff may remove his deputy at pleasure, so he is merely the agent named as attorney of the sheriff. He continues in office. The sheriff cannot abrogate his power or take away any of the incidents belonging to his office or give it to his own deputy. His power is absolute. The sheriff's county is his own. He is no particular person's agent. He may give authority to any one person, to any particular person, under no statute of Connecticut law. Can凭此 may join and sue on an entirety warrant in ejectment from acting in their county.

In England the authority of a sheriff is entirely derivative. He is a representative of the sheriff in his official capacity only in his name. The sheriff will issue a process through the sheriff's name and in that of the sheriff. He derives all his authority from a contract made with the sheriff. In England a deputy is never directed to act. The sheriff is directed, but to the sheriff himself. The sheriff is authorized to give general or specific warrants from the sheriff for his deputy not regarded as a known public officer. Deputy commissions may be in general or in direction to the sheriff.

The sheriff is not issued a known public officer. He is not.

Evidence to endorsements in his own name. The sheriff

A certificate of the deputy not to execute certain processes is void and a against law contrary to his duty, which is that he execute all process that is offered him.
The Sheriff may delegate his authority, but the deputy cannot.

Sheriff.

The sheriff may delegate his authority, but the deputy cannot.

The rule here, true as well in England as in our jurisdiction. The sheriff must therefore do his duty in person. He then may appoint him a member of the House of Commons in England, which can vote by proxy, but a person who acts in that capacity cannot delegate the power who acts by an inherent, independent right.

When it is said that a sheriff cannot delegate his authority, it is not meant that he cannot have persons to assist him, or that he may not command assistance, nor that these persons may command the forces. Command is, but this is not a delegation of his authority.

It is said in Black, 111. that an arrest by an assistant is not good. But this I think needs qualification, as will be seen hereafter. This power an arrest by an assistant when the deputy was absent.

If the sheriff directed a warrant to two persons to be executed by either of them may execute it; for whereas the authority is of a private nature, it is joint; but whereas of a public nature, it is both joint and proceed.

If the deputy is guilty of neglect of duty, as suffering an escape from the sheriff may have an action on the case against him for the sheriff himself is liable even to the sheriff in the process. He is an official keeper of jail or common prison in the county. Hence this right to appoint and remove the gaoler, who is his servant. In Florida.

The sheriff has regularly no right to confine his prisoners in any other place than the common jail or prison, unless the person appointed by law for the custody and keeping of prisoners
Sheriff

Therefore a sheriff should confine a prisoner in a private house or any other place but the common jail, he would be liable in an action for false imprisonment except where he was necessitated to do it, as if the jail was burnt down, burnt down.

The sheriff living in a county, absence of officers, keeper of the jail cannot be arrested on civil process. He cannot be confined in any jail out of his county for that would be unlawful. He cannot be confined in the jail within his own county, for as he is the governor or keeper of it, he can set himself at liberty. If a deputy sheriff should arrest him, he could instantly discontinue his authority by removing him from office, or if a constable should arrest him, he could not commit him to prison. For this must be done by the governor, who is a mere servant of the sheriff and removable at any instant the pleasure to do so.

But if there are two common jails in the same county & one of which he is not the keeper, I see no reason why he could not be committed in it generally the sheriff is keeper of all the jails in the county.

What then is to be done? Especially when the sheriff is taken as a criminal? There is no definite rule laid down. But I suppose he is to be confined in the jail of an adjoining county by necessity. If he cannot be arrested in a criminal case, he cannot be tried. In civil cases this necessity is not so great to confine this officer, because he is chief justice in civil cases & the married female justices he legally of no effect.
Sheriff.

The sheriff may sit in civil cases and be held to his own service, but not upon an arrest, with a view of arresting
him.

They cannot execute process to which he is not personally liable, but his deputy may be held liable as a servant of the
same as a principal owner.

Lecture 26th

Liability of Sheriffs for the acts or defaults of his deputies or under sheriffs

The deputy being the servant of the sheriff, the latter

is in many instances liable for his acts or defaults.

The acts of the servant at times render the sheriff liable

as the acts of the master or his own employees. "Qui facit

per alium facit seipsum."

Hence it is that the sheriff is allowed to take from his deputy's security for the faithful discharge of their duty.

It is on the premises of the sheriff's own responsibility to the plaintiff in the process. The security

taken is in the nature of a bond to secure the claimants.

The sheriff, if he be observed, is liable for the acts of his servants, in many cases. It is a general rule

that the officer acts of the sheriff as to all civil purposes

are the acts of the sheriff. It is by a fiction of law

that the law never by fiction makes one an offender.

That is, it never makes one guilty by fiction of

law, if the act is in criminal; therefore for the criminal acts

of the deputy he is not liable, for these are not constructive

acts of the sheriff. So simplicity - If the deputy

to whom a writ is directed refuses to execute it in accordance

with the law, the power to recover damages, the sheriff himself

is liable, so to also for a false return. But if the deputy
Sheriff

The officer, if made the assent, or the commit murder or any
assault by shaving on the body of the defendant, the Sheriff
is not liable, because he is not acting.

Again, it may be clear that the Sheriff is not liable
for the private acts of the Deputy, for it is only for his of-

icial acts that he is liable, so in his private acts, he does
not act as a Deputy Sheriff.

Upon this ground, the Sheriff is not liable for the
private acts of his Deputy, it has been made a question,
whether if the Deputy sends an execution against a,
instead of levying on the goods of A by mistake or some
other reason, levies on the goods of B (the Sheriff not being
indicted in the act) the Sheriff is not liable, as the Deputy
has not joined his servant, or if the only remedy
is not against the Deputy. There has been no
decision on this point, but it is thought it ought to
to be considered as an unofficial act, therefore that
the Sheriff ought not to be liable — unofficial, because
the act does not direct the Deputy to levy on the goods
of B, but on those of A. The Deputy proceeds to act
under authority of Law in no reason why the Sheriff
himself should be subjected. By the more modern
decision, however, he is considered as liable: it is
to be settled now — (1, and to it 1, 8th)

At Common Law the Sheriff alone is liable for
a neglect of duty in the Deputy. Thus if the Deputy or goather

 infused in the water, neither of them are liable to a suit by the Sheriff

in the process. But if the Sheriff is at the reason is that
either the Deputy or gaoler are officers known to Common Law to the public & besides they are total strangers to the Plaintiff in the process. So if Deputy omits process he is not liable to any one but to the Sheriff.

But on a tort committed by a Deputy in his official capacity, he as well as the Sheriff is liable to the party injured. The Sheriff is liable because the wrong is done by his servant in his official capacity, but the Deputy is also liable W C thinks because the party aggrieved may consider the Deputy as a mere tool too. By breach of duty is meant only neglect of duty, on this ground only are the decisions reconciled. A tort is meant an act of misfeasance & not a mere nonfeasance or neglect of duty. There must be a positive wrong done, not a mere negative one, to make it a tort. Thus for a voluntary escape permitted by the Deputy, the Deputy himself is liable, for this is an actual & positive tort, but for a negligent escape the Deputy is not that unless nothing more than a mere nonfeasance. So also if a Deputy has an execution in his hand, & omits to levy it, he is guilty of a mere nonfeasance only, yet if he levy it on a wrong person he is guilty of a misfeasance & himself liable as well as the Sheriff. In common sense however the under sheriff is liable for neglect of duty as well as a tort committed in the execution of his duty.

The Sheriff is also liable in both cases as Common Law. The reason of the Sheriff's liability is that he is in fact known as the officer & law. The process here being directed to
The Deputy, he is known to the Plaintiff as being a known officer, whereas in England it is otherwise, the work is never devolved to him; in that country he is not a known officer. The process is never executed in his name. Indeed deputies are so well known here that they may be sued in their own names as deputy sheriffs, against third persons, as is every day done on receipt, taken by them for paying.

Where a Sheriff appoints a special Deputy by his own mere motion, he is liable for his acts as a general officer, but if he appoints merely the nomination of the Deputy to execute his process, Sheriff is not liable either for non-performance or negligence. The reason is that the Sheriff appoints at the request of the party, and therefore to be considered, these rules of the common law are all new here except the distinction, that the acts of deputy since the Sheriff may be liable for negligence, whereas it is the Deputy in the action, he is regarded as a known public officer.

It has been observed once or twice before, that the Sheriff is an officer chosen of the State in the County for which he is appointed. If after the death of the Sheriff before another is appointed, a person enrolls, no one is liable. This clear. That the old Sheriff cannot be liable for acts committed after his death, nor even his estate for those acts before his death; for "actis personalis munificis" own personal. It is equally clear that the new sheriff cannot be liable for acts committed before his appointment, neither can the goods be, for by the act
of the old Sheriff, his power, upon fact, ceases. Therefore
as I said before, no person can be liable for such an escape,
it in case of an escape under such circumstances, the
only remedy the Plaintiff can have is an application
this way. If he thinks he might do, until a new sheriff
is appointed, for he could not be committed to prison, there
being no power in existence to receive him.

If a sheriff having begun execution or by levy
when property is removed, he may still proceed to complete
the service; for the service of the execution is an entire act.

It is said that's called over until completion of service.

So of all officers qualified to serve process, as deputies, constables,
authorities and duty of sheriffs.

The subject which I am now considering is entitled 'Sheriffs'
yet I have thus far considered, in my full powers as authorities
in execution.

By the Common Law, Sheriff is a judicial
as well as executive or ministerial officer, as a judicial
officer he holds a Court of Record and presides in it. But like
the latter has no judicial power, it is ministerial or ministerial, the
only power. A judicial officer is one who hears and
determines causes, it is called a judge. An executive officer
is one who executes law by virtue of his official power,
without any command from his superior. A ministerial
officer is one who executes law under the command of a superior.
The judge of our Court, are judicial officers. The Governor of
of the state in an executive officer. Sheriffs as before
asserted are principally ministerial, but sometimes
executive officers. I take first treat of sheriffs as
conservators of the peace; in which character they
are purely executive not judicial officers, secondly
as ministerial officers.

1. As conservators of the peace. They are the
vestige of their general authority. They are the first
executive officers in the county. The sheriff is next to
any person therein, during their continuance in office.

At common law he may a peace and commit
to prison all who break or attempt to break the peace
throughout the county. And thus, he may do as conservator
or keeper of the peace on the mere sense of what the
peace is bound and to presume that peace, all
felons, murderers, felons, &c., other criminals, to
commit them to prison for safe custody. He is also
bound to defend the county from enemies of the state,
if for all or any of these. He may, without warrant
command the peace constables. Yet common law every
person is bound to obey the summons who is above
15 years. If below the age of 16 he is when warned
subject to attend they are punishable by fine imprisonment.

By statute of Connecticut the sheriff is bound to suppress
all riots, tumults, routs, & unlawful assemblies, and for this
purpose he may command the peace constables. This seems
to be merely an affirmation of the common law.
Sheriff

The same statute gives the same authority to elect their officers, as to execute all legal process regularly directed to them, and to receive the fines or penalties, if any, which the law or the Common Law subject to the punishment. Likewise liable in a civil action on a case to the party injured. He is not indeed bound to execute at all costs, unless occasioned by his special duty, or for general whatever purposes they may occur.

In Connecticut, sheriff is liable to an action on the case for the returning bond. Sec. 284, supra. The rule there is, to command the return in four days. These attachment issues in a summary fashion.

By statute of Connecticut, on tendering a writ to the sheriff or other officer he must give a receipt for it, in order to facilitate his enforcing the same if he delivers the same, and if no demand be refused to do, the Plaintiff may call on the person present to put their names as witnesses to such delivery. This also applies to Constables in their execution. However, this may vary, however, that a receipt is demanded for an original writ. It is seldom practised except in final process.
A known officer or a Sheriff, general deputy or constable is not bound to show his warrant to the defendant before his arrest, his body or effects on his property although the theft or 76o. 69. taking should demand him to. He is bound to trust their Ancient 485. 675. 604. 1 if he cannot because the court is not then shown he is liable to the officer. In it (But as soon as officer has an actual body, he or takes his property he must make known the contents of his warrant with all convenient speed in order that the defendant may obtain bail or agree with his adversary.

But a special officer must make to known the contents of his warrant of demands before the arrest, if not demands are to be known his showing is required because he is not a known officer. The true principle is this. An individual is obliged to submit to an arrest without having some evidence. The person authority to arrest him is before one could attempt an arrest without exhibiting his evidence. The defendant may perfectly resist him. In case of a known person, the evidence is furnished without showing the warrant, but in case of a special officer or a sworn deputy by a majority for that particular case, the evidence of his authority must be shown if required.

But in many criminal cases, any one without warrant may arrest the offender. If the known authority cannot show 27th 193. 453. any warrant or authority, but still the principle is the same as to the purpose every member of the community is a known officer with full power of authority present or by 2 or 3 such
Sheriff.

The Sheriff, in the Law of the Land which gives the authority every man is subjected to know.

The Sheriff or his Deputy may at Common Law command the Judge Commissary of Equity or the execution of his office or their writs in a civil process.

This affords more as well as in England.

But a statute of Connecticut declares that in case great deposition be made against the Sheriff in the execution of lawful writs, signed by lawful authority, in quoting a lawful process on one resident that such affliction shall be made, that the Sheriff with the advice of one assistant as justice of the Peace, may call the militia of the County, and that he might do at Common Law and the statute further declares that the Sheriff shall not return that he cannot do Execution. If the militia refuses an order for retaining prisoners, it shall be 847 and 16 Geo. 516.

This is a distinct provision from the Common Law in particular that the Common Law on all persons in the County to arrest, and the statute only the militia.

The same authority also is given to constables in the sheriff's terms.

A sheriff is bound to execute all legal process regularly directed to him; but the execution of it must be regulated by the mode prescribed by law. He may not therefore break open any house or window of a dwelling house, or a civil action to arrest the party in the house of another than the law considers a man's house as his castle, if the breaking in might expose a man's house or family to robbery.
The reason for the rule Mr. G. thinks very frivolous is in fact no longer in reality existing except by authority only. It is founded on feudal notions it is a reversion to our system of jurisprudence. Mr. G. maintains it comes to this.

If then a sheriff breaks the bolt door or window of a house for the purpose of arresting the body or taking the goods of another, this is a trespass. But according to a decision in Locke v. some one authority the act is good, the sheriff becomes a trespasser. This decision Mr. G. thinks highly preposterous for that a person who requires a civil right by a violation of law is against the very fundamental principles of that science.

The modern practice of the courts of Westminster Hall is to discharge the person on motion if such service acted to give the person an action an action against the officer if it is so decided in Belmaine's case. So this question has never arisen, except in this one case yet Mr. G. considers this as well as the practice in Westminster Hall to be this.

The court however will not always discharge on motions if is discretionary in some measure with the Court to discharge or not.

This privilege of the outer door set in direct to the law to be construed strictly. The Court may proceed "not to be extended by any equitable or analogous interpretation."

What amounts to breaking door is not precisely laid down in the Books. What is the least moving of a fastener is breaking within the contemplation of the law. If someone can officer can get presently into the house they can break or windows in may break other keys, locks, or any inner apartments.
For the purpose of arresting the body or taking the goods of the defendant. And he has no right to break the windows or doors without first demanding admission to them, if they are closed, he may break them. But must not break anything else.

This privilege of the outer door and windows extends only to the person, family, guests of the owner in person residing in the house, and not to any stranger. No person is to be

Came 1st, 1862. The Castle, 15. To, therefore, B is in the mansion, some of A's officers required admittance. He may break open the outer door for the purpose of arresting him for.

Is there any kind of protection to B? There are two principal distinctions relating to this subject: the civil process, and the criminal. The principle of the civil process in any case of protecting the property of some other person existing even at their time.

This privilege, however extensive in cases of civil process, is also in criminal cases. For if an officer has a criminal warrant, the mansion will not protect the criminal. And the house in this case must first demand admittance before the officer has a right to break. Hence the peace of the family is as much disturbed as in civil cases. If the house is occupied by lodgers or tenants, there is also a prosecution for possible entry of the tenant. Which is the subject of a similar right in the case of a criminal. The officer is allowed to break open the door in certain circumstances.
Sheriff

In criminal cases, the Sheriff, not being present, or
in known offices, to justify the breaking of the door of the
criminal, or where a person by committing a felony, or
any other crime, or in a house, attempts to pass him
Baker, in order to make it a known felony the offense,
must be delicate, and cannot be done in any other way.
The books and any individual with or without
warrant, may break the outer door, so far the
warrant may be taken without. But in the other case,
he cannot be taken without. But in the other case,
he cannot be taken without. But in the other case,
as it is not to be a felony, unless with or
without the warrant.

So also may break, to suppress an affray or
prevent a breach of the peace, either by an officer or
private individual.

So also the affray is made and are
immediately pursued by an officer of the peace outer
doors, so near he may be broken open & arrested there.

But in one instance, namely civil action in
a suit of assault in "abuse of person in possession," in
restitution, the Sheriff may justify breaking the
doors or windows of the house, as a person aimed at, for
the true command the officer to turn all persons out, to
put the Plaintiff into full actual possession, consequently
the sheriff has all power necessary to that purpose.

Lodge in this case, the Law does not consider the house
as belonging to the person in possession, but to the City
in possession, for in has had a determination
of the court in his favor.
So also in any civil process the door of a barn or cottage adjoining the house may be broken open, but if it is not a component part of the mansion, the house it may be left open.

It has been contended that the store of a merchant is privileged, but the court thinks it very clear that unless it is under the same roof with the mansion it may be broken open. That is, there is no lodge in it.

If the sheriff's deputy having entered the house carefully, is

Palm. 52. LXXIV.
555
The righteous shall be strengthened.

Also if a person having once been lawfully arrested, re-enters into his house, it affords him no protection, for as he is an exceptor, the outer door may be broken open to remand him. This point has been decided in England in a very strong case. A defendant threw the windows to communi- cation with the officer, the latter noticed him, this was enough to justify an arrest; the officer therefore justified in breaking the door to remand him.

The in ordinary case, an arrest made by breaking open an outer door or window of a house is illegal, yet if while in such illegal custody, the defendant is fairly charged with another arrest, such illegal arrest shall be good, but then there must be no fraud or collusion. First to arrest the party unlawfully, then to charge him with another action.

By statute 29 Geo. 2, ch. 19, 2d. as by a statute concerning the matter, it is provided that no civil process shall be served on a Sunday, any civil process therefore served on that day is utterly void. The officer having it, is of course guilty of
False imprisonment is the person arrested actionable by
Habeas corpus. The court however will generally discharge
on motion in such a case
And where a person actually in custody escapes
This may be taken on Sunday; for the retaking is
nothing more than the means of continuing the confinement.

Lecture 22

Of the Law of Escapes. An escape
is where a person being under a lawful arrest and
reserves of his liberty, either forcibly or privately evades
such arrest; or is suffered to go at large before he is
delivered by due course of law. Consequently to
constitute an escape, there must be 1st an arrest;
2nd This must be lawful. If it must be continued.
3rd To escape, thus to make a lawful arrest. This essential to
the existence of an escape that there be a previous legal
arrest, and therefor one escapes an unlawful arrest.
He is not in judgment of law, an escaper.

Of the general nature of arrests. Every arrest in
true must be made in presence of lawful authority
an arrest therefore without this authority is absolutely
void. It is in legal contemplation no arrest at all
The arrest need not always be under a warrant or warrant,
as an officer may arrest a felon without it
A peace officer may arrest one breaching the peace or committing a riot. But when a warrant is necessary, an arrest made without it is void. When not necessary, it is good.

Where an arrest is made by virtue of a writ or warrant, the general rule of the common law is that if the court from whose authority the writ issues has jurisdiction of the subject matter of the suit, the arrest is lawful, of course, to subject the person thus arrested to go at large, in an action — this rule obtains, the process is irregular. All that is necessary is that the process should be absolutely void. There is a difference between an arrest without a warrant and an arrest with a warrant. The writ of habeas corpus by the course of law, or by writ of answer. This will indemnify an officer acting under execution on the judgment, it also depends on the judgment being rendered.

On the other hand, if the court from which the writ issues, has no jurisdiction of the subject matter of the suit, the arrest made under it instead of in the Depliant being without due to not amount to an escape, the arrest is illegal, and if the arrest is illegal, the officer liable to a fine imprisonment. But in connection with the terms of the General, the party arrested unless the process appears on the face of it to be void. In England there are dicta on both sides, but the reason is in favour of our rule.

And to illustrate the former rule, take two single-minded cases issues a writ for an assault and battery, demanding
more than 18 months before himself. But it appearing upon the face of the writ that the Court have no jurisdiction of the subject matter, the writ must be void. But if the amount of damages should be $15 or less, it there should be a continuance in the suit, yet the One month must have elapsed, the writ must be good for the Court has jurisdiction of the subject matter. If the Court has no jurisdiction of the subject matter, it would be null and void. So Court of Common Pleas has criminal jurisdiction.

So val of the Common Law, however, is not universal, for there are certain cases where the Court has complete jurisdiction of the subject matter and the process issued by reason of irregularity will be completely void. If the process lacks signature of a magistrate or judge to it, it is considered of no effect. The duty of the person in charge here the process under the process being void, the process goes no further, no record is made. So if the writ overlook a term, nothing could be done, it must be returned. The next proceeding term, if the time is sufficient between the date of the writ and in which it is returnable. The reason why it to be absolutely void is obvious; if it might be returnable at any time after date it would place the defendant in a situation where he could be in a situation to plead the irregularity of the writ in abatement. It follows then that...
The arrest is unlawful if the defendant may see the officer executing it. The Plaintiff, or the sheriff, by Mathew Cooper—The rule laid down in this book, that sometimes, when no rule is laid down, a general rule shall be made, therefor in these examples, yet mentions as being exceptions are more perfect qualifications.

In Connecticut, more process does not usually issue from the Court Attorneys for cases, but sometimes does not always, may—Most of the suits returnable to our county Courts are signed by a single magistrate, but are brought before single magistrate. They are usually signed by those who hear them.

The general rule of Common Law, therefore, is not sufficiently broad to reach all arrests, or more process in our practice. The general rule of Common Law is predicated in the English practice where the same court issue the writ, had they it. So far as this Common rule extends it applies to ours. A rule thus adapted to our practice would be that of the suit merely competent authority, made returnable to a court having jurisdiction of the subject matter. The arrest under it is legal. The jury at large can create a Justice of Peace in the County issues a writ to be served in the County, & return it before the County Court. In the same County.

But on the other hand if the process is joined by incompetent authority, or returnable to a court not
Having jurisdiction of the subject matter, the arrest in issue. The person going at large is of course no escape. If the prisoner is assigned in the first case during the life of the execution, it is no escape.

A man has an escape made in arrest on trial; where no person is left to the prisoner in custody during his absence. Therefore, two will and attempt toelijk kom. This being so, the paper is a regular, which cannot be seen in the custody of an accused person. If the paper is to the prisoner in custody, but they must be in his presence in keeping the prisoner, but they must be in his presence.

This point has been recently decided in England, it is uncertain. Someone with authority in this decision there is a question about. And it is presumed it would be different from that in this land, as much as our practice is directly in opposition to the principles established in this decision.

The things as has been observed are necessary to constitute a good arrest. First, it must be in person of lawful authority. Secondly it must be an actual to a regular arrest, or there can be no escape. The part of the two elements in that it must be made in person of lawful authority, has been treated above. The second will come to consider the 10th in order to have...
There must be an actual arrest.Proofs will not make an arrest. There must be an actual arrest by seizing the body, or any part of it, or a written warrant pursuant to Crown authority. In the absence of such a warrant or written authority, the arrest must be by seizure of the body or, if not immediately feasible, a warrant must be obtained.


Thus, when the officer has seized the defendant, the defendant having a right to be free, he says to him: "You are my prisoner!" Upon which his servant, who is turned back and submitted, this was held to be a good arrest, when the officer never laid hands upon him. But if the officer says in those words, he has said it would have been no arrest unless the officer had laid hold of him.

If there is an arrest at the suit of the sheriff, a suit at the suit of B against the defendant, it must be delivered to the sheriff, who is the facto in the actual arrest on the last suit, or in other words, he is considered in the construction of the law as immediately in custody under B. Thus, therefore after such delivery the defendant goes at large, but the officer has an action against the officer for an escape— I do not conclude that this rule would apply.
in a writ of attachment when goods, chattels or money are taken, as in the case of one species of writ in connection with some other known in England, because of the person so held in custody under the second writ, the plaintiff leaves his election of choosing his security to the sheriff his right of discretion.

II. An arrest must not only be actual and regular and legally made. There can be no escape from it in all civil cases. The arrest must be made by virtue of a legal writ or warrant. If there is no writ or warrant the arrest is not legally made.

The strict rule of the law also requires that it be made by the authority of the officer to whom it is directed. The officer must be in the company of the officer or person actually making the arrest. If the officer is presumed to be in the company of the officer, the same object is near the same place, he need not be the land which arrests, nor in the presence, or sight of the party arrested, nor in the presence of the party arresting, as where the officer, or officer, his assistant toward, who made the arrest, be being at some distance from the sight of the officer, or officer, his assistant toward, who made the arrest, or near at hand in pursuit of the same object. An officer is not liable for an arrest of one who is arrested on a Sunday, for the arrest on that day in a civil action, being void, there can be no escape. The officer is made by statute or by common law, or by statute, or by common law.
A motion to discharge is not strictly just; consequently if the court use their discretion to discharge an arrest, it is no evidence to prove that the process is legal or illegal.

The plaintiff has a remedy against the officer by an action on the case for neglect of duty—

Every person committed to prison is to be kept in safe and close custody—If then the sheriff or keeper or any other person has the prisoner to leave the limits of the prison, even for a moment, he is guilty of an escape—A subsequent return of the prisoner makes no difference—the officer is still liable. He is guilty of a breach of trust if nothing in prospect shall discharge the liability.

A voluntary escape is one which takes place with the consent of the gaoler or the officer making the arrest. If therefore a sheriff directs a person when first arrested to remain him to go at large before commitment and in the moment, it is a voluntary escape. For in some of the gaoler permits after commitment. Blackstone's definition is not sufficiently large for it includes only such escapes.
as are from the prison, nor those before commitment. A negligent escape is one that happens without the consent or knowledge of the gaoler or officer making the arrest. The word knowledge, however in this definition is wholly unnecessary; for such an escape may be with his knowledge or yet without his consent.

I. Of voluntary escapes. If a sheriff or gaoler admits to bail one who is not bailable by law, he is guilty of a voluntary escape; and if the sheriff or gaoler suffers the prisoner to step one step over the limits of the prison or the yard but for a moment, although he has a kedeep with him, he is guilty of an escape, even if the sheriff himself be with him. For if he can permit him to go out of the limits for a moment, as may for a day or a year, if he can permit him to go a foot over, he may a mile or ten miles. The object of imprisonment on civil process is not for punishment, but a coercive mode for compelling the Defendant to discharge his debts; for this reason alone that is transgressing the limits of his prison is considered an escape. Imprisonment on final process is here contemplated.

If the officer after arrest on final process permits the Defendant to go out of his custody for a moment, he is guilty of a voluntary escape; for the prisoner
The sheriff is to be ordered to bring on warrant for a copy on 3 days notice to the man within the limits of the county, that he commit the said person to prison on demand from the said sheriff or bail bondsman, or the bond given by the said person, or the said sheriff, or the said bondsman, or for a copy on 3 days notice to the man within the limits of the county, that he bring the said person to prison on demand from the said sheriff or bail bondsman, or the bond given by the said person, or the said sheriff, or the said bondsman.
go a circuitous road when there is a direct one—
or he will be guilty of a voluntary escape.

The same or a similar rule prevails when an officer
has made an arrest on a final process, and has committed
the defendant, but confines him with so unreasonable time,
here he is guilty of an escape.

So also if after arrest and commitment, the
officer suffers the person to go abroad, with a keeper, he
is guilty of an escape.

By the Common Law of the Sheriff, a man or
female prisoner committed on execution, he is guilty
of an escape & the is discharged, for it is impossible
for him to attempt to prove that he has kept him
in confinement, all such testimony being insubstantial.

It has been decided that if the sheriff confines prisoners,
turns the key, he is guilty of an escape, because he has
put it into his power to be his own keeper.

It has also been decided in the cases here that, if a prisoner,
having the liberty of the yard, seizes any discretion to escape
or has once done so, it is the duty of the keeper to confine him
within the walls; otherwise if he escapes it is at the peril of
the officer. Notice of that discretion must necessarily be given
by the creditors to the sheriff.

The sheriff is never bound to grant the liberty of
the goal yard, the bond of indemnity is offered to him; yet
he may do it, it being a matter of more discretion with him.
If he does it is at his own peril. He must rely entirely
his bond of indemnity in case of an escape. Therefore prevailing
Laid in the community that the Sheriff is bound to grant the liberty of the said when sufficient bonds are furnished him; but there is no Common or Statute Law requiring him to do it, but as I before observe he may do it if he pleases, from the bond which he has taken in writing.

The thing to indemnify the Sheriff against a voluntary escape is not valid, the offence being a public one.

The may also when theSheriff recommits the prisoner within the writ, it is not bound to give any reason for so doing, a bond given by the prisoner to indemnify the Sheriff is not valid.

An action for escape against the Sheriff, in which

most on the writ insufficient evidence that the

writ was delivered to him.

Long: 416

Lecture 24th

Of negligent escapes—any escape without the consent of the officer is a negligent escape—Thus if the prisoner evades his restraint by fleeing from the officer without his consent, or by beating the officer, or using any violence towards him, it is a negligent escape. Indeed if the prisoner escapes in any way the officer not consenting, it is a negligent escape. There is in many particular a difference between escapes on
final process or on mere process. — If one is arrested on final process, it is permitted to go at large one moment
the keeper is guilty of an escape. The jailer cannot take Back. It must be done by the officer making the arrest.
and when he has once committed the prisoner, the power as an arresting officer is gone; he departs. Office
and as the escape is voluntary, an immediate return will not bar the action against the officer, since the Plaintiff
proceeding to judgment against the prisoner is no waiver
of right to his action against the Sheriff or his jailer.
Indeed this is the proper way, because it ascertains the
debt due, which he is now to recover against the officer.
In the case of a final process it makes no difference
whether the Defendant is merely arrested or whether
he is committed actually to prison. It is in both
cases an escape —

But at common law a person arrested on mere
process & not actually committed, may be permitted to go
at large without making the officer liable, provided
however he is forth coming at the return of the writ.
Commitment on mere process are not the coercive
means of satisfaction in an action of Debt for it is not
known that there is a debt before the trial hence the
Object of the arrest in mesne process is only to ascertain the debt & to that end to compel the appearance of the defendant in the Court, or to give security for what may be recovered. Therefore if the sheriff lets him depart, he is not guilty of an escape, until after a non est inventory is returned. The difference between the Common Law & the Practice of Connecticut is, here the defendant must be forth coming on mesne process even at the return day; for his non-appearance is a confession of judgment & it may then go against him by default. So if the defendant appear & ready to surrender before non est inventory is returned by the officer it is sufficient.

In Connecticut then the prisoner on mesne process may go at large provided he is forth coming at any time during the life of the execution. But if the defendant thus arrested on mesne process is not forth coming during the life of the execution issues on the judgment, the officer is guilty of a voluntary escape & at Common Law the officer is liable for a voluntary escape, if the prisoner is not forth coming at the return of the writ.

The two last rules hold only in cases where the prisoner arrested on mesne process is not actually committed to prison, otherwise if he is committed for the permitting him to go at large even for a moment it is a voluntary escape. In Connecticut there is a statute in assurance of the Common Law on this subject.
Thus we see the principal difference between an escape on final process and on interim process is, that the former must be followed up by a commitment, whereas the latter must. What will amount to an escape on final process before commitment will not on interim process.

When a personquisite on interim process escapes, the plaintiff's remedy against the sheriff is only by a special action on the case. Here the damages are merely summation they not being assessed by judgment, consequently are the proved, and a recovery can never be had against the officer unless the party in the process has a legal claim against the officer escaping. The acknowledgment of the debtor may however be given in evidence. In Connecticut this action may be commenced against the sheriff in any of the subordinate officers guilty of the escape.

When one escapes on final process escapes, plaintiff has the choice of two remedies, by the common law, an action on the case, or by two statutes Westminster 2d Richard 2d an action of debt against the sheriff. When the action on the case is brought the jury may give what damages they please. Debt is the most eligible action for the plaintiff, on account of the difference in the rule of damages in the two cases. In an action of debt the jury are bound to give the whole debt & damages, on the court will not accept their verdict, but in action on the case they may give what part of the amount claimed they please. They may indeed give the whole sum claimed, but they are not bound to do this. These are common-law distinctions.
Sheriff

Statute of Connecticut seems to say that in any escape, either on

final or summary process, or voluntarily, the whole debt claimed shall
be paid — in any action, in civil cases. This construction cannot

be sustained.

Lecture 25th

Of Rescues — If a person arrested on summary process is
not actually committed or rescued, the officer is excused, if he be
used for an escape. He may plead his return of a rescue in law.

or by way of justification. — And the reason given in the Books.

is, that, on summary process, he is not put forward to have the prosecution

tried with him. But if a person arrested on final process is rescued.

it is no excuse to the Sheriff, for it is said that in serving final process

he is supposed to have the person committed with him. I cannot see

the reason for this distinction: why may you not as well suppose the

person committed with him in serving summary as well as final process?

But if a person arrested on summary process is actually committed

or rescued, it is no excuse, unless the rescue be made by just cause,

a rescue by traitor or rebel is no excuse, for the Law will not presume

that any power is greater than itself. The person committed is supposed

to be near at hand — the goal is a place of strength. The Law will

not admit the idea that it cannot resist rebels, traitors, etc.

Thus, in the case of Lord George Gordon's list, it was found necessary

to make a special act of Parliament, to save the keeper of the prison

from the actions of the creditors, whose Debts were set at liberty.

This rule obtains after commitment, whether the arrest was

on summary or final process. If the arrest was on final process it

holds equally true as well before as after commitment, but in

case of mere process it holds only after commitment.
In some cases of rescissory where the Sheriff is not exonerated, the plaintiff may sue either the officer or the rescuer. But I agree with Defiance that if he elects to proceed against the rescuer, he waives his action against the Sheriff, because by commencing his action against the rescuer he waives the Sheriff of his right of action against them. Further, it is in analogy with all forms of Law in similar cases; for it is a rule that when a man has two remedies, he selects one. So he waives his right to the other.

The proper action against the rescuer is an action on the case; the same would be if either the plaintiff or case. This is not true, for case v. trespass are never concurrent; it is by fiction of Law that trespass is concurrent with trespass. Trespass vi et armis v. Trespass on the case cannot from this very nature, ever be concurrent. Trespass is founded on the commission of a act, the injury or consequential. Therefore trespass on the case is the party's proper action.

In an action against the rescuer by the plaintiff in the cause the Jury may give him within the whole or part of the original demand laid against the party rescued. The true rule is, if it appear that the original defendant is authorized, so that a recovery may be had against him, the Jury are at liberty to give less than the original demand. If they give the whole, then the plaintiff is satisfied, it cannot recover against the rescuer; but if they give only a part then he may recover the action against the original defendant for the remainder.

In all the foregoing cases, the party rescued is a good witness against the party rescuing the parties criminally, if the defendant be proved guilty, yet shall there be only to the credit and not to the competency of his evidence.
In an action brought against the sheriff for an escape on process, the return of a true return is conclusive evidence in this matter at common law. The return, whether true or false, the plaintiff may have an action on the case for a false return. This return cannot be contradicted in any way, except where the plaintiff specially in issue.

At common law, where the return of the true is good upon the face of it, its defect cannot be pleaded at common law.

In Connecticut, they permit the official return of an officer to be contradicted by signed evidence. So that it is supposed that the former rule does not apply here, as official returns are not conclusive when the plaintiff.

If however the sheriff return a true return, the return is enough from the return; they may, in an action against the sheriff for a false return, prove that there was no rescue, and the sheriff may have an action against the rescuers only in cases where he is half over to the plaintiff. For a rescue, as in the case where he is half over to the plaintiff.

If a sheriff brings out a prisoner on a writ of habeas corpus, a rescuer in no case, because he might have arrested the same contempts.

This is a general rule, that a person arrested by virtue of a writ of habeas corpus is committed to prison, nothing but the act of God or the public enemies will excuse the sheriff in case of rescue. It is laid down in River & Avon; that this will excuse him, and this is not done for a great weight of authorities is to be
found in contradiction to it. This seems also to have been the
idea in Parliament at the time of the great fire in London
in 1666, for they conceived it necessary to pass an act exonerating
the thrift of all liability to creditors for such of their
inconvinced debtors as were put at liberty by means of the fire.
This point has recently been determined in the supreme
court of the state of New York, where held that the fire occasioned
otherwise than by lightning will not excuse the thrift:

The difference between the consequence of
a Neglectful and a Voluntary Cause.

It was formerly held that in case of a voluntary
escape on final process the plaintiff was forever disfranchised
of the plaintiff in the process could have a remedy against
the thrift. This is now decided not to be so. In cases
not dealt to the plaintiff, as the nature of the case may
require, may have a new action of debt against the
defendant, that is, an action of debt pursued on the
warrant on which he was originally committed, or a joint
warrant in the new execution, or by the statute of 1849 within
30 days he may have a new execution without a new warrant;
or if none of these proceedings are necessary he may
"take him on the old execution."

If the thrift permit a voluntary escape when the
defendant is arrested on main process, the plaintiff may sue
him arrested by an escape warrant issued by a magistrate,
and directed to any person, as the plaintiff cannot; the reason why an
escape warrant is necessary, is that the original process, must be
returns to Court.
Defendant; or in this case, it is not necessary that it should be returned, unless he may have a new execution, on a new
process; on he may have an action of Debt against him,
which last is frequently preferable, because in the one he may
recover interest on his execution, whereas in the other cases he
cannot. Wherein in this, cases, a court can take an execution
the usual practice here is for the plaintiff in hand the
prison immediately to proceed the execution, with or without
the process, an advertisement of the same by a writ in which
last case any one may take him with the advertisement
or he may pursue both modes at the same time.

In all cases in which are voluntary, the officer per
mission, the officer cannot retake the escaping for the
prison crime, and bodes it is a settled maxim that
no person shall recover against another in an action to
the ground that action is a wrong done by himself. Therefore
he can have no action against him of those made knowingly
indeed if after a voluntary escape the sheriff or gaoler retake the
prison, then it is guilty of false imprisonment

This rule of law that a bond taken by the sheriff

Now it is a rule in law that the sheriff be

If the plaintiff is wrong, Law 10, is void; or by the counter Law 2 of Law 10, is void, as being against Law, for it is on universal rule; and applied
to contracts, that an undertaking to do an act in violation of Law
is utterly void.

When the escape is voluntary, the plaintiff may retake
the prisoner, or he may have an action on the case against him
because he is immediately liable over to the plaintiff in the process.
Sheriff

And this, the Sheriff may do upon action brought against him. In this case, if a bond has been given to the Sheriff to secure him, he may recover upon it, for it is allowed to be good in law. The Sheriff may evade the

presence if heinson his remedy against the Sheriff as he demands. At common law the Sheriff recovers less than his demand. He is not known in law. It has been decided in connection that a person escaping from arrest in this state into another, may be taken on an escape warrant issued in another state, backing an escape warrant issued there. See p. 28.

A person accused of criminal offense, escapes, he is guilty of a misdemeanor. Sentence for the escape by fine & imprisonment. The reason is, he is being away the Law. If he can avoid it to escape, he is guilty by common law of felony.

Lecture 16th

If an officer of the being assisting a fellow, infers a negligent escape, he is guilty of a misdemeanor, punishable by fine. But if he infers a voluntary escape, when the prisoner is a felon, he is in a sort of necessity after the fact. For it is to escape the same punishment. The felon would have suffered. But if the fellow is guilty of murder, the officer shall be

punishable.
sheriff

as a matter: This however is to be remembered that the office cannot be punished in this manner until the guilt of the offence is ascertained by law and sentence passed upon him; for it would be highly unjust & improper that an accessory after the fact, should be punished for the crime of the Principal when that crime is not ascertained by the course of Law. He may however before the Conviction of the Felon be prosecuted for a Misdemeanor & be punished by fine & imprisonment.

If the Sheriff after having suffered a voluntary escape has been compelled to pay the debt owing to the Plaintiff in the original process. he may maintain an action of sedition against the escaper as money paid out and expended for his use. In case of voluntary escape will not involve that the Sheriff if after a voluntary escape the Sheriff takes the prisoner on good pursuic, an action brought against the Sheriff, the liability of the prisoner to pay Plaintiff in the original process is discharged. The principle is this. The body of the debtor is a pledge to the Plaintiff for the security of his debt; it is all the Law can give him, consequently he can suffer no loss if the debtor is again in Custody before action is brought. True, after having once escaped, the escaper again is a voluntary & the Sheriff is liable. When first present doesn't mean immediate pursuit but a taking any time before
action brought against him.

In England, the relating
must be pleaded specially, & cannot be given in evidence
under the general issue, because it is inconsistent with
the plea. In Connecticut & New York it may be given
in evidence under the general issue, by giving written notice,

If an action is brought by the Plaintiff against the Sheriff
before the vacation, a subsequent retaking does not discharge
for the Plaintiff by commencing his action attaches in himself a
right of recovery. No subsequent act of the Sheriff can cut down
of his right.

But a voluntary return of the prisoner into
custody before action brought by Plaintiff against the Sheriff,
is equivalent to a re-taking on fresh process, as the effect
produced in both cases is the same.

In case of a voluntary escape in legal process a
subsequent re-taking does not discharge the Sheriff from his
liability to the Plaintiff; for he has no right to retake the
prisoner. If he does, he is by the very act guilty of false imprison-
ment. It is guilty of a crime & can be no satisfaction to
have him relatable the prisoner. On the same principle a
voluntary return of the prisoner will not discharge the liability
of the Sheriff, as this is only equal to a re-taking on fresh
process. But by statute, may release by cert. or co. co.

When there has been an arrest on process, then
this rule does not apply. The reason is the person is at an issue
in this case, for the purpose of compelling him to pay the
due. Consequently, if the process may be delivered to him in
his own proper hands [by Act 1277.]

1800 12.6
1 M. Pat. Ky.

364 44. S. Y. 612.
657 657 560 52.
60 56 87 873.

297 12.6 294
297 12.6
297 12.6
A subsequent arrest of Plaintiff in the process to the
inquest, searching will not impair the voluntary
but the Sheriff's liability continues, if the person in
the person may be detained by the plaintiff
in the process. The reason for this is evident. It is a
true release, which never discharges the right of
any action. A true release does not even discharge
a hold contract. The plaintiff may take him, on a
negligent escape for his own security, for this does not
discharge the person.

When a person has been committed to
jail on an execution, the Sheriff cannot receive
the money due on the execution or discharge him
if he does he is guilty of a voluntary escape. The reason
assigned is, that the Law does not recognize him as the
agent of the Plaintiff to receive the contents of the execution.
The Law no right to receive the money. It is the duty
of the Sheriff to keep the prisoner in his custody until
he is delivered by due course of Law. We, however, a
question whether of on an action brought against the
Sheriff to have the money into court, together with
the law fees cost, the proceeding would not be. Staged.

Wolf thinks they would

A jailer who has a prisoner
In custody may retain him until he has paid him his pay. But if after a negligent escape the prisoner is discharged by the plaintiff, the gaoler cannot retain him for his fee—And this is reasonable, for by his own neglect he has lost it—in which case the law will not give him

**Summary mode of recovery**

If a prisoner having the liberty of the gaols and without the knowledge of the Sheriff, he may in court himself release the same, if he comes before action brought on if the prisoner voluntarily returns, the liability of the Sheriff is at an end. In these cases the Sheriff may recover the bond of indemnity which was given for the prisoner abiding a true faithful prisoner. In damages however will be only nominal indemnity directed to prevent.

But after the prisoner has thus escaped from custody, the only mode of recovering is the action of trespass which may be brought by the Sheriff to receive him again into custody, the necesity of the prisoner if the prisoner, if the reason is that he has been guilty of wrong if only suits himself to an action

It has been decided in Connecticut that after the action against the sheriff is barred by the statute of limitations 5 years, the sheriff shall not recover more than nominal or special damages in an action over to the plaintiff in the process.

The common may then sue as above by suit and a judgment recovered against the defendant on a judgment recovered against him for the escape of a prisoner where the original creditors right of action, barred against the sheriff by statute limitations.
Lecture 21st

Of False Returns... If a Sheriff makes a false return he is liable to an action on the case in personam of the party injured... but this rule holds true not only to the Sheriff, but to any public officer acting under him...

If the Sheriff makes a false return, when he has actually made no service on the defendant, the latter may maintain an action against him... at Common Law the suit is always directed to the sheriff, not to him only... in his name only can the return be made...

In Connecticut when a false return is made the defendant may proceed in abatement. By the Plaintiff being in this case the suffecting party, may have an action against the Sheriff for such false return...

If the Sheriff make a false return from estimation... upon execution or any process, the plaintiff may bring an action on the case against him... the governing rule on the subject is that in all cases of a false return... the party injured whether Plaintiff or defendant has a right to action against the person making such false or illegal return...

As to escape the insufficiency of the legal... statute of Connecticut has there introduced a rule... known to the Common Law. Thus if the prisoner escape this such insufficiency, the county and the Sheriff is liable...

The reason is, it is the duty of the County to build... fails in repair... In England this is the business of the Sheriff... Under this statute remedy is made by...
Sheriff

action at Common Law, but by a petition to the Court of Common Pleas in the County where the bond is. The reason is, a Court is not such a corporation as can be sued, but the petition or habeas corpus may appear to the superior Courts. In general the liability of the County under our Statute is nominal only. For it has been decided that if the prison escape is responsible, the Plaintiff must pursue him first resort to the County if he is not responsible the creditor can have nothing by the case, therefore the County ought to be only nominally liable. Farmers' Special Assessments are all that are given!

These decisions do not think petitions are contrary to

or

This is one class of cases in which it is thought the liability of the County is substantial. When the person escaping is responsible, the County defeats the Plaintiff of his remedy, which would otherwise have been expected. Here the County would be liable for the whole Debt. In the same situations we sought to exact

The Sheriff as well as the County is liable for in escape. Thus the insufficiency of the goal if the escape was actually facilitated by any act of himself or others.

Here follow Miscellaneous Rulers

If a creditor voluntarily discharges a Debtor taken on recognizance from custody, whether committed or not, he can never afterwards enforce his judgement.
It is also a justification of the demand. The reason is, the body is deemed a satisfaction for the time being, and the credit by discharge, now has extinguished the former claims. And the rule is so inalienable, that although the discharge in custody was made in consideration of some new promise or undertaking, which the Debtor has broken, the credit cannot recover his money. He cannot retake him on the execution nor can he maintain an action on the new promise. But with an instrument for the purpose, nor can he enforce the original judgment; yet an action of assumpsit will lie on the new promise if for a specific thing. If there be informality in the instrument given in consideration of the discharge, the discharge is irrevocable and the debt entirely lost, and it is now settled law that a bond conditioned that in certain cases the Debtor should be returned again into custody is void against law.

If two joint Debtors are taken in execution, one is discharged, and the other is discharged for Custody by the Debtor. The reason is, that while the body is in good hand, satisfaction for the Debt is given discharged by the credit. The Debtor is discharged. Now as a return to one or another, consequently a voluntary discharge to one is a discharge to both. Consequently a voluntary discharge to one is a discharge to both. But until the law merchant, the holder of the discharge, or a promissory note, the having taken one constitutes in
Execution & seizure being without actual satisfaction, may sue another to take him in execution. So on this point he obtains satisfaction, in how such a whole. But in this case it is to be observed, that the Inquirers are not Joint Debtors, for they are distinct & independent; whereas each one is a new debtor of the Debt. All & each of them if they were Joint debtors, the Law, merchant would join way to the common Law.

It was decided in the reign of James 1. in the time of Lord Verulam: that, when a sole defendant confin'd in goal one execution, did issue, the Debt was presumed satisfied in goal or execution, and that the defendant was entitled to the common law, & therefore had saved his right to the other. If two joint debtors had saved their two rights to the other, it would have followed, that if one of two joint debtors confined one execution, did in prison, it was a discharge of the other; but it was however soon after which decided, that this was not a discharge to the other.

But this rule was never agreeable to the common law, for it is in no way analogous to persons having two remedies given them, to have any security for them. The imprisonment of the body, is deemed a mere security for the payment of the debt. If therefore the prisoner die without the debt of the creditor, the latter can never be considered as having received in memory of the debt, which it was intended to secure. By the Statute of 21 & 22 Jac. 1. it is declared, that if a sole debtor die in prison, execution may be sued out against his estate. But the Dependent had
Sheriff

... been conferred by force of an issue before. This statute is declaratory of the Common Law as recognized by our Courts.

By statute 23 George 6th a statute against contrac... same as the prison that the will remain a true prisoner, until all the fees incurred of bonds are paid in full; void. An object of this statute was to avoid all oppositions, be they hard as the common law... 

This statute has generally been considered ruinous in the case of the common law. There is a difference between an instrument which is void by common law and one which is void by statute. The latter, used in toto, by the former as good as the residue. I can see no reason for this distinction.

Our Courts have never considered it.

Lecture 23rd.

Statute regulations in connection with Goats and Goalers.

The law relating to these has already been... law as a great measure under the general title of Sheriff, but has not been here to be considered... a person legally committed to prison for any offence, by our law subject to have his own charges. The evidence of commitment, if the law cannot actually set him free, its estate is subject to the law, and subject to the direction of the Court. If the law is maintained, the...
must be paid out of the State treasury. If the grand
may take fees from any prisoner greater than allowed to by law,
the prisoner is liable to the damage, a fine at discretion of the court.
When a person is committed to goal in any civil case, he is
obliged to bear his own charges, unless admitted to the poor prisoners
goal, which is that the same is no estate to the value of 17 shillings
and troy weight of silver, and to pay the same for which he is imprisoned.
He is taken to goal, he is discharged from prison unless the
plaintiff gives him a weekly maintenance of 17 shillings
which is deposited with the goal. In criminal cases, the jury
must find a true and honest prisoner. His estate is not given, nor if the
court after acquit him is liable for his expenses. No execution
for the same obtained by prior false in. Proceed the oath can be
administered (in civil cases) the creditor must be notified in any
fashion to appear within time. If the application is not in
sufficient reason appears, any magistrate can make
the oath. If the first application is unsuccessful, he cannot make
another application equal to two magistrates, or a how one must
be a chief justice of the court or a justice or two justices known unless
who have power to order the allowance to cease. When the creditor
furnishes a weekly allowance it is added to the debt, and prisoner
must be discharged without satisfying all the penalty; if which remain
in an accumulating sum, eventually to be discharged by the debtor.
A county debtor can not be committed in the same department. He
is liable to pay a reasonable damage. The other law rate.
When any county is out of debt, prisoners may be set at the next
adjacent county. There he remains until debt is cleared. In county
debtors courts have in their respective counties authority to order into
close confinement. All debtor commits for debt, damages him on costs
in execution of the debt excess 17 shillings may be fixed at the discretion
of the county court. All debts must stay of the debtor, if he does not has a
voluntary escape, which comes from a prison court.
Baron & Feme.

Lecture 28th.

I shall first consider the rights & duties resulting from the relation of Husband & wife.

1. This relation is created by the common law & by our own consent, & is not found in the wife. Hence by the rules of the common law, all the personal property which the wife has in possession at the time of her marriage becomes the sole & exclusive property of the husband.

The general principle by which the law regards this branch of the subject is, that the husband is bound to maintain & protect the wife. Where a wife is so far as this only is held in order to enable him to discharge this obligation, the husband by marriage obtains a power over all the debts & contracts, & all choses in action of the wife; but does not acquire an absolute right to them. He obtains a power of collecting all her choses in action, & the proceeds of this power & reduces the choses to possession, during lifetime he acquires an absolute & indefeasible right to them; but if he does not, the covenant is dissolved by the death of himself or his wife, all her choses in action will be vested in her or her representatives.

During coverture, the husband having absolute right over personal property, he may dispose of it at pleasure, he may bequeath it. But if he dies intestate before the wife, it goes to the executors or administrators of the husband (Paraphernalia first kind). He has however no right to personal property which wife holds in her own right.
Baron and Feme

To also husband is entitled to the personal profits by the wife acquired during coverture — e.g. legacies — to the avails of her labour.

Settlement of husband on wife is made to be an absolute purchase of all her choses. So that he not only has them if he survives but if he dies first they go to his representatives unless an express unbroken agreement to the contrary.

Of obliges of the wife he is said, husband may as a joint tenant of the judgement.

If within due before collection the fee accurs Tor in England, the real estate vests absolutely in the survivor —

But in Connecticut, the right of collection is in the husband subject to accounting of the survivor as in case of partnership rights.

Husband may assign his choses in action for valuable consideration. Occur not 2. Th. 208. 141. Th. 208.

Wife not liable to husband's debts after his death nor to be taken in execution while he survives.

Goods of a feme sole, in possession of another within her bailment, or finding are an her marriage absolutely vested in the husband to be may sue for them alone.

Note: If the conversion of other injury be before marriage, it is a question whether in the first case, husband can maintain issues alone. Defence is certainly made

Voluntary conveyances of property by wife before marriage have sometimes been adjudged fraudulent against husband, e.g. Woman on the joint of living makes a conveyance voluntarily to a more stranger and occurs in order to provide for her children by a former marriage.
Baron & Feme.

2nd of Wife Chattels real. Where then the husband by marriage acquires a right similarly, the in general more extensive than to his goods in action of personal estate.

The husband may dispose of the wife's chattels real, and thus make the property absolutely his own. So he may sue in ejectment in his own name in right of his wife, and recover a term for years; this makes it absolutely his own. The husband cannot dispose of wife's chattels real by devise, but if he dies without having devised all their lives tenure to the wife, then restricting chattels real are analogous to choses in action. But in the following which they differ:

Chattels real pass to the husband, if become his absolutely if he survives his wife. So they may be forfeited for his own slavery or attainder or solemn upon for his acts. But if there is judgment against the husband execution cannot be sued out against the term after his death: yet the husband may make a lease of the wife's chattels real, to commence after his death, and if he makes a lease of a term for years in right of his wife, his representatives are entitled to the rent, the the wife survives. But if the lease made by the husband did not comprehend the whole term, the residue of it survives to the wife.

If a term soe soe being joint tenant of a chattel real.

manes & dies, whole goes to the surviving tenant.

an assignment of a lease to a tenant's covert, a lease husband's term is not required to assent, in sufficient for a new covert in of sufficient capacity to purchase of other without the consent of her husband. If the may devise & direct the estate, yet if be written agree in degrees, the purchase is good. Burdett, v. Jordan, Doug., 451. 6o. Litt. 3. 325. 6.
Baron and Teme.

Of the collection of the wife's chose in action.

The husband cannot sue alone for debts due to the wife
before coverture; the reason of this is, that the husband
does not acquire a right to the wife's chose in action
until they are collected. But should he sue, a judgment
in his own name. When she die, his executor
might in the case, take out execution upon it, but
as the wife is joined if the husband air, before collection
is completed, execution will survive to the wife.

That such judgment should survive to the wife in
case of the husband's death, seems perfectly natural, for
the chose has not been reduced to possession of the husband.
On what principle, then, does it survive to the husband at
the death of the wife? It is simply this: the judgment
was joint to the paramount rule of jus accrescendi.
It takes place in this case, but it survives to the wife on
another principle, viz. that the chose has not been reduced
to possession. Now on this subject questions may arise
in this state & others of the U.S. How we have totally abolished
the jus accrescendi merely by statute. Without any statute
in other states there are statutes on this purpose. I think that
the principle upon which a judgment survives to the husband
is the jus accrescendi. I am confident it is where that
is abolished, a judgment obtained in the name of the
husband & wife will not survive to the husband.

The reason why the chattels real of the wife survive
to the husband after he marries the wife I do not know. Some have
endeavored to make out the reason by calling the husband's wife
Baron & Feme

Joint tenant, or quasi joint tenant of the chattels real.

But this is absurd. In a joint tenancy, the owners must have one and the same title, commencing at the same time, by the act of the parties; since there are the parties essential to a joint tenancy, it is absurd to call the husband and wife joint tenants. The reason then why the chattel in real of the wife survive to the husband is that her widow.

And since it can with no propriety be said to descend on the person ancestors of joint tenancy, I conclude our law in this respect to be the same as the English.

In our country, hardly any chattels real are known by the term for years. In England, leases extend an absolute estate nothing in the creation retains possession of them.

If the husband mortgage the chattel real of his wife, he has an absolute right in the equity of redemption. But if the husband and wife mortgagess, and the husband recovers, does the wife shall have it. It has already been observed that if the husband makes a lease of his own Chattels real, the lease does not extend to the whole number of years, the remaining part of the rest during the continuance of the lease made by the husband, goes to his representative. This may seem to be contrary to a rule sometime laid down, that rent follows the reversion, which is true that rent follows the reversion in fee, but it is never true and affects a less estate.

If the wife is possession of a chattel real, but is rent of it in possession, and the husband does not reduce the possession during continuance, it will not survive to him at the death of his wife. This depends upon a technical rule, that Land descends to the person last seized.
If the wife is possessor of chattels real in own right, as
example, for instance, they would survive the husband.

The husband, as before observed, may assign wife's choses
in action for valuable consideration, but not otherwise. It
bonds the wife. The reason I suppose is, that if he assigns for
valuable consideration the assets come to the benefit of the
family. I find nothing in the books however to this point
but I apprehend that in assigning the chattels real of the wife
or in other words disposing of them without consideration
would have the same rule as there is the reason for it.

The rule however is probably a rule of Equity.

But the husband may release a bond without
valuable consideration.

With respect to husband as administrator over
wife's choses in action, under preceding statute.

By the statute 27° Charles 2° the husband when he
administered on wife's estate, is bound to pay all the debt which he
owed before coruption. Provided the debt is sufficient.

And thing new, left husband bound to distribute, same as any
other executor, to new rest of him. But by statute 29 Charles 2°
the husband is allowed to retain the sum paid of wife's effects
after having paid due debts without distributing to new of
her. In Connecticut there is a statute similar to this first one. I think
the husband would be liable to distribute after paying the debts.

I should have observed in the former case, that if the husband
cannot relieve on rights of his wife like annuity, so as to bind the longer
than his own life, for the real estate, an incumbrance fixed thereon.
Of the wife's real estate of inheritance

The husband has the sole expectancy during life of the wife's estate during coverture. But at common law in many cases he cannot alienate alone, as the Act of Settlement required. It is not enough to give effect to the governing principle.

Nor can husband's wife by the joint

act, alienate her inheritance except by joint or accessory

According to English practice, this is different here by Statute.

By Statute 32 Henry 8 the husband & wife are enabled to make leases of the her free reversion on joint tail for 2 lives

or 21 years. If husband grants larger estate than for his life

in wife's land, no forfeiture occurs, as in other cases

of particular tenants.

At most it will come only as a grant for his life, possibly for her, as the wife may die, he not be entitled to the county.

On his death it reverts solely in the wife; on her death the fee vests in the heir. But the husband in case of a child born alive or capable of inheriting, has an estate in the whole of what the wife died receiving.

County of Connecticut

In Connecticut, however, the husband has county settled

having children on lawful issue. The testamentary issue of

lives by charter of baron, was according to the title. But

this issue of county was never added to the side of the

Revolution. It has by statute been declared alienable,
Baron & Feme.

There is no Court in Remains or Reversions. The seisin of the wife must be an actual seisin or possession; except in the case of some inchoate heirships. The marriage must be legal; and the issue must be born during the life of the mother. If the issue is not born during the life of the mother, by the birth, but before, she is tenant by the curtesy. The title cannot be consumed by the death of the mother, formerly tenant by the curtesy in common. The issue are tenants only during the minority of the issue. But then the husband was not curiously coltual. These decisions however depend on usage, and there has been no later confirmation of them. Hence it is now settled that tenant shall hold by the curtesy during his natural life.

At Common Law, the amount of rent, due to the wife while she was a fema sola, would not survive to the husband on her death. But by the Statute of Henry 8th they were given to the husband; they now rest in him on the wife’s death, to go to his Executors.

Rent accruing out of wife’s property during coverture goes to the survivor.

The wife at common law can have no separate property. But a gift to her sole of
Baron and Teme.

separate use in property is protected in Chancery. To be only
protected in law. The husband cannot have any
right, either by custom or otherwise, but he can
sell the same as absolute as if one as
the husband were the same as the wife of
the husband, or as the wife of
the husband.

The husband cannot by his agent defeat any
gift to the sole separate use of the wife, the husband

The married men have no

Since the wife has been allowed to
hold separate property, trustees have been thought necessary
for separate real estate. But, this is not now the case.
For any property real or personal may now be given
directly to her separate use, either before or after marriage,
so that the son by the husband in any other person
of that, alone shall be held in trust on the husband's

trust for the wife's separate use, and a husband's,
interest

And the wife's right to the husband's estate

In England under the statute of distribution, if the
husband die intestate and leaving issue, the wife is entitled to one third of her
personal property absolutely, if no issue, one half.

The title of the husband being first said.
Baron v. Sene

Docket

At common law the wife, as entitled during the life to one third of all her husband's estate, whilst she was at any time married during continuance of which she might have her husband's interest.

And this hardship cannot be relieved by alienation of this right, the words being in a jurisdiction.

Consort's Complaint  In New York in a Deed

Any issue which she might have had to a decree of

repatriation which she might have had to a declaratory of the words in an official title.

The must have been the actual wife at the time of the declaration. At common law a divorce is

taken to take away the right of dowry.

So also a divorce by men of those who did not

If the husband dies before the age of majority, yet the wife is entitled to the dowry. But she must be above the age of 18 at her death. Wife has dowry. The above is equal

Between persons budge that the wife of an heir might be the due of the husband of an heir and also not be tenanted by the coty.

It is now determined that she cannot be removed.
The right of the husband is in conveyance to all devices, trustees, mortgagees, in whom conveyance is made after execution. The right to possess, hold, and enjoy the homestead is sufficient to entitle the wife to the same. But it is not sufficient to entitle the husband to the honorary in connection with the wife in the event of the death of the husband, in which case the whole undiscovered property, so far as the death of the husband is involved, is held by the husband as his. 

The wife is entitled to one-half of what the husband owned at his death. A wife cannot be deprived of her right by alienation, nor by her husband in contemplation of death and for provision for his family. He is entitled to the estate in the event the wife husband was divorced. In England the wife is not entitled to an equity of redemption on mortgage in the event of mortgagee. 

In Connecticut the law mortgage in case of the death of the owner, the wife is entitled to one-half of the estate. In Connecticut as in England paramount to all other causes and interests, the homestead is held by an exception in the deed, and the deed is made absolute by an indorsement of the conveyance of the homestead to the mortgagee. 

Praise of the Homestead Law of Eng. 2 1/2 1453. 1667. 1718. 

As we have seen, a husband also has legal construction...
Baron & Feme.

So wife is bound by accepting before marriage a

surety

[Omitted text]

The wife is also entitled to certain articles of property called "paraphernalia"—i.e. in its etymology, something over & above dress—according to the English Law, it means the apparel or ornaments of the wife. The is sometimes difficult to distinguish between these & the property given to the wife separately use.

The husband is a stranger to the wife's property which she holds to her sole & separate use. For the Supply is to the entire exclusion of any right in him that is not so as to her paraphernalia, especially if the second class. Property in order to rest exclusively in a joint count, must be given to her sole & separate use, but no particular form of words is necessary for this; it is sufficient if the intention be manifest.

In some cases, the intention is inferred, not from
any more conclusive of it, but from the nature of the
property & the circumstances under which it was given.
E.g. Diamonds, plate \\nc. given by husband's father
on the day of marriage. The present by a strange
friend, given by the husband himself during his life,
are also in some cases exclusive property of the wife
not liable for the debts of the husband

Much Roman law is on the subject of the laws,
whether \\nAides of devices to the wife by her husband
then she takes as device, which presumes that the
property was the husband's. Property given to the wife
during the life time of the husband, for the express purpose
of being worn as ornaments, is not her separate property
as against creditors in the above sense, but liable to certain
qualifications for the debt. These are the

Paraphernalia;

of which there are two kinds. 1. Necessaries
as panel of bedding. 2. Ornaments, or jewels & trinkets
in general. During his life time the paraphernalia
of the second kind are at his disposal; but according to
modern authorities, he cannot devise them.

This however has been overruled.

The first kind cannot be taken by creditors, nor can
the husband sell them. The way perhaps, sell some, but certainly
not all of them. If he does it will be a modern
reason.
The famphernest of the second clase are those in the hands of the husband's executors to discharge his debts, after the other personal property is exhausted. Not before, for the wife as to these is not only preferred to the representation but even to the legatees.

In England being liable in the hands of the heir for specially debts, or specially creditors, the famphernest of the second clase, the wife is as a creditor in chancery against the heir for so much as these creditors have taken of her famphernest

Famphernest of second clase

If not liable for debts, if there be no trust in the real estate for the payment of debts, the famphernest are taken by creditors, widow cannot of all credits come upon the real assets, i.e. probably the cannot in all cases as if the creditor who took the famphernest were simple contract creditor — jewels which the husband kept in his own possession and permitted the wife to wear on famphernest.

A settlement of jointure on the wife before marriage in favor of the demands on her estate, or if the personal property of articles made before marriage, stipulating that the settlement should be in labor, takes away her right to famphernest.
Baron v. Feme.

If the husband creates a trust in lands for payment of "debts," they are liable for debts by simple contract. Personal property however is not liable. If the paraphernalia of the second class are taken even for simple contract debts, the wife will be considered as a creditor in Equity.

She has also the same rights against the devisee of lands as against the heir, for her claim is the same as to that of Legatees or Devisees.

If the husband pledges the paraphernalia, the wife, not the executor has the right of redemption.

And if there be a surplus of personal property after the payment of the debts, the wife is entitled to it, to redeem even in exclusion of Legatees.

If in the case supposed the personal funds has been exhausted by specially creditors, she has the same right I suppose, against the heir. So I suppose, if the husband's lands were charged with the debts, to the personal funds have been exhausted even by simple contract creditors. For in both cases the aught, after payment of debts, to stand in the place of the respective creditors.

The wife's right to claim property as paraphernalia is not transmissible: e.g., the husband devises another nature of the second class to wife for life, remains un-
Baron and Feme

be another. The wife will hold her dower in life, as
under she will, and claiming them as 
separately. On her death they will go to the remainder-man, liable
to the Executors or administrators. For as she made no
claim to them as in separation, administration cannot.
This, however, is the supposition that the husband, having the
amount to e. 

In Connecticut, real as well as personal
property is liable for Debts, and as the executor, if he
should take the property for the payment of Debts,
would himself be immediately liable, unless the
widow, if there were other after sufficient, run on,
can be taken to be all in such cases upon both
sides an exhausted? If so, then, the widow will
be a creditor against him to the amount of them
against all the estate of the deceased real and personal.

In Connecticut, necessary household goods are allotted
the wife, by statute, when the estate is insolvent.
Baron and Seme

Lecture 30th

Of the Husband's liability on the Wife's account.

Husband and Wife are jointly liable: 1st for the wife's debts. 2nd for wife's debts. 3rd in some cases for her crimes of them in their order.

1st He is liable for her debts contracted while sole.

But the liability ceases on her death, unless some interest he recovers.

Suppose husband dies first, then 2nd his estate is liable.

If however judgment be first had against them, it will alter the case of the debt for then there is no liability unless judgment be recovered. If then the wife first, no judgment having been recovered, as before, the creditor loses his debt, unless the leaves an exec. i.e. chooses in action.

If to the first debt survives against her, as before. The husband's liability in this that as the wife by marriage loses the command of the husband he is then deprived of the means of securing himself from suit. In this event, she ought not to be held personally liable without the husband. Besides he has the aid of her labor.

She cannot therefore in any civil case be held to hold a loan for a debt or tort. She must be discharged in the case in hand. Except when the action is brought against her

While sole, finding which the same, her execution goes against her alone.
5. Case 190. 236 R.
1872.
10 Dec. 49. 12. 51. 215
34th. 103. 720

3. 12. 4. 149.
The 12. 57. 1167.
20 Oct. 1720. 844 379.

A 349. 186. 76. 142.
A 349. 186. 83. 96.
1. Roll. 19. 18. 959.

51st. 319 below. 366
519.
Case 374.


2. The husband is liable jointly with his wife during coverture for the torts committed while sole. The law is thus the same as if the alone and without the direction, approbation or consent of the husband, committed a tort during coverture.

Where the husband and wife are jointly liable for his torts, the case continues so after his death.

But the husband is answerable for his torts only during coverture.

So if the commits it in his absence, but by his direction, he alone liable, then there is coercion of the wife, she bound to obey.

3. The husband alone in some cases liable for the wife's criminality. Ex. In cases of seduction or bad theft, committed by her, this her coercion, or in his presence, he is liable alone. The act is then considered as his.
Sume opulitium ex Fino to Bunglary 2. Lemus Bunglary
But this is questionable.

The wife is liable as it sells if the commit theft.

Voluntarily, or in the husband’s absence at his instance.

If such command is not fall short of coercion.

But for higher crimes, as treason be committed by both are liable, the the husband and occasion by

her alone, the alone is liable.

If the wife incurs the penalty of a local statute

Husband is bound to pay it, the she commits the act alone

without his privy: she is liable with her it may

be made party to an action or information.

He in his company 2, with his justification he is liable

alone, I almost

The cannot be wife accessory in a felony for selling

It assisting him, the a felon.

In all cases, in order to which the above, e.g.

Wife do not extend, the wife is liable in crimes and

sole.

Of the wife power to bind the husband.

You prove to bind the husband during covenants by his consent

is said to be joined on his asset if even implied.

This principle however is too narrow in many cases.

For the Husband is often bound when he sufficiently
Baron & Teme.

If children are born. Ex. a. He must provide her with necessaries; & if he refuses she can bind him; but for any thing besides necessaries she cannot as wife bind him by her own contracts.

The true principle then on which the husband is bound for her necessaries by her contract seems to be his obligation as husband to provide her with necessaries, i.e. food, apparel, & medicine—such goods as are suitable to her rank.

It may be said that, from this duty, the law implies his assent to that the implication is not rebuttable.

The husband, like an infant, is bound for wife's necessaries.

At any rate, when the husband is bound without actual assent, it is on the ground of an implied assent, a duty as a husband. If having the power to discharge himself by assent, where he would be otherwise bound, he does not, he may be considered as bound by his implied assent. So if not having power to discharge himself, he does not attempt it, he is bound by an implied assent. But if not having this power, he attempts to discharge himself i.e. prohibits, the husband seems to be bound on the score of maternal duty.

That the husband cannot be bound except by his consent expressed or implied.

Cases in which she can bind him prior to marriage, in which she can bind the husband clearly on the ground of consent. 1st Where there is an express consent of the husband before the contract. 2nd Consent of the husband subsequently given.
Baron d'Fene

169. 100. 180. 120. 120.


169. 150. 180. 380. 120. 133.

169. 150. 180. 133. 150.

150. 140.

150. 109. 120. 120. 190. 50.

150. 118. 2. 155. 12. 140.

150. 490. 150. 95.

2. 643.

150. 118. 2. 1006.

129. 3. 300.

2. 383. 125.

104. 185. 3. 340.

Afterwards:

If a wife usually provides necessaries for the family, the husband pays for them, for her there is an implied assent.

If the necessaries provided by the wife come to the use of the family, the implied assent is subsequent, as vice to 12. 1006.

In these cases, the wife acts as servant.

The contracts are those of the husband. Supposing in some other cases which might be mentioned, she is clearly bound on the principle of assent.

A general credit given to the wife, as suh, cannot be sustained by any prior assent, so as to defeat the claims of those who afterward purchase on the husband's account, as in case of necessaries.

If the wife without having a general credit purchases clothing, she pays them, without having worn them, the husband is not liable, because

they came to his use. 125. 300.

If the pawned her clothes before or after

wearing them, and pawned them, it was expressly prohibited,

If she pawned her clothes, before or after

wearing them, and pawned them, they were evidently prohibited.

The husband is not liable for the money

This is a transaction distinct from that of providing necessaries.
If the husband turns away his wife, she is liable at all events for her necessaries, unless the Court adjures the husband to act according to Sal. 113. and 1244. i.e. He gives a general credit. To Sal. 124

If a man cohabits with a woman it allows her to assume his name as his wife, he is liable for his necessaries, the not married, therefore, "never married" is a bad plea in an action for the debt of the wife. Such a plea however is good in an action for

Power on an appeal

If the husband or wife first by agreement, with the husband allows him a separate maintenance, he is not bound for her necessaries at will, after the separation is generally known in the place where she lives whether known or not to the person binding, or in the place where the trust is given within an actual

But before it is thus generally known he is liable

Assumption sometimes that wife was tenant on her own

Ex. 126. 7. 14 Bum

2078. C. T. 604 - maintenance, the husband is not discharged unless the person is in a separate state, or both the husband and wife have agreed to it

126. 58. T. 110, 124

171. 8. 115. 176. 142-3.

If the wife cohabits with another person in otherwise, the husband is clearly not liable, after the
Baron and Leme

elopement is notorious

(And according to the current
of authorities he is not liable at all, but forever
up to the extinction or acquittal for interstate co-
discharge, 2 Car. 706, 6 D.R. 603. See R. 444. 1 M. 1248
and it makes no difference whether
the elopement be adulterous or not. vide

Lecture 31st

The wife living in adultery is bound by her own
contracts.

But if the husband suffers her to remain with him
and with her children, having made no provision for her
of the living in a state of adultery, he is liable for her
necessaries, if the plaintiff can prove the adultery.

But then the husband is not liable for her
necessaries during the elopement, neither is the wife
liable, for she is still a wife to all intents and purposes.
She has no property separate to side. She, marital rights are
there.

Where the husband or wife live separately, the
husband is liable for necessaries furnished her, the articles
should not be charged generally as furnished to him, but the
special ruling should be shown. When the cause of the action could not
be traced to
Baron and Feme

If the husband provokes necessity at law, he has a right to exhibit the public as well as any individual from trusting her, if may thus discharge himself.

He may thus terminate any credit which he has given her either with the public or individuals.

But if he cannot thus depose her of necessity it seems

If a wife elopes not with an adulterer, and afterwards offers to return, if the husband refuses to admit her, he cannot uphold her for no reason for her necessity afterwards.

In this case a general prohibition by the husband against trusting her is not good. But a special one is good.

Suppose the elopement is adultery, if the husband then leaves after refusing to marry her.

Here the wife is guilty of the first wrong. But if the husband turns the wife away, especially if he leaves his house or account of very ill treatment, the husband is bound for her necessity against a general, or even a special prohibition.

Here the husband is guilty of the first wrong.

For money lent to the wife, the husband is not liable unless actually expended in purchasing necessity, and only in ordinary, because as there is danger of misapplication the law will not
Baron & Teme

Page 137

Section: For the contract is good on land at the
time of landing, it is not affected by which of post facto.
In Chancery the London Stores in the place of the vendor
receives the amount of the necessities.
Hence would not be, liable himself to lay out the money for reimbursing

It has been said that a private settlement
of property by a woman before marriage to her husband
use, was fraudulent or against the husband's interest
So that if a woman possessed of a trust beam
marriage, the interest will vest in the husband joint

A contract by which one is bound to his
husband to pay money to the wife, is not subject
to his contract. The may receive the money as it
becomes due, but cannot discharge it.

of the wife's power to bind herself by
her own contracts.

It is a general rule of the Common Law that a
wife cannot make herself liable by her own contracts.
The she may in many cases bind her husband.
The reason generally assigned is, that her existence
is minor to, but one will in. Regularly she

Contracts are void at common law, 1 Br. 94.

Hence a promise (on a consideration of kindness) made after her husband's death, does not bind.
Baron and Feme

The power of the wife are only available for the advancement of agriculture.

The true principles of this rule are, 1st. The law has either deprived her of her property or disabled her to dispose of it; else, the first is privilieg'd. 2d. If she should dispose of it, the husband's right would be violated. 3d. It might be said that she was coerced. 4th. The husband has a right to her person; if she confines herself, this right would be violated.

But as Chancery has allowed her to hold separate property, she may now bind the property even while living with the husband, to the extent of the property, but no further.

For the husband has no right to that.

Yet in this case she is not bound at law, her person is not subject, for the marital right of the husband prevails.

If the wife be bound she is not bound to any extent, her person might be taken. So the governing principles proceed.

If there is no trust of such property for the wife, the may dispose of it without their intervention, unless their joining is made necessary by the instrument under which she holds.

If the husband is banished or banzied

Corpi 127. Sec. 4. 142 R. The colon, or is transporting, or is an alien enemy, he is

400. 104. 308. &c. Public civilities meeting. If the wife is convicted of a crime, she

may contract at Common Law, is liable to be sued, arrest to 

3d. 104. 106. 107. 3d. 547

193. 356. 114. 106. 107. 3d. 547

8d. 114. 106. 107. 3d. 547

193. 356. 114. 106. 107. 3d. 547

193. 356. 114. 106. 107. 3d. 547
So in case of a divorce, a menage there,
also if the husband lives abroad (it seems) of the wife
trades as a free soul. If the husband or wife are
separated, under article of agreement or it results a right
to a separate maintenance, the wife can act at
common law to the extent of her contract.

The principles of the decision in Collet vs. Collet are.
1st. Wife having separate property, her liability to the
extent of it does not end her privilege to violate this
right of property. 2d There is no coercion (see earlier pages)
3d. The mental rights to the husband, by her
not affected. Objection, wife's existence merged to the
not in Chancery then also? In the notion of her
merger, seems, 1st to privilege husband the wife;
property are under the control of the husband.
2d. To preserve her rights. This power does not apply
to such a case as that of Collet vs. 2d, Vide Ashurst's
principle rejected by Powell, page 92. 1 Par. 101 admits
that she may be considered in law as bound to the
extent of the separate maintenance. How so,
if her existence is merged? She has no right of her own
of the husband asserts. She asserts in finding
her person, as she gives up his right to her.

Equity in the proper forum, Chancery can act upon
the subject matter.

But I conceive the wife has property, the
means of acquiring property by her labour.
for he has relinquished his right to the servant's wages and the privilege of his wives' dower.

But if it be true that he cannot be a tenant and a dependent upon her, only being a servant, and she be within the realm, he was not held liable to her being a separate person. This was for necessities. But if the marriage be dissolved by separation, he is not liable to be sued

...mate maintenance, is not liable to be sued...

But if a joint co-heir living separate in a state of duality is liable for her debts, as before observed.

If a joint co-heir living with her husband, buys, owns, a fine, or suffers a recovery, he may object it during her life, or after her death by bounty.

And in England a fee simple cannot be created as to commoners in future, so as to her personal property, which is in general, i.e., subject to his control, she can in no instance dispose of her property by act executed by such as is to her sole separate use, the she may devise her chose in action — merely as to her power of devising.

If the wife having separate estate, permits her husband to receive dues the rent, i.e., profits, if it be real, or the interest of it be personal, it is considered in equity as having abandoned the rents to him. This prescription however may be rebutted by fraud — it was observed, ante that the husband...
cannot defeat gifts to wife sole & separate use, nor can
he defeat a descent of real property - this however,
has been questioned whether he can defeat devise in
the separate use. But if he neither agrees or
disagrees, the purchase is good during covenant.

Wife after covenant may dissent from
her purchaser or ratify them. The authority rests
her representatives have the same right of
after covenant. She did not make her election.

If the husband & wife were made tenants in
common, she may disagree to the purchase, after
coverture.

In Connecticut freehold may be granted
to commence in futuro; provided the first limitation
be to a person in esse, or the immediate issue
of that person. This by statute 11. May not the
wife have grants by deed her own freehold to
commence in futuro? The fee is absolutely hers,
and there are no marital rights to be affected.

1. The issue no limitation. 2. The husband's right
to her property is not violated. 3. For his right
to her person. It is declared that she may
devise of the object of coaction is no stronger
in one case than in the other.
Baron & Teme

Of agreements, between the husband & wife.

It is a general rule of the Common Law, that:

- all contracts between husband & wife, are void;
- that those made between them, before coverture, are dissolved by intermarriage.

If the wife of a defendant becomes executrixência, or administrator to the plaintiff, the action is destroyed. So if the defendant has been taken in an execution by the original plaintiff, he must be discharged. The reason assigned is that the legal existence of the wife is merged. The true reason generally is, that the right of action would meet in the same person; (e.g. case before & after marriage) or the recovery of damages would in many instances be nugatory, by reason of the husband's right to wife's property.

To the rule itself there are many exceptions, (these exceptions not consistent with the reason assigned generally, they are within the other) in many cases, however, the rule holds good.
Baron & Feme

of Contracts between Husband & wife

during Coverture.

1729, 10 Plow. 84
Book & Rule 23, 25.
1741, 336, 345, 6.

At Common Law, no contract between husband & wife respecting personal property is valid, except qua separata.

And the Common Law does not recognize a right in the wife to hold personal property.

A Deed of Land directly from the wife to the husband would be void, at Common Law, as before observed, for the same cause, i.e. the husband's right to the property, for the contract & usufructuary enjoyment would still be in him.

Lecture 32

But it is now settled in Chancery, at least, that the husband may settle property to the sole & separate use of the wife, during coverture, i.e. that an agreement respecting that property even until, the husband himself one binding

A conveyance by the husband to a third person for the use of his wife is good at Common Law. Since the statute of use, a conveyance may be virtually made directly by the husband to the wife, without the aid of Chancery.

The Deed vesting the use, the statute, the presumption...
So if the husband in order to encourage the industry of his wife, engages to allow her a part of the profits of her business, it is good in chancery.

Donative mortis causa from the husband to his wife, if same is testamentary.

If the husband covenants with his wife not to intermeddle with her estate, he is entitled from doing it, she is not left to her covenant i.e. I suppose she may obtain an injunction against him, or destroy of it.

Observed once, Articles of agreement between husband and wife to live separately will be enforced in Equity or Law to the extent of agreement & no farther.

Therefore any property afterwards coming to the wife, will be just so far at her disposal as if there had been no separation, unless the contrary is expressly stipulated for.

A wife covenants may execute a power or authority given by the husband or indeed any other person, extant itself to convey or devise an estate, if the estate is vested by way of trust, or of power over an estate, or an estate to the use of the same covenants for life, remainder to the use of such a person or the by any writing to.

So by way of trust the cane dispose of the real property of the husband or any one else, as an estate vested to trustees in trust for his separate use for life, remainder to. It seems the court deems it execute a power in any other way.
Baron and Some

1. But not if the power is over her own interest

In these cases the appurtenance is considered as taking by virtue of the devise to giving the power that person executing the power.

[Text continues]

2. A voluntary settlement by the husband on his wife after coverture is void, as against the subsequent husband knowing the facts as being frustrated by statute 21 Edw 3.

3. Of contracts between husband and wife before coverture.

It is regularly true that if the husband is indebted to the wife, or vice versa, before coverture, the intermarriage extinguishes the obligation.

Suppose the husband and wife to the wife by his own be in marriage. If the husband dies leaving the bond uncanceled, will it revive? It is the general opinion that it will not. A personal contract once extinguished is forever extinguished.

5. Of obligee marriage one of several co-obligors, the whole debt is dischargeable. As to the general rule, the distinction is, where the contract is such as creates a duty on the husband during coverture & where it is not. A covenant or promise with or 32 Edw 3.

6. To leave the husband wife a sum after husband's death was admitted to be good at law as well as in equity.

Because there was no debt during the coverture. As to bond before coverture, condition to leave the husband's debt is admitted to be good at law, final part being a debt.
Baron and Teme

But there can be no doubt but that such a bond in Chancery is good as evidence of an agreement.

Such a promise to leave is before marriage, has been adjudged good as early as Erskine Hoyland's time.

So of such a bond vide Sale, 325. Erskine 5th vol. 252, note 3, 2d. 407. This point however has been considered very doubtful until quite recently.

In Chancery such a bond is considered as void at supra to by late editions of Baron, 1st. 2d. 2d. 2b. 233. 333.

But it is now settled to be good at law — the wife may by accepting a jointure, i.e. a constant leasehold of freehold for the wife in lands and tenements to be before marriage, take her right to dowry. Subsequent intermarriages were considered as extinguishing such agreements.

The English Law as to bearing dower by jointure is regulated by statute of Uses 27 Geo. 3rd 8th.

Of the Requisites of a Jointure.

1st It must take effect immediately on the husband's death.
2nd It must be for the life of the wife at least, not for autem.
3d It must be made to herself and not in trust for her.
4th Expressed to be in satisfaction of her whole dower.

Judge Reeve thinks it probable that in Connecticut a jointure might consist of personal property, but the Act's doubt, since some other estate evidently means a larger estate than for life.
Baron & Feme.

If the jointure be settled after marriage, the wife
may on the death of the husband accept or refuse it
& take her dower, but not both.

If the wife agree to accept a gift by devise instead of Dower, she may after a court's determining accept or refuse to do so. If the may take both generally unless the devise is expressly to be insted of the Dower.

Parol evidence that the jointure was in lieu of Dower, is not admissible. Lord Lovel has declared that it is, but his decision has been reversed by Wright, and Wright's decision has been affirmed in and procedure.

There is however this exception: the devise is not expressly to be in lieu of Dower, yet the wife cannot take both devise & dower if the husband has devised all the her other property, for this is proof of his intending the devise as substitute for the Dower.

Now it is a general rule that the marriage settlement agreements, either before or after marriage are binding in Chancery.
Baron & Feme

Lecture 33

Some Rules not falling directly under the foregoing divisions.

If a husband dies in a lease of the copy

1 Roll 349 No. 302. Regard of the husband's estate, for more than 21 years.

1 Roll 245. Vol. 7. 100. Suppose the man after the becomes decasent satisfy

an annul, as when the lesse alone, not alone.

If an obligation be given to husband's

1 Roll 349. The may refuse the benefit of it after husband's death.

1 Roll 349. No. 38. After such waives it accrues to the representatives

of the husband, as an obligation to him alone.

If the husband's wife at common law, are

made tenants in common, the may disagree to the

purchase or gift after husband's death.

1 Roll 349. No. 36. If be a freehold, a disagreement by joint, is not

sufficient. In England she may disagree in a

land of severe or Don't done by Deed. So contrary-

taking the benefit of a good agreement.

If an Estate be to the husband's wife, to

1 Roll 352. No. 118.

Co. 1st. 18th. 8.

32.4

a stranger. The husband's wife have

a parity.
Baron v. Feme

If real estate be conveyed to husband & wife, they take by intitlement, not by moiety; ego,
The husband cannot by his own act, alienate even a moiety. He cannot sever the joint interest.
A fine or recovery by wife alone, or go
against her & her heirs, ut are... But the husband
may rescind it during coverture or after.
There are the only conveyances of some count
to which at common law they cannot agree
after coverture. If the husband join, the convey,
ance is good to all intents. It is doubtless by some better
the husband & wife can convey by recovery

If the wife make any other conveyance than
a judicial one, it does not expressly or implicitly
confirm it after coverture, her heirs may defeat
it after her death.

For the reason why judicial conveyance
by husband to wife or by wife alone is good, vide
Sum Cons. 22.

If the wife is injured in her person,
the husband thereby sustains consequential damage
she has a right of action against the wrong doer.
E.g., battery, slander, false imprisonment, &c.
In these cases, the declaration must be laid with a

16. 1522.
2 D. 39, 2 Div. 120.
2 Love 157; 7 140.

21. 302, 17 H. 34.
2 Love 221. 8 403.

O. 12, 8 23.

26. 15, 180.
26. 12, 8 23.
Sue ad latory the husband has his action. But proof of actual marriage is necessary.

Husband cannot maintain an action for adultery committed by his wife after solemn agreement.

According to the old common law, husband might give his wife moderate correction.

But according to the new law, if he beats her violently, or even threatens to do it, she could bind him to the peace, by writ of supersedeas in chancery, or might obtain a divorce in the spiritual court,

But no evidence is now allowed of the husband being his wife at all, she may bind him to the peace at law, vice versa.

The husband, in case of gross misbehaviour, unjustly destroying his property, neglecting him company, &c., may be restrained by habeas corpus.

The husband may justify battery in defence of his wife, & vice versa.

If a woman make a will or devise, afterwards rescinds & dies, it is invalid.

The survivor is husband in whose name it descends.
Baron & Femce

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

Being in general rule that they cannot testify for or against each other. The reason assigned is that the husband and wife are one person and one may not receive one evidence in pursuance of one cause without the other.

Consider this union as interest prejures, as well as the policy of the law. This is indeed admitted in some of the Books to be the reason. 1 De G. G. 253.

The husbands cannot testify when his wife is concerned even if it be against his interest. Ex. The property settled to the wife sole and separate use was taken for the debt of the husband. In an action against the Thurif, the husband alleging his wife's trustees is an evidence was excluded.

In no case, even between other parties, is one allowed to give evidence tending to criminate the other. As, when in settlement, or other cases, the marriage is dissolved on the ground of a former subsisting marriage, the lawful wife is not admitted to testify to the former marriage for that would change the husband's by any this that her legal identity is in the governing principle.
Heretofore, the general rule there are the following exceptions: 1st. In case of treason.

2. Where the wife is herself a complaint against her husband in order to tend to the peace, which she always enjoys.

This when the husband is acquitted by the public, for abusing the wife personally - In Connecticut this point is not settled by the High Court, but in some parts. The principle of Lord Audley’s case has been adopted.

3. A woman forcibly carried away is married, is a witness against her husband to prove the fact. Here, indeed, is no marriage such a transaction being widely related to her.

4. A man marries having a former wife, living. The second may testify against him for the marriage.

5. In actions between two parties, e.g., where the husband is not a party, the wife has been admitted to give such evidence as would indirectly charge her husband civilly. E.g., In an action for wearing clothes against one, his wife’s mother was permitted to swear that they were provided on the credit of her husband. - Den in criminal cases where the evidence would be collaterally to exculpate husband


1st. Declarations of the wife as to transactions immediately within her province, have been admitted to be proved, to change the husband. Ex. gr. Declaration that she had agreed to pay a certain sum for some child.

In what cases the husband should join

The wife in bringing actions

In some cases the husband must join the wife.

In others, he may or may not, at his election; in some, he cannot join him. It is difficult to reconcile all these cases.

1st. General rule: The wife must join, where the right of action would devolve to her after his death. Because, if the husband might sue alone, he

would by commencing the action, claim a right in himself, of money. Thus, and the wife the legal right.

In actions real, for wife's land, they must join, so.

So in suits for wife's Chores, which she had before marriage.

So to recover rent due to the wife when sole.

So upon promises made to the wife while sole.

So for injury to the person of the wife during coverture, or

So for waste or wife's Lien.

For treachery for cutting wife's toes during coverture.
Action for destroying embankment on husband's land
as common pasture grasses he does not sustain; husband
must sue alone.

In Tenure for destroying or injuring the grass
on the husband's land during coverture, husband sue
alone; it is said they may join.
Indeed, if both may join in a joint malicious prosecution of each, in which they have both sustained injury; or husband may sue alone. See 182, 219. 

No. 16. If husband and wife are both injured in the same cause of action, both may join. 

182. If they have both sustained special damage, the husband must sue alone. 

So if injuries sustained during volunteer service for the United States, caused by the same act, both may join, but in Scott v. Allen, they do not. 

And in Scott v. Allen, they do hard, this is contrary to or in so far as. 

Doddridge also says, "if the husband alone may discharge, it disposes of this case. He may sue for alone," as stated by the Pink. Coke 3 Bulst. 164.
Grist: A wife can't maintain three months power in the bed for the love of that. In 1 Sam. i. 19, it is said, 'his husband.' But there may be maintenance of bread; a wife, for that year, 1 Thes. iv. 9, of the acts of the converting, which is a tent, with which a home canst may be clothed as well as with Cheeses. 1 Pet. iv. 25.
Baron & Feme

1639. Case 207.

So in rent or costs accruing out of wife's lands during coverture. But why is not the husband obliged to join the wife in this case? The rent would survive to her.

So if a bond is given to the husband & wife during coverture, he may sue alone or join wife.

And yet the bond would survive to the wife if the husband should die without designating to her interest, as in this case he may discharge. i.e. It vests in him.

If it does not survive to the wife in this case, in the case he discharges to her interest.

47. Prob. 616

So if bond be given to husband & wife during coverture he may sue alone or join, yet the bond would survive to the wife. So on covenant accruing to the wife at Revolution in fee during coverture.

But in this case he must declare on the pension in himself & wife, in right of his wife - hence ill an special demurrer.

So if bond be given to wife alone during coverture the husband may sue alone or join.

Suppose a legacy given to wife during coverture may the husband sue alone for it? Although he may -

But it does not survive to the wife. Are does it not? But he may also join the wife as in the last case.

24.3.25. 26. 280. 453. 676. 716.

183. 205. 236. 246. 266. 166. 574. 169. 432. 3.

Case 207. 432.

All 316. 280. 676. 716.

Ding. 314. Salt 240. 2.

2. Lutur. 1421.


Lem. 217. 25. 26. 27. 37. 67.

185. 205. 236. 246. 266. 156. 375. 217. 192. 180. 236. 132.

185. 205. 236. 246. 266. 156. 375. 217. 192. 180. 236. 132.
Baron and Sene-

If the wife is the meritorious cause of the action

An action made to join the husband, the marriage

join in the action in some cases, it is the cause of

the action does not survive to her.

Not without an express promise, i.e. in assumpsit

and contract during coverture.

It is said in Coke, 47. That the action in the case survives to the wife. But this is mistake.

It is denied by Lathard, 114b, 1890. This true reason it is said is that the husband affirms the promise to the wife by joining her in the action, i.e. he agrees that the wife may take the benefit of it.

In 2 B. & C. 1939 arguendo, it is in Coke, 47. that it is said to be shaken, but the Court recognizes it as sound.

The husband and wife cannot join in assumpsit

without stating the wife's interest.

the man married a woman having children by a former husband, he is not bound by the act

of marriage to maintain said children. And unless there are no properties from the acquire by the marriage. But if the wife, then, sends to the world as part of the family, she will be considered as standing on the ground of title, even on a contract made by her.

wife being his absence abroad for the maintenance t education said children.

But such maintenance in good consideration for a promise by said children.

when they come of age to settle the influence of their maintenance.

as to have for a master is interest for necessaries furnished his children living with the mother under from the father. vide 2d. 184b, 212.
Baron & Teme.

Lecture 34th

1. In such cases husband & wife must join, continues.

2. When the wife is the suffering cause of action & the husband sustains the consequential damage, she cannot be joined in an action brought for such consequential damages: as in case of slander of the wife with special damage to the husband.

So in case of an assault & battery of the wife

This latter action has generally been called trespass

vi et armis, it seems; but it is strictly case.

If battery is committed upon husband & wife,

They cannot join for the whole injury: for the wife

battery they can, but for the husband, they cannot.

But if in this case, separate damages are given

for the battery of each, the husband may release or

to his battery, & then, if being after verdict, he may

have judgment with the wife for his battery.

So if as to the husband the defendant be found not

guilty, the verdict is good —

The husband may sue alone on a promissory note for

449

The husband may sue alone on a promissory note for a debt due to the wife as her sole

or due to her as executrix.
Baron & Femme

So for adultery with the wife

Many circumstances aggravate the damages: e.g., the rank of the plaintiff — the wife's previous good character — the TREASONous conduct of the defendant, etc.

And many circumstances tend to mitigate the damages: e.g., the wife had previously chosen that she was a prostitute — that the husband turned her out of doors that she was familiar with other women in the vicinity.

If the husband consents to the act, or if he permits his wife to live as a prostitute, the action does not lie. See note section with 511. 577. 248. 246.

To contumacy in an action by the husband & wife for imprisoning the wife, pursuant to the husband's business remained not done to his damage; was held good after verdict. The verdict was only by way of aggravation, not constituting punishment.

If the husband sees alone when he ought to join the wife, or joins her when his ought to see alone, this mistake is not cured by verdict. Judgment may be entered on writ of error brought.

But if the wife was alone when she ought to be joined with the husband, judgment can be entered only in abatement.
Bacon & Teme

The right of action being strictly hers, the husband may have Error of judgment goes against her in what cases the husband must sue without the wife.

1st. In a general rule that the wife must be joined when the action would survive against her otherwise the husband's representations might be injured e.g., Debt due from her own sole.

So for his rents committed before coverture. So for rent due from her before coverture.

So in general in all actions to which the wife was liable before coverture.

1st. So for torts by her alone during coverture without the husband's privity.

If a lease be made to the husband & wife, the action for rent accruing during coverture is against both. For if she should survive, she might confirm the lease & then the rent should survive against her as I think.

2nd. But regularly when the cause of action should survive against the wife she cannot be joined. e.g.,

If a free sole lessee, marriage, the husband is sued alone.
Baron and Seme

1 Ben. 5:73. 70a. 6. For rent incurred during coverture; for it survives against the husband, not against the wife.

For here she cannot derive the lease after coverture if the husband has taken the whole benefit of it during coverture. (See above page.)

Assumption against husband and wife on the joint promise is bad. The husband should be sued alone, for spread, the wife, the promise is void.

Action against the husband and wife for battery by both or by wife alone if the husband's coercion is bad.

So in general for a tort committed by both or by husband's coercion during coverture the husband should be sued alone, for it is his act.

It is so held, that even if the husband should be found not guilty or being sued alone, for he should be joined only for conformity; otherwise judgment may be set aside.

In action against husband and wife, conversion.

5 Ben. 194. 661. 31. 1 P.1. 197. 394.

If tort is made known and disclosed to the husband, the wife is relieved from guilt by the husband's consent. For this reason, for an action for trespass, the husband is bound to be sued at the same time with the wife. If the wife is joined with the husband, then the court will look upon the action may be adopted, is to arise versa.
Even if the mistake is not pleaded in abatement, it may be assigned in error, at a motion in a suit in good faith the matter brought into court; and the same may be taken in evidence with reference to the conduct of the parties. 

If a cause of action is sued alone, please overture it prevails, she may have execution for costs in her own name, or by seizure process. The husband or she may have execution together.

If, where sued with the husband cannot be sued alone, the husband must join. If, suppose she is sued alone, then it seems it is otherwise.

As to the wife relief when taken alone, or with the husband on main process, made above.

Of Wives power to devise real property

in Connecticut.

By this statute all persons of full age, right understanding, be not legally incapable, shall have full power to make their wills and testaments, alienations of their lands or other estates. The meaning of "legally incapable" is incapable of devising deviseable property at common law. Note the construction given to the words "all persons" in statute 32 and 33, Rev. Cod. 118 i.e., all persons capable of disposing of real property by the rules of conveyance, but the husband by custom may have been in this county.
2° Time, count was capable of advising at common law, what was deviseable, if marital rights were not to intervene by it.

The question then is, what power had James count at common law, before feudal tenure James count, it seems from two English custom, right of hom-own law, devise lands. Lands, being deviseable before the conquest.

During the feudal tenure, the property was deviseable even by James count, when they held property over which the husband had no control.

E.g. Personal property given on action ecclesiastic by way of bounty: 3° choses in action without consent of the husband. Le.1. mod. v. But even if with consent it proved that there is nothing in the nature of covenants to prevent except the husband's right to the property, any property here be in modest since the statute of 29 Geor. 2.

by which the husband is entitled to wife choses after her death.

3° Personal property to husband's separate use. Objection: James took appurte Right - answer, why

there may she not devise lands.

4° At common law she might frequent such personal property as would accrue to her on her death, if she survives, the will would be good. - Le. 1. mod. v.
So his personal property she may bequeath
with his consent.

Wife's right to devise is established in Connecticut
by the Court of Errors. For a petition for a new trial
was recognized by their Legislation.

Of the Celebration of Marriage.

Marriage is a civil contract at common law.
By statute of Connecticut, publication is necessary within six
weeks preceding the date of the marriage, or by writing in the
hand of one of the parties to the marriage, or by writing deposited
in the hands of a person who will be present at the
celebration of the marriage, or by writing presented to the
Recorder of the district where the marriage is to be celebrated.

The ceremony must be performed by a person authorized to
perform marriages, and in the presence of witnesses.

Before the Judges, 24 Geo. III. It was a jus inorthic municipally
premises marriage, in which case it would not be limited to the
civil jurisdiction of the court from exercising a void. Sch. 438.
That it also includes that marriages contrary to its provisions are absolutely
void — yet the Court would not grant administration of the
wife's estate to the husband. By this authority it would
be voided by the former year. The question, family civil
when the first of marriage comes into existence, common
law practice of marriage is recognized. In the case of
an actual marriage must be known. The result of
marriage action.
Baron and Feme

of void & voidable marriages

In marriage in England are of two kinds:
1st Canonical, Consonancy, affinity, incumbrancy.
Reconciliant seems to have been abolished. But the other
impediments seem to have been derived from the divine law
& therefore cognizable by the spiritual courts.

They are sanctioned however in England by statute
32 Henry 8 which prohibits all marriages prohibited by
God's Law. It is declared in the statute that nothing
God's Law except shall prohibit any marriage but within
the limited degrees they are established as to consonancy
affinity. Nothing God's Law except shall prohibit mar-
riages without those degrees. This exception probably
includes incumbrancy. A being an impediment in the
divine Law. Canonical impediment under the marriage
is voidable during the lives of the parties. Afterwards
things Breach would prohibit.

Co.Litt. 35
Salter 548.

Vaukher 246

All persons lineally descended are prohibited.

Gill. 158

Among collaterals, the most distant degree is that
between uncle & niece & vice versa.

But for ascertaining what marriages are
lawful & among collaterals - to far as relates to
consonancy & affinity. Not to many a collateral
relation in the first or nearest degree to a relation in the first
line of collateral relation.
Baron v. Feme

On marriage the daughter of his former wife rests

If no divorce takes place during the time of the

marriage, the issue is legitimate.

In Connecticut, a man may now by statute marry
his wife's sister, & vice versa.

Divorce for the above cause a vinculo, or
a divortium from the state, 1st in existing marriage
2. Want of age 16 or 17 years in the latter age 3. Want of consent
of the parties in question 4. Want of reason, want of reason is
These under marriage void ab initio, as nucleon divorce.
Their marriage - Bigamy in England is felony,
but it is here merely punished 2. Want of age - marriage
may be nullified without another marriage - But, they may
also disagree & avoid it without divorce. When either
comes of age, he or she may declare the marriage null
+ if one is an adult he is not bound by the obligation, and limited
3. Want of the consent of parents or guardians, third common
law is no impediment, but is a marriage statute. The law
here is very different from the enacted from the English.
1. Marriage within the prohibited degree is absolutely void,
of course the issue is illegitimate. 2. Want of consent of parents as
does not render the marriage void, but only subject the clergyman to
a penalty, it does not affect the validity. In England, it is void
unless there is a public celebration of the marriage. 3. Pretend is not
known to our law. A marriage celebrated in another state to evade our Law
is good here, for no one law is not complied with, but another state is
Baron and Feme -

Of Divorces.

Divorces are of two kinds - 1. Intra vitam et in mortem. 2. Post mortem. The first is a complete dissolution of the contract; the second does not dissolve the relation of husband and wife, but merely separates them. In England the first kind is only for the canonical impediments above, existing before marriage, as is always the case in consanguinity; not so prevailing as in the case in inebriety and affinity.

The causes of partial divorce in England are adultery, cruelty, and procured fear. Parliament of the grand total divorces for adultery. In this case, divorce are in the Ecclesiastical courts.

After a partial divorce, issue born is presumed to be illegitimate. It is rebuttable.

In case of voluntary separation, the issue is presumed to be legitimate. In Connecticut divorce are generally granted by the Superior Court; but total divorce only in case of 1st fraudulent contract. 2nd adultery, 3rd three years, unlawful absence, until a total neglect. 4th seven years absence, unheard of. 5th three years absence, when on a voyage usually performed in three months, unheard of or legal master lost circumstances.
The Consequences of Divorce as to Property.

In England, in case of a divorce a vinculo, the wife has no share nor any right to any part of the husband's estate, for cuiusnullum matrimonii sit nulla pars.

After a partial divorce for any cause, she has her dowry; she also has alimony settled according to the discretion of the judge. I suppose the law is the same here.

But in case of total divorce, no contribution for adultery, the wife has none of the husband's property, also as part of the husband's estate, nor exceeding one-third, may be immediately assigned her for alimony. It has been adjudged by our supreme court, that personal property may be assigned to her (29 Theophilus).

So whenever the marriage is within the limited degree, the supreme court may assign a reasonable sum.

(Handwritten note:)

In a divorce made to wife with husband consent, where she is a minor...
Lecture 1st.

The title will include 'Guardian of an Infant' according to the common law. An infant is any person, male or female, under the age of 2 1 years. The age of majority is fixed at different times in different countries. By the Roman law, it was 2 1 years. But here at the age of 2 1 an infant is sui juris, he is then of full age, capable of acting for himself. We will first consider.

The Privileges and Disabilities of Infants and Minors

I. as to Crimes. What is criminal in an adult is sometimes not so in an infant. It is an invariable rule that at common law, no person under the age of 7 years can be punished for any offense whatever. He may commit a forbidden act, but not a criminal one, because he has no freedom of will. The law presumes he has no will; 'tis most to be conjectured.

No person can be punished for a crime, unless there is an intent concerning the criminal act. Neither can be as will in this case, there cannot be any punishment. At 11 an infant may be punished for a crime as well as any other person.
Parent & Child

He is then supposed to have arrived at a sufficient age, to have a will of his own. Between the age of 7 to 14 it is called a "delicious period," & it has always been a question of fact, whether the infant is doli capac, capable of committing a crime.

The presumption of law is, that he is not doli capac, but this presumption may be rebutted.

1 Holt 40; 20-26

When proved, the major is made to supply the defect.

434 Strode 70. 72

The same tendancy, however, lies upon the prosecution.

The presumption that arises in the case of Infants remain 7 years cannot be rebutted. It is presumptive juris de jure. According to some opinions this presumption varies before & after the period of 10 1/2 years: between 7 & this time, in favour of the infant; between this time & 14 it is against him.

If there be such a difference, it only shifts the burden of proof in the latter case from the prosecution to the Infant. But there appears to be no such distinction in the English Law, that it existed in the Roman.

The rule is actually as laid down above. It is drawn by Blackstone & Bacon that in some cases infants over 14 are privileged as to misdemeanors which are not capital. They do not lay down what cases it shall
Parent & Child

Thinks they are cases of omission, because infants are excusable for omissions, whereas adults are not. It being a general principle of law that infants shall not be punished for mere omissions, or neglect. It has become a standing rule in many that, in the administration of criminal law, an infant shall not be convicted on his own confession without great caution and caution. So jealous is the law of the rights of infants. The Judge in this case was said to be his counsellor; if they have gone so far that where the infant has confessed the crime he is convicted, the Judge have ordered the plea of infancy to be put in, the cause to go on to trial.

It is said there is an instance in the books: when an infant, under 7 years of age, was sent to prison for manslaughter, and this proves nothing. See it fully examined by Mr.:

The presumption in favour of infants over 7, it has been observed may be rebutted—For it is only a presumptive juris de facto, whereas under that, by this jurisprudence juris de jure—Some particular period was necessary to be fixed in order that opinions might not be vague.

With regard to general statutes inflicting capital punishment on infants, a material distinction is to be
observed. In some cases they are punished under
then the instances, in others they are not.
It is rather difficult to lay down any precise rule
on the subject, but Mr. W. thinks this the most cor-
crect one: If the offence created by the statute is made
such as is punished corporally by the Common
Law, infants are within it; it may be punished
under it. But if the statute prohibits an offence
not punished at common law corporally, it inflict
a corporal punishment without creating an offence
to punish it at common law. Infants are not
within its unless expressly mentioned. The reason
given is that the punishment is collateral to the
offence. This is not sufficient. The true reason is, that
of Law, in construing the statute, will not allow
the privileges of infants at common law to be
exercised more implication. There are the
leading distinctions respecting public offences, we
have to consider II. How far the infant is liable
for torts, or civil injuries. I conceive they are
liable at any age, although, if committed with force
and the reason is, the Law en redress an injury
done against the intent with which the act was
committed. Criminal Law regards the intention.
but in the case of civil injuries it is not so. The
inquiry is not whether he intended to do it, but
whether he did do it. The intention may ag-
gravate or lessen the damage. There is one case
in the Books where an infant of 4 years of age was
sued for an assault and battery and it was not contended
the act was not his. There is a distinction in principle,
between the case of a public and private wrong. You
wholly repugnatant to our ideas of justice that a person
ought to be punished for an offence when there is no
will. But in the case of a civil injury, it is equitable
that the party injured should have a compensation.
It has been argued that an infant of 17 is liable
in an action of slander, it is from this case it has
been inferred that an infant 17 is not liable. This
inference is illogical. It further there is no case in
which an infant under 17 has been tried. Now suppose
that an infant is liable for slander whenever he is
capable of making "false capital." Can you subscribe to it?
An infant liable civilly for his parents' deeds?

W. G. cont'd. He is not, because if the same, his privilege
as to suits contracts would be destroyed on the score of
contract, when it is a
Parent & Child

1 Habe 788:905

1 Habe 914

3 Bein 1802

Black Rib 223

8 Tho 335

12 Bein 103

A general rule that he cannot make one. The is, to be an infant as a common cheat, whenever he is "noli capit." In one of these cases, it is decided that an infant is only liable for those torts which are attended with a degree of violence. This cannot be true, because he is subject to an action of slander where there is no violence. All the decided cases go in support of this rule, that an infant is not liable for his plain debits. Lord Mansfield and Lord Kenyon (also Judge Pease) disapprove of this rule. The former says that privilege of infancy was given as a shield of defense, not as a weapon of offense. Lord Kenyon says, obiter, that an infant would be liable in an action sounding in contract, of a mere act of delict. An action sounding in tort cannot be sustained against an infant, where the cause of action arises out of contract, for the foundation of the action is the contract, which he cannot make.

It was once held by Parker & Sevon Justice, that if an infant would take upon himself to have an act of age, no evidence of infancy should be admitted, because it would be to take advantage of his own fraud. This could be fixed as laid down, because if it were it would
Parent or Child

subject an infant to his own contracts. Your contract, as such, would bind him in all cases.

It is agreed in some cases that a contract to be good against an infant it prevent the consequences of his want. This is however, (Wyl., thinks) a rule of Equity - a Court of Law never would do it. It is left to the discretion of the Court.

But a court of chancery can never bind an infant to his contract to prevent the effects of fraud, where it is absolutely void - because that would be to make a bargain for the party. The last rule (one which applies to contracts that are merely voidable).

Lecture 2

Infant liability for contracts, as the particular at common law, the age for choosing guardians is 14 in both sexes. Before this time, they have no right of choice. In Connecticut, this rule is introduced by statute, it makes care of age for choosing guardians at 14 for males and at 12 years. According to the English Law, an Infant may be an executor at any age even an unborn infant.
Parent & Child

May be appointed, but the appointment would be
good. But although he be appointed he has all the
rights of an Executor, he cannot exercise the
office till he is 17 years of age. Consequently
when one under this age is appointed, and min-
ority "cum testamento annexo,"
must also be appointed.

No person can be an Administrator, until
he attains the age of 21 years: and the reason
given is, that an administrator must give bonds
for the faithful fulfillment of the duties of the
office, being appointed by Law, whereas an Execu-
tor at Common Law need not give bonds, not being
appointed by Law, but by the Testator.

In Connecticut, it is questioned if Executor can
even his duties of office, until he also is 21, because
he is, by their Law, required also to give bonds for the
faithful fulfillment of the duties of his office.

Under their statute also infants at 12 may make
a will of his personal property.

The age of consent to marriage is 14 in males
and 12 in females. No person under such age, is bound
by contract of marriage. Will be over 12 the other side.
This age, one may dissent as well as the other: hence an agreement must be mutual: according to the English law, a female may be betrothed at 7 years of age, when her husband dies, she is above the age of 9, she may be endowed out of her estate. The age of dower of personal property by will in England is said by some to be 14 in males, 12 in females. By others 17, 17, 18. The former seems to be the better opinion. If, of these ages, at sufficient discretion, they may make a valid disposition of personal property. Full age, as was before observed, is 21 years: this is completed on the day preceding the 21st anniversary of her birth. The law makes no fraction of a day. The day of the birth being one included, it cannot be again, it makes no difference whether it be from the former or latter part of the day.

With regard to contracts. In general rules, no person under the age of 21 years can bind himself by a contract. Regularly then the contracts of infants are not binding at any other void or voidable. But if an adult joins an infant in a contract, he is bound though the infant is.
If then an action is brought on this contract, the adult cannot plead that an infant is joined with him. So if an adult makes a contract with an infant, the former is bound, the latter is not. And if an action is brought on this contract, the adult cannot plead that the infant was not bound on his part. The infant's assent is deemed a sufficient consideration to uphold the contract. This is so considered in Chancery, which will compel a specific performance on the part of the adult. The only exceptions this Court would also compel the infant to do Equally.

This is a general rule, but it is not universal. If the contract is absolutely void, the rule will not hold. The chance of a benefit is always a sufficient consideration to raise a promise, as in the case of a voidable contract made by an infant. Therefore, the adult is bound, because it is only voidable. But when an engagement is strictly void on either side, it raises no consideration to support the engagements on the other. Therefore if an infant makes a contract which is absolutely void, a legal necessity, there being no consideration to support a stipulation on the other, the adult is not bound.
Once it seems well settled that if the infant after having made a contract, recovers the consideration money towards him, it afterwards avoids the contract, he is not bound to restore the consideration which he has received. The law seems it a gift to him. It has however been disputed whether an action of Fronter would not lie where the consideration was specific, or an action of Indebitatus assumpsit when money was paid, on the ground of fraud in the infant. The Books do not warrant the idea that either action can be supported, and it might deprive the infant of his privilege, to enable him to the adult to change the nature of the consideration from that not of a specific to a specific nature.

I suppose the infant to refund the consideration out of his estate, by which means he may always continue the whole of his estate, if he can persuade to trade with him.

This is a general rule that infants cannot be bound by contract, there is one exception in the case of Necessaries. It being a general rule of the Common Law that for necessaries an infant may bind himself to pay in order to prevent his suffering. These necessaries consist of certain enumerated articles, which are all included in these five: Food, Clothing, Lodging, Medicine, Instruction.
Parent & Child

The reason why an Infant is not bound by his contract is, that he would understand it, & that he would be unable to enforce it. (151)

Some time must be left to the jury whether the quantity were or were not necessary. (151)

The law is, that where the Defendant pleads infancy, the Plaintiff may plead generally. (151)

That they were necessary or unnecessary; whereas, (151)

Ser. 69, 9th 612. The location would have to plead especially what things were which he purchased.

An Infant may bind himself, under these restrictions, for his wife, or children, necessary. (151)

The law is, that he would be bound by them, as he was for himself, (151)

as he may marry, so he may bind himself for

in order necessary for his comfort & convenience.

Bentott 45. An Infant is also bound by the Contracts of others.
made before coverture. Yet she must have
been bound herself before marriage.

This exception must be understood with
certain qualifications; for no infant can bind
himself for necessities if he is under the care
of a parent, guardian or master, if duly provided
for within it is true that he may be an
infant guardian or master when they do not
furnish such necessities as many may think he
has much to do to their discretion, it is must
be clear that he is not duly provided for.

From what has been said, it follows that an
infant can bind himself only in three cases.
1. If he has no parent, guardian or master, that is
bound to provide for him. 2. If he has one, but is
out of the reach of his care. 3. If he has one, it is
within the reach of his care, but is so ill provided
for that he is suffering, or is danger of suffering.

In the two last cases, the parent, guardian or
master is held on his contract. In Coutrie
there is a statute, which is supposed to introduce
a new rule as to the infant's power to bind himself for
necessaries. It has introduced some thing new by compelling
parents to fulfill the contracts of the infant made.
Parent & Child

on his own means, when they permit him to contract
but the question is whether in any case, we can tell
an Infant can bind himself for necessaries by his
contract. The statute says a minor under the guardianship
of his father or his guardian himself, he is
clearly not within the statute, if he has one, but if
he is provided for, he must either be thrown upon the
survivor of the poor as a pauper, when he has property to an
indefinite amount, or must be allowed to bind himself by his
contract. I think the latter is right & sound.

Lecture 3

In what way an Infant may bind himself even for necessaries
The distinctions found in the Books, & the reasons.
The Infant is not in strictness bound even for necessaries
by his express contracts. Because he is not liable of course
to the extent of his contract, but only to the amount of the
value of the articles furnished. In case of an Adult who makes
an express agreement to pay a certain sum for goods, he is
bound by it, the the articles are not worth half the sum
agreed for, but in case of an Infant, he would not be bound.
The amount of the value of the necessaries is all he
would be liable for. It would seem therefore, that he
is bound upon our assumption, a quantum valutant
in whole, or in part, by the amount of the necessaries
supplied by law. The Infant cannot bind himself for
necessaries in any way or form that an adult may
Parent & Child

This will appear from the following distinctions which are on the ground that the contract was made for necessaries. 1. It is an agreement that an infant cannot bind himself by a personal bond, this however precludes the consideration may be

2. By a simple bill (given for the price liquidated)

3. By a negotiable bill, when actually negotiated

Infant is not bound

4. By a note not negotiable, the note is revocable

5. By a note of exchange not negotiable, he is bound but when actually negotiated he is bound as between

6. By an account stated (which is an account stated and

The enquire now arises, what are the reasons of these distinctions? We will take them in this order.

1. "Why may not an infant be bound by a personal bond?"
The reason given in the books is that it may work the disavantage, and may occasion a forfeiture. This is not satisfactory, because itself might always be had against the penalty. The true reason is, the consideration is not known. It cannot be told whether the bond was given for necessaries or not. When a personal bond is executed, the consideration ca
When the bond, which he has executed, without being dispensing to deny that the contract of the bond were for necessaries. The privilege of the infant would be utterly destroyed. The reason, therefore, which was that all the cases in which the consideration is such as is expressible, he is bound, that if the nature of the contract excludes the engaging into the consideration of in the infant is not bound.

2. So a single bill is not now examinable. It is true that a single bill is not now examinable. It is not bound, because, as between the sure and the maker no enquiry can be made into the consideration. If then he was bound, the principles of the Mercantile Law would do for forth the overthrown or his privilege must give way. But suppose the note is not negotiable? He is bound by it, because the consideration may be looked into, while it continues in the hands of the promissor. It is a mere single contract on the principles of the common law.
4. By a Bill of Exchange before it is negotiated, it is bound; after it is negotiated, no such thing is the same as negotiable note.
5. By an account stated it is not bound. The items of an account may be looked into, but the reason of this rule is, that they were settled before when they were not examined.

There are cases are powers to support the general principle. But still there arises a question, whether in these cases, where by the form of the contract the infant is not bound, he is bound by the original simple contract as in the case of a formal bond.

By this he is not bound. Can he be sued in an action of indebitatus assumpsit for the necessaries which were the foundation of the bond? This refers when another question, whether the bond does or does not merge the simple contract? Do this upon another, whether a formal bond of an infant is strictly void, or only voidable. The decision of this question will decide the first one. If it is voidable, it does merge it; if it is strictly void, it has no effect at all upon it. This question will be considered under another division of the subject. Suppose the bond is void then I conceive the infant is bound when the
original contract, express or implied. This is agreeable to principle & all analogy. For it being a legal necessity, there can be no means in law or in fact of destroying that which is good. That which is strictly void, does not destroy a future right. A single Bill does certainly merge the contract.

We have a security which is not voided by this or nothing, the same reason. Our law is the same with the English in point of principle. There is however rare one class of cases, in which it is a little difficult to know what is to be done — a note of hand is here in bed. It is of the same character as a personal bond in England. Is the infant bound by it? It has been decided formerly that he was. That he might be allowed to go into the consideration of the other question. For instance, whether a note given by an infant is void or not voidable. In Connecticut, it has been decided that it is not void. The infant has this. You shall write an infant on a note to be a slip of paper, safely a promise after full age, but that you shall not rely on the original promise. This is contrary to the decision in their Supreme Court. If one note can void they do not merge the original bond, & contract. If voidable, they do not merge.
Parent and Child

Lecture 1st

The Infant can never bind himself for any debt unless the money is actually expended in the purchase of necessaries. At Common Law, the Infant is not bound for money lent unless the lender actually offered it himself for the necessaries in which case the Infant

is bound to the same amount as the value of the necessaries, not as the case may be, the whole sum


to which the lender of the money stands under the

game of a vendor would recover as much as the

vendor would have done, had he permitted the credit

which is the real value of the article


It has been decided that when an Infant was a

mechanic it purchased articles to carry on trade he was not bound. The Law presumes he has not

sufficient discretion to make a Contract but the

articles purchased were not necessaries in law.

So also an Infant is not bound to pay for repairs
done to his buildings. These repairs are not necessary

they may be done by his Guardian.


It has however been decided, that when an Infant

takes a lease of a house and lives in the house

until the next day arrives an interference. He can all that
day, he is liable in an action to an assignee on the debt

on the real proviso it is reasonable, i.e. does not exceed
Parent & Child

one year's value. The house is here for the purpose of lodging, but I am not near the venue of the decision as it respects the Land.

The necessary education an Infant may have himself, but what is necessary in one case, is not so in another. It differs in different persons. It is a matter of fact to be left to the jury under all the circumstances of the case. A liberal education in England would be considered necessary for the son of a gentleman, but not for the son of a poor man—

To accommodate times, clauses that provide a man of less degree estate & expectation who lives with a child from his family, left his son to the care of another who has married the mother. The stepfather educated him at Yale College. The Parent was liable for the necessary expenses of the education. It has been decided that instruction to an Infant in Music or Dancing was not necessary—A doubt if this is now Law.

The manners of Persons are materially changed, & it is often that instruction in any further branch of education, according to the rank in life is necessary. If an Infant was voluntarily left

3 Bacon 1801 &
12 M. 172. 315
30 Good. 960 85
6 R. 575

bound to do, either in Law or Equity, he is bound by the act. This regulatory he is bound only for his contracts for necessaries—
Parent & Child

Thus if an infant holds land or other property under the common law, he is bound by it, and if it is interest, he is likewise bound in equity. If an infant receives it by descent or inheritance, he is liable therefor as any other person; and if he takes a lease by succession under the statute of victualers or a lease of estate subject to an annual rent, he has not made the contract, but holds under one made by another. So if an infant sells

Grant, he is bound by the act, unless some advantage has been taken of him, or he has set out too much. So if an infant mortgages, conveys, or upon payment of money, he is bound

by the reconveyance. The reason of this rule is, that as he is bound to do the act, it would be idle to make any effort not to have his voluntary act stand, when he may compelled to perform it by the very next day by process of law.

An infant when defendant in a cause is bound by their decree against him, except that he has
Parent & Child

"A day in Court after he attains full age, the
impeach the device either for fraud or error
this day in Court is six months after he
attains full age. In the case of a judgment
at Law, he has no more a "day in Court"
than an adult has. She has been no particular
indulgence allowed to him.

An Infant Plaintiff is much bound by
a decree in Chancery as an adult or as an Infant in a
Court of Law, unless he can prove gross
neglect in his procuration. We have no day
as a matter of course when he is a Plaintiff as
his parent or se aabove. The reason is, these
acts voluntarily, but when Defendent has
compelled to appear, he acts in invitiation.

These rules which I have laid down with regard
to Infant's ability to contract, presuppose that
the contract respects his own interest, therefore,
it is a rule that those acts of the Infant which
do not affect his own interest but take effect
from an authority which he has a right to
exercise, such acts are binding. Thus, if an Infant,
Executor, collects a debt due to his Testator, it says
17 June 1802

3 1st 640 -
2 1st 760
3 648 -
4 1822 21 -

Parent & Child

On actual due from the estate, he is bound
by the act. So if he discharges a debt upon full
payment, the discharge binds him. So an infant
may acquire many rights, if the act, B. does in
his own bind him.

When the terms of the infant's legal inac-
cretion cease, he may legally satisfy those acts
which he has done before it, by which he was not
before bound. Thus a promise after full age, to
fulfill a contract by which he was not before that
time bound. But this rule does not hold where
the contract was absolutely void, for such an
one never can be satisfied. There is nothing to
satisfy it as though it never had been. It is a
mere non-entity. It has no existence as in the
case in asarious contracts. But it is not to
be understood that when an infant gives a
security absolutely void, that a subsequent
promise after full age will not bind him.

So if he makes a contract which is good,
I give a security which is absolutely void.
A subsequent promise after full age will bind
him. Thus suppose a personal bond is void, it
is given for necessaries. If the promise to pay after
full age, he is liable for the necessaries.
The subsequent promise attaches upon the original
consideration & lays the foundation for an action
But the rule does not hold when the security
is only voidable, for the original contract
being merged in the security, furnishes no
consideration for the subsequent promise.
But this only means, that the Infant cannot
be sued on the original contract as a ground
of action. There is a very material distinction
between 2 cases: here, the subsequent promise
is the ground of action itself, where it is a
good replication to the plea of Infancy on
a voidable security. It cannot be the ground
of an action in itself, because the consideration
must be either the original contract or the
written security. The former it cannot be, for
that is merged; neither can it be the latter
for a parole promise never can attach upon
a written security, which is voidable as a consid-
eration. But it evidences of a waiver of the pri-
"life of Infancy as to the written security,
therefore is a good replication to the follo-

Ref: p. 155, 164
of Infancy or the written security. This is not, of itself, a ground of action. If this is not the written security which by the subsequent promise is merely avoided, it is all intents and purposes void. This distinction is not well explained in the Books.

But when an Infant makes a subsequent promise in consideration of one which is enforceable entered into during infancy, he is held no farther than the promise of tender. As if he agrees to pay $1,000 during infancy, and afterwards promises to pay $500. He is bound to pay no more than the subsequent promise becomes the rule of his legal duty — the notice from case to case.

So a claim of Infancy, a repudiation of a promise after full age is supported as far as the Plaintiff is bound to support, by proving a second promise. This need not set forth that he made it after full age; it shall be presumed to arise at the same period. Therefore the Plaintiff is the Defendant. The Plaintiff may not know his age.

If an Infant is jointly interested with an adult in a lease, if the adult provides a rental...
Parent and Child.

If it is in his own name, he shall be deemed to have acted as a Trustee for the Infant.

If the Infant may claim his share if it provided it is beneficial, otherwise not. The reason is that leases are generally renewed, and subsequent lease is a grant upon the old stock.

If an Infant is married or a cause ducus to which his Infancy is a good plea, he cannot be discharged in a summary way, as a scorn court may be, but must plead his infancy. For his Infancy is not regularly absolute, but only relative.

Lecture 5th.

That Contracts made by an Infant are void, and what are merely voidable.

All contracts by which Infants are methodized are either void or voidable. The distinction is some what artificial, but the consequences resulting from it are material. Of late years Courts have been inclined to consider these contracts by which Infants are not bound as voidable merely, not void. This is advantageous to the Infant because it leaves it to his discretion to avoid the contract or not when he arrives at full age. Having the rights forever there are few cases...
in which this year of any injury to the infant, his contract will be construed strictly construed.

The first general rule laid down on this subject is, that those contracts in which there is an apparent benefit, or semblance of benefit to the infant, are only voidable, if those on the other hand, where there is no such apparent benefit or semblance of benefit are strictly void.

This is not I think a governing rule. The first one affirming a rule is undoubtedly true. From it it follows that the purchase of an infant are only voidable because they are always presumed to be for his benefit. There are no exceptions to this. If this part of the rule were not true, he could not be devisee, grantee, leasee. In fact he could take property in any way than by descent. They create a power on his part and are only voidable. Upon the same principle a power of attorney given by an infant to accept title is only voidable.

It is ancillary to the completion of a purchase for hire.
Parent & Child

And it has lately been decided that an indenture executed by a Slave to his master promising to serve him faithfully as a servant, was only voidable; because it might be for the benefit of the Slave.

Then exceptions all concur to illustrate the former branch of the rule.

It has however been said that where an Infant made a lease without receiving rent, the lease was absolutely void. This, has been laid down in:

162. Nov. 130. 216. Gym. 331. Butt

10 mod. 421. 42.4 Law of time to time continued in such a case:

105. 533. 12 mod. 163. 535. 2 Bar. Wr. 304

There is not a single judicial decision to the point.

3 Bar. Wr. 304

Therefore not the highest authority of what the Common Law is. Still there has been no judicial decision is said by Lane Mansfield. The point. This however is not the case there are weighty opinions to the contrary.

3 Bun. 150. 6

Sic. Nov. 541. Contrary; Littleton himself says, ‘I the never yet

1st. 145. 305. 3 Leb. was restricted by a single judicial decision’ that

3 Leb. 76. 5 Dec. 535. was contended by an Infant may be avoided

the lease made by an Infant may be avoided; if the lease was laid down with

reference to reservation of rent. There is

then a weight of authority on both sides of

the point. Lane Mansfield against lease

to be void. The law is not taken with the latter branch of this rule,

it seems to be uncertain (for it may sometimes be true) but L. Cas
advances some arguments which incontrovertibly prove that a lease made as above is not void. The
says he may make a lease reserving rent or not, in
order to try his title. Now if this lease was strictly
the defendant in one who was a stranger to the lease
might take advantage of it, but if it was not reasonable in
Carnot, for it is a general rule, that whatever makes an
instrument void may be given in evidence in
An Infant's Lease can never take advantage of
the lease in favor of and avoid the lease. This poses
absolutely that the lease of the Infant is only voidable
for the general rule says that when the lease is strict-
ly void, the defendant may take advantage of it.
It is then clear, or principle that a lease of an
Infant reserving rent or not, is only voidable.
It is said again that a power to execute by
an Infant's Lease because a parent cannot never
be a beneficiary because a substantial benefit to Infant.
Now there is no necessity that this should be considered
as void, any more than a lease in single bill.
I do not know that the reason given viz., that a Penalty
can never be for the Infant's benefit; he must be
declared to be a good one. The 13th day in England
a power would be considered as void. Then
an Roman notion contrary to this idea.
Parent and Child

The principle however, according to equitable cases, I should consider it as unalienable.

At common law, an infant cannot plead non est factum. In a Bond, it gives infancy an evidence under it, but must plead it specially in the same court; may do this; and it is general rule that whatever makes an instrument absolutely void, may be given in Evidence under the general issue. To this rule there are some exceptions, viz. Therefore it has no very great weight in the determination of this point.

But what furnishes a strong argument against the idea that a formal Bond from an infant is strictly void, is this, that an infant having made a request in his will for the payment of his debts, leaves a will which cannot be paid on the ground that it is satisfied by the request - but a strictly void bond never can be satisfied. In the opinion of the learned tribunals, this bond is considered void only as voidable. I must leave this question exactly as I found it, there is no necessity for stating

considered void. Yet on the ground of its having been so long acquired in, I believe in England it would be considered as void.
Parent and Child

Here are the three cases adduced in support of the latter branch of the rule. They have been considered;  
I think it appears that it is at least doubtful.  
If in its nature a very vague one. It is more  
properly a qualification of another rule. If  
indeed it is a general rule it is truly a novel one that  
includes only one case.

Then is however another rule which when  
taken subject to a single objection seems to be  
the true one. The former part of the foregoing rule  
relates chiefly to purchase. It is not contradicted by  
authority or principle. It is universally considered  
as true. The latter branch which we are now to  
consider relates chiefly to those contracts which  
create a duty in the Infant, or convey an interest  
from him; such as Sales, Conveyances, Debt, Leases  
& obligations entered into by him conveying away  
his interest. I give you the true rule of discretion  
invasion. It is this: all gifts, grants, sales, deeds  
or obligations made by a infant which do not  
take effect by manual delivery are void. Those  
on the other hand which do take effect by manual  
delivery are only avoided. This rule was laid  
down substantially by Littleton.

We will examine this by a few examples.
One infant makes a covenant, this is confessedly voidable not void. But what benefit or semblance of benefit is there to the infant according to the general rule mentioned before? There can be no apparent benefit in conveying an infant in trust. The presumption is that it is injurious to him. We cannot see his event for centuries, but must wait till he arrives at full age, then a firm and decided action pleased. But the law may act before his age. Why then is this voidable? Because the instant power by delivery, he shall not immediately consider his contract a transaction after he has done this solemn act.

One infant sells a horse. This contract is merely invalid. The delivery is the criterion. It is a solemn act of transfer, which shall not lie so considerate as to reverse the other parties;

for if the sale was void, he might immediately consider the buyer a tortfeasor. On the other hand, if the infant makes an equating agreement to sell the horse, but does not deliver him, this contract is void. If the buyer takes him without any delivering he is a trespasser.
Parent & Child

But if the case arises here, the same boat is to be taken.

These words, "which take effect by delivery," are the
rule, an important as they respect the delivery of a
Deed. They are essential when applied to fees, as
when applied to sales. Then is the difference
between Deeds which convey an interest, and those
which delegate a power. The former are generally
voidable, because they pass by delivery; the latter
generally void, because they do not pass. They
enable another to carry it into effect.

according to this rule, gifts, grants, leases, etc.,
are only voidable as they pass by delivery —

A Power of Attorney made by an Infant is void,
except one, made to accept. seizure or interest,
because it does not convey an interest, it does not
take effect by delivery —

Pawell denies this distinction between deeds.
He makes argument on the point, but only says,
"the distinction is not well founded."

From all that has been said, it follows, that all
Deeds by an Infant are regularly voidable, that
Leases, Conveyances, Deeds, it are only voidable when they
Parent & Child

take effect by delivery - Leurs, when they do
not to take effect - In this point the opinions
are contradictory they cannot be all reconciled
with very considerable difficulty with any general rule
that has been laid down.

The first rule is to be considered as a qualification
of the one laid down or above. Lord
 Mansfield held this opinion.

The general rule then is that those con-
tracts which take effect by delivery are void only,
but it is to be connected with the following
rule, that when the contract is such a way
detrimental that the interest of the infant cannot
be preserved by taking this distinction, the Court
are to consider it as void even the delivery by
delivery. This is well exemplified in case reported by Eth.

A young woman made a contract of marriage
with a Baron to take two owners of her land if it took
wife from her head. Here the Court held that
the contract was void, she recovered in an action
of assent. The rule here was
properly qualified. For her privilege could in no
other way be preserved.
Parent & Child.

But it is not so in case of a penal bond, for here it can be avoided.

Contracts by an infant are in general only avoidable, as a promissory note, single bill, bill of exchange &c.

And it has been decided that a bond to submit to arbitration by an infant was only avoidable & not void.

Here are then very few contracts of infants which are strictly void. The indeterminate clauses mentioned, which must be very small, are such as a power of attorney. The case mentioned from 3rd Roble—

If a contract is void, third persons on the adverse party may take advantage of it, but if it is merely avoidable, only the party for whose benefit it is made & his representatives can take advantage of it.

As if an infant sells a horse, & delivers it, no one can treat it otherwise than as a binding contract, but the infant or his representatives. But if he had not delivered it, the adverse party, Managers may consider it void. Execution 19th
Parent and Child

Lecture 6th

I observed in the last lecture that voidable contracts could be taken advantage of only by the party himself or his representatives; according to this principle it is a rule that a transfer of conveyance of real estate is made by an infant only by himself during his lifetime, or by privies in blood, i.e., his heirs. They can take advantage of it. The privies in blood, as remainder men and remainder women, cannot take advantage of it to come into possession. They hold an aliquot part with the tenant in fee.

The representation of an infant are those spoken of as the representatives of his infancy.

Another distinction between voidable and voidable contracts is that the former cannot be confirmed, but the latter can be either by express or implied confirmation, as well if Sover as Lessor. In general any act after full age evincing an intention to waive the privilege of infancy amounts to an implied confirmation.
Parent and Child

As if a lease is made by an infant, now if he continues in possession after full age he thus ratifies his contract; it is liable for the whole rent that has accrued during his minority and after it, for the contract takes effect at maturity.

This case of lease is only an example of an implied confirmation. A voice contract it has been observed cannot be confirmed as if an infant takes a new lease of the same land on the same terms, not increasing the rent, or diminishing the term; he can never ratify or confirm it, for it is absolutely void.

Thus far of the distinctions between void and avoidable contracts. We come now to speak of the term and manner, in which an infant may avoid his avoidable contracts. If an infant has conveyed his estate by fine or Common recovery, he may avoid this conveyance, by a writ of Error during his infancy, but not after it. The reason is, that during his minority his age is determinable by construction; there is nothing against the record. But after he attains full age his age is to be determined by as many things shall be averred which is contrary to the record.
Parent and Child

This is the rule as to judicial conveyances.

But there is a material difference between this
 Convention by matter in pairs is executed
 own act. This it has been said he may avoid
 Inst. 11, 243, 250. either before or after full age. But this seems
 not to be shown for it is now settled that he cannot
 avoid it until of full age; because in avoidance
 before this period it is avoidable as the first con-
 veyance, therefore he might avoid the conveyance.

It follows from this that if an infant before
 full age, makes a re-entry to avoid the conveyance
 a stranger cannot enter upon the land either
 subject of the infant, either by virtue of a deed-
 ment made by the infant, or by virtue of an
 execution issued upon it, in lieu of revenue. The
 reason is, the stranger has no right only upon the
 avoidable act of re-entry; the feejee's title is the
 older one. The rule is the same as to other convey-
 ances by matter in pairs, as Lease and release.

So that the meaning of Boltons' rule must be that
 it is binding only during Infancy. It is not
 necessary to observe that there are some exempt cases
 in Equity on this subject that fall under not all the Law.
Marriage settlement agreements made by infants without consent of parents or guardians are for the most part binding in Equity. For this reason, because they are only necessary to the primary or principal contract, which is the marriage — by agreement, is meant an agreement to settle property upon one or both, or Issue. This is not allowed at Common law, for it is very little known in this Country, because the property of the ancestors goes to the children generally. But in England, when the Estate is their to the whole, it is necessary that these marriage settlement agreements should be made, in order to provide for the younger children. The reason why Chancery can make these binding, is because this bond is the guardian of all the infants in the kingdom. The is their a bond of royal prerogation dedicated to the Chancellor of Chancery. Consequently Courts of Law cannot restrain his power in this respect. He is the paramount Guardian of all infants. By virtue of this power, said contracts are enforced in Chancery. Now it is such contracts made by infants are to be enforced by Chancery is not stated. There is then no general rule on the subject. So it is said to be one, that the bond of Chancery will generally enforce petitions. Their power is discretionary. That is, legal discretion.
This is to be found in former precedents. It may be that the
interest of a female infant in a money litigation
shall be bound by a marriage settlement agreement
before marriage

It is well settled that a female infant may
accrue to her as to her own, by accepting under such
an agreement, a settlement by way of jointure.
A jointure is a substitute for Dowry, and it has
been held that she is bound by it, thus it consists
of personal property; which is contrary to the
common law principle that it must consist of real estate — It is said
in some of the books, doubt, if a male infant
can bind his real estate, by such a marriage
settlement. I see no difference between male and
female infants as to their power in this respect.
If it is good in one, it is, or should be so in the other.

Besides, it is settled that a male infant can
live with consent of Parent (which is a falsehood) having
been settled for uses, lands, tenures,

So that Fortescue is in error in this
Real Estate...
Parent and Child

It has been actually by Lord Mansfield, that it is

a

female infant, in her, covenant a marriage

with consent of Guardian, in consideration of

marriage to convey the estate over to the husband

Chancery will confit the performance of the con-

tract. So I conceive a male infant may—

Lord Mansfield, in speaking of this case, says,

'He is going a great way yet.' He says, there

are cases where Chancery will do it when the

settlement made by the husband is an adequate

one to the Law. Again, it is said by

Lord Thurlow, that, the real estate of the female

infant is not bound by a contract to convey it

to the husband, unless after the death of the

husband, she takes possession of the settlement

and he says, the Court, never ought to go into

the inquiry whether the marriage settlement

is an adequate one, except for the real

estate. This is entirely opposed to the opinion

of Lord Mansfield. I when the whole, I

doubt whether I will blame him unless the

afterward ratifies it.
One point however is clear, that a contract made by a female infant, to convey her real estate, will not bind her, unless it be made before marriage takes place, because by marriage she acquires an additional incapacity, to be supposed to be under coercion.

But the general question whether a male infant may bind his real estate by such an agreement as is not settled. This is settled, that if in covenant with an adult, to convey his estate to use, in contemplation of marriage, he is bound by it; this only reserving his contingent right of dower.

And according to the current of authorities, it seems also settled, that no marriage settlement made by an infant, male or female, to settle real estate, will be enforced in chancery, unless it is fair and reasonable, and where an adequate consideration is given. From all the investigation I have been able to give this subject, I find no set of principles laid down which govern this case.
Parent and Child

Another rule, peculiar to the Law of Equity, is that if an infant capable of making a will of personal property, does beguile it, and property for the payment of his debt his executor will be compelled to pay them, these debts are those for which by law he is not bound to pay. This is a rule founded in strict rein.

By Law, he may make a will of personal property. By Chancery, he can make a bequest now in h Unsure as to his power, can he not order his Executor to pay this bequest to the borrower? Clearly no. Why then cannot he order his Executor to pay his debts out of his personal property? It is not a satisfaction of the debt, but the creditor may receive as a Legatee. The contract is only evidence of what sum shall be paid.

I have before showed that infants contract may be ratified at Law at the first age. In Chancery a contract made by another with or without infant consent may be ratified by the infant after full age by virtue of certain instructions.

As where land belonging to these children was leased by their mother during their infancy for 14 years. They continued to receive the rent, and some time after full age, it was brought to this Court in Chancery to avoid the lease. But it was dismissed. That fact shows,
Parent and Child

Lecture 7th. Oct. 6th. 1849

What power an infant may exercise.

"Power" as used in Law, is an authority confided by one person upon another in relation to some right or interest of the person to whom the power is given.

Or such power may be by the public to an individual.

But with regard to Infants, it is a general rule, that they cannot execute general powers over real estate. This general is meant a discretionary power - the reason plainly is, that in Law, no discretion. But as neither a special power, that is, when the manner of doing it is prescribed, it may be explicitly done.

Infants, because no discretion is necessary, or his interest in any may be affected, nor is there any danger of injuring the interest of any other. He acts as a mere instrument - as a mere mechanical act that he has to perform. The judgment, therefore, of fumes, a mere contract, such as this act, the authority must, as a human being, a particular instrument.

But an Infant cannot execute a discretionary power over his inheritance; because how can it be to his disadvantage? It is therefore no.
Thus suppose A. devises an estate to an infant for life, & gives him power to make an estate for three lives. Now this power he cannot execute because he might destroy his own interest.

Others say that Lord Hardwicke gave it as his opinion, that there is no precedent, either in Law or in Equity, that a person can real estate may be executed by an infant. By this is, it can be meant nothing more than that there is no instance of a general authority to, or to it is said, as reported by Verey, whose opinion is to the contrary. The idea seems that an infant may execute a discretionary power over personal estate even the his own interest is affected by it. Moreover, it is not enough to bargain it by will; the reason is, that he has then acquired sufficient discretion in the age of the Law, to have the charge of his personal property. There is difference between real & personal estate. Where an infant being tenant for life, with power to make a disposition, in pursuance of this power, covenant to make a settlement upon his wife, this covenant was enforced in Equity. In this case the infant was not affected by it, although the power is over real estate.
Parent and Child

for the jointure is not to take effect until after his death. She ceases to be the estate ceases, because his ionmouth for life.

The result of all these rules and distinctions is, 1st. That an Infant not interested in the execution of a power, may execute it, so as to vest the principal to the extent of its provision it does not amount to a discretionary power over real estate — and 2. The Legatee interested, he may execute a general or discretionary power over personal estate, provided he is of sufficient age to bequeath personal property by will.

There are certain offices which an Infant may hold; certain distinctions respecting them require to be noticed.

It is a general rule that an Infant may hold a ministerial office, requiring only skill and diligence in the execution of its duties; but he can hold no office requiring discretion. Hence he can never hold a judicial office. He may be a Serjeant of the Law, a Notary public, and never a Judge of a court of record or nisi prius.

The reason why he may hold a ministerial office is said to be, because if he cannot execute it himself his deputy may. These offices are numbered in...
Parent and Child

The book does not tell us how the Deputy is appointed. It surely is cannot appoint him. Suppose he is appointed by the Guardian or by the Chancellor. Suppose him an office is given to others. Alice V. leaves a son, 3 years old. The son is may hold it; after he cannot execute it; the Deputy may. The only difficulty is, how shall the Deputy be appointed. He certainly must derive his authority from the Deputy. He must be appointed as by the Chancellor or the Guardian.

The true criterion then as it respects these offices which an Deputy may have which he may not hold in this. If the office can be executed by a Deputy, he may hold it. If it cannot, the Deputy cannot hold it. And the office is a ministerial one.

3 Moore 126 note. But an Deputy cannot be an attorney for want of discretion, the law will not allow to take the case.

3 Moore 126 note. How can an Deputy in any case be a Lawyer for two reasons; first, because the law will not discretion, secondly, because it is an act, particularly an act may be at any age at 17 exercise it. An executorship is an office. Suppose that one of twelve years is appointed. His Deputy may execute it, appointed by the Chancellor as ordinary of the case may be. He in an "Advisory" does not give more advice, even in testamentary annoy. He acts for in behalf of the Deputy.
Parent and Child

So far as an Inf. may hold & execute his office, & also hold & execute it, his privilege is destroyed; or in other words an Inf. acting as an officer is bound by his official act; because it would be in the highest degree unjust were he not the act under the authority of law and under colour of it, for an injury the law merely will make him responsible for it; hence, if an Inf. being a bailee suffer an escape, he is responsible.

New law an Inf. in affected by the non-performance of conditions annexed to his office or estate.

These conditions are of two sort, express & implied. It is a general rule that Inf. are bound by express condition as much as adults, tho' it is not universally true. Hence if an Inf. holds an estate to which an express condition is annexed imposing a forfeit for the non-performance of a certain thing, he forfeits the estate by a non-performance of the condition as much as if he were an adult.

This rule indeed is founded on the idea that he who grants an estate to another has a right to order that estate to come back to him unless the condition is performed. The estate goes out of his hands on the express condition that such things be or be not done; but there is an exception in the case of an Inf. where the condition is to be performed on failure a penalty is forfeited. Here the Inf. is not bound by this penalty.
Parent & Child

While nothing is perfect but the estate he is then bound
But where something collateral is perfected the time
is not limited by it, because this might be made use
of for the purpose of retaining the life to an indefinite
extent; it consequently this privilege given by law would
be endangered.

As to implied conditions. They may
be created either at common law or by Stat.
according to Sec. 209. Implied conditions at
common law are either founded on skill and confidence
or not so founded, i.e., they are founded on a
presumption of skill or fidelity, or upon some
consideration different from that.

By implied conditions at common law, where
skill and fidelity in the person to be bound affects
any bound as well as their.

It is a condition annexed by common law to
each office that the holder thereof conduct skilfully
and faithfully; if they are not, the bond being thus
rendered unfaithful or unskillfully, or forfeited for
failure by virtue of the condition implies
involuntary.

But by such conditions implied by
common law as are not founded upon any
supposed skill or fidelity, or growing out of
any special confidence in the person to whom
bound.
Now it is a rule of the Common Law, that if a lease for life alienes his estate in free, he forfeits his life estate—this is a branch of the feudal system—somewhat arbitrary—these reasons for its non-existence. If an heir being such a lease alienes in free, he does not forfeit his estate: an adult would.

As to conditions, implied by Stat. Law, an distinction is taken which I do not well understand.

The rule is this—where the Stat. imposing the condition gives a recovery at the suit for the breach or non-performance of a condition, theft is bound by the imposed condition, whereas it only gives an entry.

Thus if an heir, being a lease for life or years, commits waste, he forfeits his estate, because the Stat. of Gloucester gives a recovery at time.

But where the Stat. Law gives only an entry for the non-performance or breach of the conditions, no recovery, the theft is not bound by the condition—as if an heir alienes in mortmain, he does not forfeit his estate: an adult would.

I can see no very clear reason for this distinction. Perhaps it is this—Where
Parent & Child

The Statute gives a recovery of the
plight. It expressly takes away the privilege of
the four-year rule of law that the privilege
of an infant shall not be taken away by
more implication.

It is a good rule that infants are
swept by the Statute of Limitations unless their rights
are saved by a provision. Statute of Limitations,
are in the nature of conditions annexed
to a right. Now in this case the right
is swept because there is an express condi-
tion annulled by that which takes away
the privilege, unless completed. For this
reason the Statute generally contains a clause
in favor of infants. Perhaps it is
the case in all the Statutes of Limitations
that have been passed.

Yet it is a rule that if an infant
trustee for an infant does not see
when the infant contracts or enforces
his rights within the time prescribed
by the Statute of Limitations, he is saved by the
statute in Equity, and this statute in Equity that Law.
Parent & Child

An act on a note of hand in con-
must be brought within 12 years. Now a
note is given to it in trust for an off-
under the trustee being the act within 12/2
a recovery upon it is forever gone— This rule
relates to Dr. (Rev.) or Trustees who have
a right to sue in their own names. It does
not extend to such cases where the action is to
be had by the Def. in his own name.
Thus suppose a Legacy is given to an Def.
The act to recover this must be brought in his
own name that does not run of Time.
Parent & Child

Lecture 8th

Thus far we have spoken of a host right, an Infant may acquire a host duty, he has to perform – we come now to speak of the means of asserting those rights, enforcing those duties: first, how Infants are to sue in the sued.

When an action is to be brought by an Infant, he must always appear by his Guardian, or next friend. You can never appear by attorney because he cannot appoint one. He cannot execute a power of attorney.

If then an Infant Plaintiff appears with his Guardian or next friend, the Defendant may plead to his disability. It is necessary then for the laws in this unit that he sue by his Guardian or next friend.

At common law indeed, an Infant could sue in no other way than by Guardian. No provision was made for his appearing by next friend. But by the Statutes Westminster, 172, Infants were allowed to sue by next friend in a court of common law in certain particular cases of necessity. The right then of appearing by next friend was derived from the provisions of those statutes.
Parent & Child

These cases of necessity, in which the two
statutes allow the Infant to appear by next friend
may be reduced to four:

1° When he sue his

guardian—Here clearly there is necessity—2° When the
suit is against a stranger, the guardian will not
appear himself, but consent to the action, here he
may sue by next friend. If the Guardian does not
consent to the bringing the suit, it cannot be brought.

3° When he has no Guardian—Here unless
he may sue otherwise than by guardian, his
rights having in justice this wrong must be enforced.
4° Where the he has a guardian, yet he isagina
from him, he cannot appear in his behalf. Infant
may sue by next friend: as when Guardian is in Eng-
land & Infant in the U. States—But according
to some old opinions, the Infant under the equity
of the statutes mentioned, may appear by next friend
in any case. If this were true, the right of the

guardian over the Infant's suit, would be entirely
destroyed. The Guardian has a control over the
person & property of the Infant, but the Infant
might sue by next friend in any case, his
property might be wholly squandered away—
If an action is to be brought by husband and wife, the being an infant and not appear by guardian for the husband has a right to appoint an attorney for himself & wife both. In fact, the husband is the guardian for the wife for most purposes. So that it has ever been said that the guardianship of the wife ceases upon marriage. This is not wholly true.

Then an infant, by his guardian or next friend, either of them who appears, is answerable for the costs immediately, he is compelled to give security for them. The reason for this is, the guardian or next friend may bring very improper suits to the detriment of the infant's estate, if they were not compelled to pay the costs. Now this rule means that guardian or next friend are liable in the first instance, but not on the execution against the Infant for if the guardian has conducted honestly & fairly, the court will allow him a reimbursement out of the estate of the ward. According to some opinions, the Infant is liable in the first instance if the defendant, of his election may proceed against him or guardian. This is now denied to be law. And the true rule is, laid down by Lord Chancellor King, that there is no instance in law or equity in which an infant Plaintiff has been...
By this, the Plaintiff was to find pledges to be answered in case he failed in his suit: no false clamour: now there were nothing but costs. And an infant, Plaintiff never was obliged to pay pledge, who should be answerable: consequently, he never in such cases was obliged to pay costs. He does not bring the suit, to the guardian and, or the infant cannot contract.

An infant is a ward in clearly liable for costs, either in contract or tort, operation pacts against him: there is no reason for substituting another in his place. Indeed no other can be. The guardian does not become the sent to be brought. The act is not tortious. Therefore he may not be accountable for costs.

According to the English practice, both guardian and next friend must be admitted to them for him by the court, or it must be admitted by counsel out of Chancery, see out for that purpose. The reasons is to prevent the bringing in improper suits by the Guardian. The rule does not mean that the Guardian cannot sue, or bring an action; only means that he cannot appear in the suit, unless regularly admitted in the way above mentioned.
In Connecticut the practice is different. The Court never inquires of course into the qualifications of the Guardian, whether voluntarily chosen a right or not. If complaint is made that the Guardian cannot safely take care of the management of the estate, the Court would inquire what care of the infant interest. It is not sufficient to say that the mere finding alone shall always be admitted, nor that both shall be made by the Guardian. A finding of some judge is void by the Court, to be sufficient in this it is not sufficient to say that any person may sue for the infant even without his consent, as to those things to be done in discretion, which the infant may be discerned by the Court, that it does not at its peril to the infant and health respecting the costs.

If an infant male or female, in an action brought by their joint or any one of them, the infant may appear by attorney or attorneys for the infant, as their joint or one or other, the Court may appoint for himself the attorney or attorneys. In the infant's name and interest, it being a general principle, that where two have a joint right, the act of one rejects with it, when bruised the other's interest is the infant's interest. The infant's concern for them is their joint right, it may be they are with co-executors. In being a co-executor they cannot do that they are such, but when they are proud of the infant's interest, it has been said that it is an infant. An executor may allow the infants by the attorney the infant of administrator. I cannot see one difference. It is not law. Lord I will be done.
Lecture 9th 27th December 1811

How an Infant may be sued

Here it is to be observed that an Infant Defendant must always appear by Guardian, I never by next friend. Coke 255, 256. By the Common Law no Infant could be sued and appears by next friend. The Statute of Westminster 1

Infant, Plaintiff; now where he is sued his pleadings must be signed by the Guardian; and it seems to be agreed that in an action against husband or wife the Infant being an Infant the must appear by Guardian and not by Attorney, for the distinction; 2

288. 258-258. 258. The exception being an Infant from Court, when

Plaintiff, when Defendant

If the Infant has no guardian, the Court will appoint one; the matter. This guardian is called a guardian ad litem. If he has a guardian, he must be called, though he does not appear, the Court may appoint another. In the case, "This doubtful - the I think the safest way of proceeding - but clearly if the Infant has a guardian who, out of the reach of process, or has misbehaved himself, the Court may then appoint another. A Court cannot of strict right remove a guardian who brings a particular suit of appointment. For if they could in any case.
Parent and Child

Almost a guardian as a lesser. They might receive the true one appointed by Law, it would assume a power never delegated to them.

It is to be remembered that the power to appoint a Guardian & Alien is incidental to every Court before which an Infant may sue. As an Infant Defendant is to appear regularly by guardian, the guardian ought to be summoned, notified to appear & defend for the Infant. But the process against the Infant Defendant, for after process returns he may be notified.

If an Infant Defendant appears by Attorney & judgment goes against him, it may be recovered by a writ of execution brought before the same Court who rendered the judgment, it is called a writ of execution "ex eodem actio." In England it must always be brought before the same Court, it is not in fact but in the pleading.

In Connecticut, if an Infant being sued does not appear at all & judgment goes against him by default. Still it is erroneous for the Guardian was not summoned. If notified it is sufficient. For the Court have done all they could do. They cannot compel the Guardians to appear. This will hardly apply in England, for judgment is more summary than either. There is no actual, constructive or petition appearance.
If an infant being sued with others, the court, after hearing a plea, either withdraws the suit against them all, or, according to the English practice, it is in the concurrence of all. This in effect is an infant. If an adult can sue together in an action of trespass, a judgment against both, I entertain damages. This judgment is to be reversed in toto. But in this case if the jury find for the infant the infant shall recover, and pay damages severally, i.e., so much against one, so much against the other. It would be erroneous only as it regarded that of the infant. Repetition might come against the adult. For here the case is the same as if there had been two distinct judgments: shown from their intention. To preserve束 to conduct it has been decided that when infant was sued as with other, as frequently at the infant appears by attorney.
The jury assess damages against all judges. 

In cases where an infant is jointly injured, the infant still must recover from the adult, although damages may be recovered from the adult. This principle seems reasonable.

The adult might have been hurt along with the infant, so the damages recovered would be equal to the rule that two are jointly injured.

If two are jointly injured, the act of one is the act of the other.

As the Plaintiffs said, it's election to sue one or both. The adult cannot complain of the judgment against the infant, the adult might have recovered it all out of the debt who would not have been able to recover a contribution from the infant.

Therefore, there is no contribution. This sequence is according to the Common Law rule, and I doubt the force of the law.

If an infant or an adult joins in causing injury, it may be recovered as a matter of course and as such an infant during his minority, but if it remains good against the adult, it is not.

Their interests are distinct. If property, this law is a species of Common appearance. It is in the nature of a deed of accord, therefore a contract, but it is a rule of law that if an infant or adult joins in a contract, which is not obligatory upon the infant, the adult is bound also. The infant is not.
How the Law regards Infants in utero

An unborn infant as to many respects is considered by law as an one, which they were not formerly. The law in modern times has undergone considerable change. The killing an unborn infant is not homicide, but it is a great misprision. For as to this it is not considered in ease strictly. The law as it respects this is not formerly ever. By misprision is meant any high offense, under the degree of felony.

But if an unborn infant having received a mortal wound or injury, is born alive, within a year or day, dies in consequence of the wound or injury, it is homicide. The term here limits itself to all cases of homicide whatever. It may be murder 1 in the books, it is said it is murder, tho' this is meant only that it may be. The true rule is, it is homicide, but if the wound was given with malice aforethought it is murder, if attended with great provocation so as to reduce it to manslaughter it is either that offense or to it may be excusable or justifiable homicide.

It has been laid down that it cannot be murder but this is now decided to be so.
Parent and Child

An unborn Infant is in Case, for the purpose of inheriting. He may inherit his ancestor's Estate. But the intervening time between the death of the ancestor and the birth of the Infant, the heir presumptive succeeds to the inheritance.

Here, the will be an heir of course.

As the Law now is, he may take by devise; formerly it was not so. Within two centuries past there have been some very subtle distinctions between

Devices present de presente et those heir remote de future. To the former of which, it was said, the unborn Infant could not be a devisee, to the latter he could. But these distinctions I conceive to be now entirely of obsolete. This is always an

Ecclesiastical Device, the devisee not being contrary to the rules of Law should be followed. The unborn Infant then may be a devisee of real, or a

Legatee of personal estate.

In the case of an unborn Infant who is

a Devisee, between the time of the death of the Devisee and the birth of the Infant; the property goes to the heir presumptive.

An unborn Infant may take a distribution

heirs under the statute of distributions.
Parent and Child.

Under a term created for the purpose of giving portion to each child, as a share where living at the time of his death, a posthumous child shall take equally with the others. If any person wishes to oblige his heirs at law to provide for his other children a suitable support, he will leave among his property to be 10s. 10 for 20 years in trust, for the purpose of creating these portions; then heir at law in order to obtain this property, must raise these portions.

So also if a bond is given to a person conditional, that he shall pay a certain sum to each child as he should have living, at his death. A posthumous child will take unequal to the other children.

An unborn infant, as it respects waste, is considered in exec.; for an injunction to stay waste may be granted in his favour, if the Bill for that purpose may be brought in Chancery by any person filling himself next friend.

It is also settled that under the Statute Can. 2 an unborn infant may have a testamentary guardian appointed for him, which guardianship shall affect immediately on his birth. It also provides that a father may appoint guardians for his children.
Parent & Child

An unborn Infant may be appointed an Executor at any age, but cannot act as such, until 14 - An Administrator doesn't ministrate must be appointed if a Testator appoints an unborn Infant his executor, two are born, they are Co-executors, for neither can claim priority - So if one advises an estate in bequest -

a legacy to the unborn child of 2 + two are born, they both take jointly -

Lecture 10th

Relative rights & duties of Parents & Children -

This leads to the consideration of three children that are legitimate + three that are illegitimate; -

List of Legitimate Children - a legitimate child, is defined to be one who is born in lawful wedlock, or within a consequent time afterwards. The amount of this definition is, that a legitimate child is one begotten or born during lawful wedlock. By this definition it is not meant every child born who is begotten during wedlock or a consequent time afterwards, is of course legitimate, but that no one can be legitimate unless born under these circumstances.
If so born, he is prima facie legitimate, that is, the presumption of law is vested in his favour, if the issue proceeds from the opposite party.

An illegitimate child is defined to be one begotten out of wedlock.

This I think incorrect; for if a child is begotten before the legal marriage, it is born after the death of the father, then having been a previous intermarriage, the child is legitimate — yes, it is within the rule; it should define an illegitimate child to be one who is begotten out of wedlock, and born within the same time afterwards.

A child born under the first-mentioned circumstances is presumed to be legitimate and formerly no proof except what rendered legitimacy impossible was admitted: this could be done only two ways, 1st by proving want of access, 2d by showing the husband's discontent. No proof of these being strong presumption of illegitimacy was permitted. As the rule formerly stood no proof of the non-access of the husband was permitted than his absence extra quator manae,
from the whole time of the conception to
the time of the birth. If, however, the husband
was absent for any length of time beyond a
year, and he had a child any time after his
return, the law was the same as it would be
legitimate, no proof to the contrary could be
admitted. So if it could be proved that the
husband had been confined within the
realm for 20 years, he had seen no other
person but his wife, yet the child would be
legitimate—no proof to the contrary could
be admitted.

As to the mode of proving impotency, wise
authorities in the

These rules however have been very much
relaxed, indeed they may be considered abolish-

The first notice as to may be found in the
way by absence beyond six months. The jury, who
are the judges of the fact, may now give access
to whether the husband has been in the time in
the realm—real now access to all that is necessary.

Impotency may be proved in this way
than formerly—the cases cited in the
margin point out the former presentation.
Parent and Child

The ancient rules are not only relaxed in this respect, but it is now settled that other evidence, than those of non-access in imposture may be admitted to prove the illegitimacy of a child, although born in lawful wedlock - as if the mother has cohabited with a stranger, if the child is alleged to be illegitimate, if it has grown up the name of the stranger to which there does not go a fact of impotency, but of the improbability of the legitimacy: The fact is still to be proved in the same manner as any other fact.

The issue of a marriage which is null, ab initio, is of course illegitimate. In Blackstone, under the head of husband and wife, you will find what marriage are null void. The reason is there is no relation of husband and wife. This connexion is meretricious & consequently their issue illegitimate.

So when a total divorce has been granted, for causes existing before the marriage, then in such cases the issue illegitimate, from which an issue so by civil instruments, following canonical expedients, In the former a divorce is not necessary to prove the issue illegitimate, with latter it is
Civil disabilities under a marriage void, canonical only voidable. But it is to be observed that the legality of a marriage not absolutely wise can never be taken in question ex certa within the lives of either of the parties. This is the case with those marriages which are made void by reason of some canonical impediment; the reason is that divorced or annulled marriages are unique in the spiritual courts for the good of the parties which cannot be done when one of them is dead. This rule is confined to those marriages which are unlawful by reason of some canonical impediment that is, when divorces are necessary to prove the illegitimacy which are necessary only in cases of canonical impediments for civil disabilities, legitimacy may be denied at any time.

If a child is begotten born after a divorce "a mensa et thoro" the presumption is that it is illegitimate because the law presumes the parties to have conformed to the divorce which was to live separate & which prohibits their living together & cohabiting again.

But while there is a voluntary separation by agreement of the parties to live separate, on
article, justification of a child's birth, it is presumed to be legitimate, because the law
does not prohibit it. Consequently, in the case where the child is born out of
wedlock, the parties may be declared illegitimate.

When the question of legitimacy depends upon the fact that the child was
born out of wedlock, the wife is not a competent witness to prove non-concubinage. It is, says Lord Mansfield,
against the policy of the law, because it might give offence to the husband, & it is also contrary
to the law. Yet she is a good witness to prove
the non-concubinage, if she would seem equally
certain, or if she may be the only person acquainted
with the fact.

The parties are both competent
witnesses, to prove the time of the child's birth,
if the question of legitimacy may often depend
upon that fact. So they are both competent
witnesses to prove the time of fact of marriage.

So also the declaration of either party, out
of court, respecting the birth of the child before mar-
riage, may be proved after their deaths.
Parent and Child

When questions of birth, death, marriage, and legitimacy arise, evidence is generally admitted. So also, tradition, common reputation, family registers, inquisitions on tomb stones, &c., may be admitted. So also, if to a suit in Chancery, husband or wife is a suit against third persons, having in any way stated the fact, that the child was born before marriage, or any other fact contradicting its illegitimacy, it is good evidence of illegitimacy after the death of the parent.

By the Roman Law and Canon Law, a child born before marriage is legitimated by the intermarriage of the parents. But by the common law, that intermarriage of the parents intermarriage after the birth of the child, is illegitimate. But if they intermarry any time before the birth, the fact in hand, it is legitimate.

And it is a rule that all children born of a widow so long after the husband's death, that by the usual course of generation they cannot be his, they are illegitimate. But this usual time is, in order to determine prima facie the legitimacy or illegitimacy of a child, is not precisely ascertainable. This question for the medical faculty.
rather than for lawyers; there are however, some rules laid down. It seems to be agreed, that the usual time is 9 lunar months; this time may be shortened or lengthened by circumstances which may be given in evidence.

The rule is, if the child is born within the usual time of gestation, it is prima facie legitimate. If born after the expiration of the usual time it is prima facie uncertain of legitimacy.

It is said, if a woman marries immediately after the death of her husband, to have a child within such a time, that it may possibly be the child of either, when it arrives at years of discretion, she may choose which she pleases for his father.

And if there is satisfactory evidence to show to which she belongs that would determine who I descend under what circumstances children are reared illegitimate. This rule holds only between male heirs of legitimate issue. It is not the case of bastardizing issue by divorce or by breaking a valid marriage. He is a bastard because he was not born in marriage. The rule is this: if the eldest son, i.e., the illegitimate, enters upon his father's estate before his issue, his issue shall take to the exclusion of the other. But this must have
Lesson 11

As to the rights, incapacities of illegitimates.

An illegitimate can have no right

than he acquires, because being nullius filius or

nullius populi, he is of kin to nobody but

his own issue, as it respects inheritance

therefore can inherit nothing.

But this maxim, nullius filius does not

hold to all purposes, for it does not hold,

in the case of marriage within the legitimate

degree. An illegitimate child cannot marry

his sister, etc. So does the maxim

extend to cases where the law recognizes

the consent of father & mother to a marriage.

Then the law recognizes the relation of parent

1 child, & I conceive the consent of the father of

an illegitimate minor child is necessary to his

marriage, when he is known by being compelled to

father.
1 Sc. 107.

Litt. 188

This maxim applies only to cases of inheritance. The foundation of it is the rule of law that he cannot inherit, Litt. 188. because he cannot intend. The maxim is in fact nothing more than that the rule is the foundation of the maxim and not the maxim the foundation of the rule.

This case applies to a derivative settlement. But this is a species of inheritance. It is a right derived by law from parent to children; therefore not against the rule.

1st. 3

297. 458-9.

An illegitimate child has no name by inheritance. He may acquire one by reputed; because he never derives one from his mother the father is unknown. His Christian name is never acquired by derivation, descent, or inheritance. It is a name of baptism.

An illegitimate child may purchase by his own act a name, but he can take nothing by his name unless he has acquired it by reputation.

The maxim as applied to this case, is in precise conformity to the rule as laid down by Butten. He cannot claim by inheritance. So also an illegitimate child, may purchase by the name
Parent and Child

A description of Acts. The son of J. S. if he has gained the reputation of being the son of J. S.

The reason that a bastard child cannot inherit from any person is said to be the uncertainty of the father that he is filius nullius; and this I apprehend cannot be the true reason, for there is no uncertainty of the mother, and he cannot inherit even her estate. So if the putative father afterwards marries the mother, here it plainly appears he thinks there is no uncertainty, yet still the child shall not inherit. It is then a rigid rule, there is a leaning in our courts against the opinion of filius nullius. Is this it? This is the policy of the Law (which is the expression of the rule) prevent bastards in many circumstances from inheriting. As when a mother live, and dies single, the children should inherit her estate. It has been strongly urged to be adopted in our courts, it very probably will be bye the bye. A child of bastard can inherit so where an illegitimate child having acquired by his industry a handsome estate, which he always intended his mother should have.
Parent & Child

I for whom he had the most filial affection, yet neglecting to make his will, it was held that the mother should not inherit it. The Court were so strongly inclined to break the rigid rule that there was only a majority of one in favour of it.

An illegitimate child can take nothing under the description of issue, because issue as generally understood means "heir of body." He cannot therefore be devisee under the description of issue, because he cannot be heir. He can not gain a new name by cultivation or reputation of time, the son of just lost by continuance of time. At the moment of birth or immediately after, he cannot be said to have acquired a name.

If a device to his eldest son, it such child is an illegitimate one, he cannot take. The devise will go to the eldest legitimate son. But if the device be to him, by the name he has acquired by cultivation, he will take. So if the devise be to his son William now in the service of the Duke of Saxeby, and his name was Richard yet he will take. Even, the the father had forgotten, or did not know his name, still as it may be renewed certain who be named, the son shall take the respect.
If a contingent remainder is limited to the eldest son of J. legitimate or illegitimate he having more at that time, if afterwards he have a son that is illegitimate, that son cannot take because when a contingent remainder is limited to a person and in case the remainder man must be able to take at the time when in case which he is not possible, the having acquire no name by representation. But it has been said that precisely such a limitation to the eldest child of a woman, legitimate or illegitimate is good it will take effect because in this case, no continuance of time is necessary for him to acquire the name of his mother. As to this I do not conceive the law is settled. If only continuance of time serves the person in the former case capable to take such a remainder, it would have to be since he devoted in the case of the woman. But this is not the only objection. The limitation is when there is not a contingency the future birth of an illegitimate child as a condition certain time. The law presumes that an unlawful and never will happen only on remote probability. Now it is a rule that a contingent remainder is not good when limited upon remote probability. Blackstone call this a remote probability.
Parent & Child

This subject is considered at large by_rngers.

The laws of the decease. The latter opinion,

however that such a limitation would not be good.

An illegitimate child (as before observed) can have no

heirs except of the own body his own lineal descend-

ants. And the reason is, all other relations and

in this sense common ancestors, but the see are

not the subject of intermarriage. The question

from whom anything is claimed is illegitimate

name, and his issue. Descendants can obtain from

the surnames relations cannot. The illegit-

imate child is the proprietor.

Upon the principle that an illegitimate

child is perfect titular, it is held in England

that the settlement of an illegitimate child is

in the parish in which it is born. The place of one

birth, it is always prima facie, that place settlement

therefore takes the other jurisdiction, when the

parish, i.e. parochial, to be obtained. Why

first to certainly be possession settlement

there can be no derivative one, as he cannot

inhabit anything, the belonging to that which

he was born. Yet if it can be proved that the

mother was personally the settlor of the town

to go into another town in order to live in, for

the purpose of evict the offence of maintaining

her, they would be liable, the stir composition.

The place where the mother has a settlement

however to regularly the place of the child.
Parent and Child

So that where an illegitimate child lives during the first year of his infancy with his mother for nurture, till his place of settlement is different, the parish in which she was settled must support the child during his nurture. This must mean however that she has gained no settlement there at the time of the birth. For if the mother, the legally settled in the parish of A, yet is resident hence later in the parish of B, it is deliverance, the child's settlement is in B — yet if she goes into another to beg, mistaken at as a vagrant. It is deliverance of a child the child's settlement is that of the mother. Because the law will not allow her to gain a settlement for her child by her own doing, or a violation of law.

It has been a matter of some speculation how far the maxim that an illegitimate is multum flexus applies in Brown. I think it applies more precisely the same as in England, except in the case of settlement. For it has been decided that the mother's settlement is that of the illegitimate. Yet it has also been decided by the S.C. Court that the law that the mother cannot attain the estate of the illegitimate child as being part of her. I have therefore no idea that an illegitimate child can inherit here. Of one married in the United States a man marrying a wife according to the civil laws of a given state, the doctrine of common law, that all illegitimate children are not necessarily free. In the United States and it is settled clearly that marriage is not necessarily free.
Parent & Child

Lecture 12th

The duty of Parents to their illegitimate children.

The duty of these Parents consists chiefly in their inclination to maintain them. The obligation of

1760. 2854

both in England or in every town has been, merely secondary to that of the Parent. Parents then are bound to

support their illegitimate children. For the wise and salutary municipal laws do not regard the

relation of Parents to Children, but to certain duties in a family relation. The duty of maintaining

an offspring is imposed by natural law. As the Parents are the means of bringing human beings

into the world, it is their duty both by the law of nature and the

Law of God, that they should rear these beings and

After the proceedings in England for enforcing

this duty are by two Statutes, 18 Edw. 3 Geo 2

by virtue of these, the father or mother are both the

secure the support of their illegitimate children.

In England, there is no remedy for the mother

against the father, further, in most parts of the

country, neither by the forces of the mother, in England

the civil magistrates when complaint made by

warden officers, make process against the putative

father, and make an order of restitution under which


Parent and Child

order, the father lives himself that he must take
and be burdened with the support of the child.

In some, the father and mother are both liable
for the support of their illegitimate children
as well as generally in this country. The proceedings
are as follows: a complaint is made by the mother
upon oath to a magistrate, who issues a warrant
to apprehend the person whom she charges as
the father of the child; which can almost usually
be done before the judge. The matter is then
brought before the magistrate who makes an
inquiry of the mother, as to the truth of the charge.

The magistrate in his discretion is then to bind
the father over to the next county court in which
the child is born, for trial by indictment; but the
indictment is not meant that he is to bind of course, but only if he
thinks the evidence is sufficient proof of guilt.

The magistrate may only hear over the party, or
discharge him. In only a court of inquiring
he can not proceed. The county court has final
jurisdiction of the cause. In the inquiry before
the magistrate and the county court, the mother
is a constant witness of necessity, as it is
the herself is seeking her reward. Very frequently
she is the only witness. The person accused by
the magistrate in a criminal proceeding is the father.
a further process. The form of the process is 

criminal, the object, civil. If the proceedings 

are not criminal the defendant would avoid it. 

It has been generally supposed that the 

complaint must be made by the mother, to 

be due to her remedy before the child is born. 

There are some strong reasons to support this opinion. 

Kneal v. Brown, and in the Banor 

case of a concealed woman it was decided 

superiorly in the other party. A man of good 

family reputation once had such a charge, when 

at the birth the child was a delinquent! Yet all the 

rest, so strong reasons it appears to be law 

that it is not necessary. The oath of the mother 

is not indeed conclusive. It is, only prima facie 

good & answers the burden of proof upon the 

defendant. Her testimony in this respect is 

like that of all other witnesses. She may be 

impeached. Her testimony invalidated as to 

her character for truth & chastity. But the 

defendant's plea is not good against her oath 

of the woman yourself can take her oath. She then 

is called upon for discovery in the time of travail or 

the hour of danger, this is a great check upon her 

impeachment. A civil suit for the provision of law, 

the time for non of the mother recovery. It is a condition.
Parent and Child

Proceeding, I cannot be acquitted by any other.

But when the town prosecutes for its own security, the requisite is demanded with the utmost care. This has been well settled in Connecticut.

The statute here requires that the continued constant in the accusation. The must not change one before the magistrates: I must not before the county court:

To set an example. The absolute necessity that she be constant to confirm in the accusation, I even the consent of the father is insufficient because there is a presumption of law which cannot be rebutted. If there be prosecution before the county court, judgment in chief goes against him, the judgment goes: that the judge satisfies, to pay the damages, and also it is requisite that the judge satisfies to save the tax on farm from the support of the child. Therefore, the town committee.

The damages amounting to the practice here fixed for the child's support until he is twenty one. But they are not collected as in ordinary cases of common law. Execution is regularly issued quarterly, each for one third of the whole sum. If the mean time the child dies, in subsequent cases, the town, therefore the may not have all the damages awarded by court.
After it is afterward found that the expenses of support the child greatly exceed the damages awarded, the father is entitled to bring new action in the courts, and the advocate is made to add to their executions as they severally issue. The damages are considered as an estimate of the expenses which may be incurred, and are sufficiently large.

If the child is not born during the session of the court, the case must be continued because as prescribed by the statute the court will order a renewal of the bonds. If the defendant do not appear or surrender himself into his bond in perpetuity, it is said by Blackstone, that the mother of an illegitimate child, whose child was married before the union, or after an abortion, the defendant being discharged his means be such that he is discharged from all liability. In the case of the marriage of this child, it is said, the rule, as far as marriage is concerned, of the child afterwards is declared of a bastard child, as if of course, person discharged. But the moral rule of the common law, mentioned before, viz., if the child is born during wedlock, it is legitimate, except in two particular cases, this rule would be true, for as the child would be legitimate, the real father could never be sued, for as the
Parent & Child

It is now an established rule that the child, being born to the illegitimate mother or any other person, may be held as illegitimate. The husband of the woman so born bound to be held liable only if it can be proved that he was aware of the illegitimacy. In such cases, the husband is held liable for the support of the illegitimate child. In the case of death or divorce, the case is uncertainly taken from the wife or the husband.

An action for the illegitimate child depends upon the husband's consent. If the husband consents, the wife may then proceed against him. If the husband does not consent, the wife may proceed against the husband directly. If the child is illegitimate, the husband has no right to join in the action.

It is a question of law, according to the principle of the English law, that all acts of the father are considered in law. All children born to the father are considered legitimate, unless proved otherwise.

But after all this, it stands peculiarly as all the rights of the wife, they are vested in marriage in the husband—before marriage, she was bound only for half the maintenance. If the husband can be made no further obligation upon the wife, then it is that the wife has now the right to sue for her recovery.
The bond of indemnity is to be paid on appearing in court & announcing final judgment. As the case in this case the party on the Bond is not discharged under the Statute of Limitations until a year from the last quarterly payment. The Law of Bail is, that where the Statute of Limitations, the Bail shall not be made to respond the proceedings given against the Principal, unless an action is brought against them within one year from the time of judgment given. If this were the case in the present instance, it would be held only for one fourth of the original damages as the Statute limits it. Therefore in prosecutions of this kind it is held that the Bail shall be made not only for one year, but for one year after the last payment is due.

Thus far for the mother remedy, now for that of the Town or Parish. If the mother demands Prosecution for the support of an illegitimate Child, the Selectman of the town in a like kind the Child is not to prosecute the patron in behalf of the town. The object of which is to compel him to give security to save the town harmless from expenses. This they may always do, unless he voluntarily enter into security when it becomes necessary. The object of the prosecution by the mother is to obtain retribution for the Child, that is the town to oblige him to enter into security of having him from offense in case ofanship. The consequences are also different. As any rate the town cannot object to support the Child while the mother is able.
The mother commences a prosecution, & abandons the selectman may suit in their name & proceed in the same suit, & for the benefit of the mother, but for that of the town. If the suit be after judgment against him, fails to advise advice, or if he be convicted in a criminal suit & not suitable for a conscientious oath. What the mother has sworn before a maj. strate, or her examination may be given in evidence after her death, to support an order of exclusion, or in other words to subject the father, according to a general rule of evidence. That what a witness becomes sworn to before a justice of the peace, may be given in evidence after his death, in the same suit between the same parties, if those who heard her sworn, may swear, to what she said.

It has been a most serious, whether an prosecution by the selectman, the mother is compellable to testify, who is the father. It is certain she can never be compelled to testify to anything that will exonerate herself. This she does not in this present case; she is only informing the court, who joined her in the commission of the unlawful act. The question is, not whether she had an illegitimate child. This is taken for granted. The crime is already sufficiently disclosed; even this the fact took place she could not be compelled to testify. It has been said she is not compellable to testify, because
we have not the same power as in England.
There is no argument for we have no power to compel all witnesses to testify. It has at length been decided in the Supreme Court of Connecticut that the
may be compelled to testify. If this decision was
on the ground that the act was not there criminate
itself, it was right. But the great objection
is that it becomes a cause of domestic discord.
Suppose the real father to be a married man
of good reputation, I am in the family. The
mother does not wish to injure her innocent
family or her character, now if the towns
overseers may contrive her to testify who is the
father, it may occasion disgrace to innocent
persons as the wife and children of the father.
There are no decided cases in the books, if
indeed it was for the purpose of establishing the
certain rights of another, there circumstances
ought to give some protection, but as it is a
consequent right I do not think it should
be carried into effect.

In England there is a rule that the mother
shall not be compelled to testify in favour of her
child until one month after the birth of the
child. The reason is there is no trial a full trial before
Another question has been stated, whether if an illegitimate child is born during a wedlock, the husband is obliged to support it; it is decided that he is not.

It has also been decided here, that where the mother favours the subject of an illegitimate child, she is compelled to testify as to an interest, which ties her positively to the subject. For this testimony goes to invalidate her evidence in the point at issue.

The trial is now, if it has not been by the court, in the reason of it, is derived from the statute, it provides, or implies generally, that the Court shall the jury are to determine the guilt or absolve the damages. The prosecution against the petitioner, the father disposed, partly civil partly criminal, and in object and criminal in form. Hence it has been a question whether depositions can be admitted as in any civil case, in which they can be admitted. It has been decided that they can, that form shall yield evidence.

Again, in criminal cases there is no appeal from County Court to the Supreme Court; it has been decided that no appeal lies in this case. The former is decided. This plan as to illegitimate children.
Parent & Child

The duties of Parents to their legitimate
children. They consist principally in the
particulars - 1. Maintenance. 2. Protection
3. Education. 1st to maintain. This
is a principle of Natural Law, more
maintenance consists in providing necessaries
the duty is reciprocal. But then in distinction
between their obligation to support their minor
children & their adult children. The rule is
the former are bound if able to support
both when small but minors absolutely
in all events, for a minor is presumed by
the law never to be able to support himself.
Therefore no parent can allege that his minor
child is able to support himself for the law admits no
such plea. With regard to adults, divided into
the rule is in that the parent, if able, shall
support his adult children unless, yet in the
case, the parent may show that the adult is at
leam, support to justly explain this distinction.
On the other hand, the same obligation rests for
Children & Grandchildren to support their parents
2 & 3dly. 3dly. when unable. Our statute in this respect differs from
Rule 26:3. The English only. In this, that in England it is questions.
whether grand children are ever compelled to support their grand parents. But in almost every state in the Union there is a statute to this effect. Under these it has been held that grand children are not bound when the children are able — but if parents are unable, they are.

The assessments are generally made according to ability of each, and the one child has received much from the parent who has spent it, while the other who received little, is not; yet the proportion of each shall be according to their ability.

This ability materially depends on the condition of their families. If two are each homestead for thousands each, but one has a family, the other a bachelor, in this case the latter shall pay more than the other, in proportion to his expenditures.

It seems to have been thought that where a man marries a wife having children, the second husband is bound to support them during infancy, the third whether, was before able or not, as against this in the usage. I probably hence the opinion I doubt whether the general is rigorous in right. In England, the second husband is not bound to her.
Parent and Child

The case is not so, the case may be as follows: if he is not bound the moment cohabitation ceases, he cannot be bound, it is laid down without any qualification. The law for enforcing maintenance was made for enforcing natural duties. The statute of 1842 extends only to natural relations, so were the statutes of 1407. The husband is bound in the case supposed if the wife, if she takes her own name if she was a maid. The objection is that it extends only to natural relations. Be it so. It extends to the matter when she was a widow. It was incumbent on her when the marriage. How does he wish to be with his legal duties? Why the wife may be worth $1000 and the children ten. If she married, it was money.

It has been usually decided that the husband was not obliged to maintain the wife's parents. If it is a measure of policy, as the contrary would tend to create family dissensions. The statute extends only to natural relations.

In applying the husband to maintain the child by reason of marriage, he is supposed to know at the time that he takes her with her relation. But in the last case this can not
Parent & Child

It is supposed. The parties are generally married and the support is owed to age.

It has been settled that one is bound to support his wife after a divorce a vinculo et matrimonii and unless de foro.

There is a rule well relating to purchasing that may be to this effect. 1st. There is a statute by which an husband is not liable without some cause, having wife unable to support herself, having no relation bound by law to support her. The estate in the hands of the heir's legatees shall be charged with the self-support of the widow in dower.

Lecture 13

The duty of support is enforced in England by applying to the County Court and the form of a memorial. In ordinary cases an action at law will not lie. The act in England is enforced in the same way by application to the Court of Session.

The rule that an action at law will not lie is enforced strictly with regard to dependents. If the party fails to support his minor children an action at common law against persons who have supplied them with necessaries against the father. The application to the Court may be made by any of the relations where bound to support, or by the solicitor in cases.

Cost.R. 1. 251.
On this memorial all the parties who are bound to support the parties are cited, and when affirmation of service is tendered, the court by a commissioner issues a writ against them in the name of the memorialist. We have now done this with maintenance. I come 2d to think of protection. This is a duty arising out of natural Law, rather than conferred than enjoined by municipal Law. The Father is not compulsurable to protect his child, for he cannot be compelled to act doing so, neither in the civil law. The duty rises from the relation. The father, as a stranger treating his son, he has no right to protect his son against the father for not interfering. But the father.

3d Just 543

May interfere, aid at Common Law he may uphold his child in some right, without being guilty of civil maintenance. So that it would be maintenance between third persons is not made by reason of the relation of parent to child.

4c Sec. 296- Father may justify a battery in defense of his son. That is, it has a right to use the same force which the son might so that this right is not such as every one has to prevent a breach of the peace, for the Father may take the part of his Demand, to use a similar violence in the former
Parent & Child

Their rights are reciprocal. The son has a right to maintain the father. Laws must justify holding him in subjection. There are few such in the books on this subject.

3. Education. This is also a moral duty. In England there is no provision to enforce the duty, except that every man, free or slave, must educate his child, otherwise he will be held in contempt of the King, and his child may be committed to the education of the pope.

In Connecticut there is a statute enjoining all parents to teach their children to read the English language, to know the law, and to be able to read and write in English. It also enjoins their children to attend school until they are able to read and write. In the New York state, the law requires that all children attend school until they are able to read and write. The expenses of common schools in the state is between $1000 and $5000 more than all the other states of the United States.

I was very young when I first began to read and write. I was called to the bar at twenty years of age, and have been in the practice of the law in what is called full of business and during that period I never met with but one person who made this work.

3.

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Deeds of Children towards Parents

It is their duty to obey their lawful commands, to be subject to them during infancy and childhood; and when grown, it also to protect them when necessary, for the latter cannot be enforced.

The Rights of Parents

The parent has a right to correct his minor child in a reasonable manner. This arises from his duty. He is bound to educate and support his child; for this purpose he must have an authority given him over his child. And the exercise of this right of correction on domestic government must be in a great measure discretionary. But if he exceeds all bound of reason, and moderation, it shows that the law is not making laws punishable; and I have no doubt but an action in person of the child would lie in such a case.

Indeed there was an instance in York a few years since, where a father threw a son 17 years old down stairs and injured his back, an action was brought for £7000 recovered by the child against the father. The child clearly has a right, which the law contemplates, to protect against the unnatural brutality of the parent; what however is secure in one instance, might not be in another. The true ground is, the
Insufficient text is visible to provide a natural text representation.
Parent & Child

Another instance of the power over the minor Child is that of marriage. He may withhold his consent to the marriage, and the consent of the Guardian is absolutely necessary both here and in the case of a minor Child. In Eng., if his consent is not given the marriage is absolutely void, the issue illegitimate—But in Const. the marriage is good, but the person who solemnized it is punished by fine.

Every Citizen has a certain power & control over the estate of his Infant Child. A minor Child may hold estate real or personal. But the parent has a power over it other than in the character of trustee or Guardian, and he is compelled to give an account of his trust when the child arrives at full age, or the case may be, before that age. This power belongs to him as Guardian. He has no power over it strictly speaking as Parent.

A minor Child is entitled to all the profits that he can acquire otherwise than by service. He may purchase it is only valuable for he may hold it of his pleasure. If a property should be given him by deed or if a ticket is signed in which means a free, it is his.

But the parent is entitled to every thing which is found by the labor of the minor Child. Because the labor of the minor Child is his own. He is strictly his servant, and I conceive a parent can as more make a gift to a child that earning is the prejudicial
Parent & Child.

of the creditor, than he can give him any other estate.

The right of the parent to the service of his child in the foundation of all those actions which he lays with a fair ground of action is for having beaten or otherwise injured his minor child by which

he has lost his service, the recovery in the character of master—

Pott v. Pott, cannot maintain an action for a mere battery or an immediate personal violence done to his child— for less the act is to be treated in the name of the child who was in the name of the parent or next friend. The father has a remedy for all consequential damage. Now if

the parent has been at any expense by reason of personal violence done to his minor child, being a husband, he is entitled to recover the expense in the act for quod he procured the service of it especially as a ground of damage; otherwise he cannot for it would be the same as if he should not lay with a per quod he in which case his declaration would be demurrable—

After the same principle an action lies in favor of a father at the recovery of his daughter,

if it is his loss of service— i.e. no action will lie without this loss of service all the rest is matter.
3 will. 18. Of aggravation. The expense incurred during his daughter's illness may be recovered of specially liable.

But this is the law of service as the ground of the action; yet it is not the rule, nor the principal ground of damages. The real damage is the injury or disgrace to the family of Indies.

Have often given enormous damages where the
law of service was fictitious or very small.

And service is not the ground of damages in

evidenct. For 1st, any kind of service however small is subject to entitle the latter to a recovery for a law of service. 2nd, the character of the daughter governs
this damage in a great measure; for her good char-
acter for chastity will aggravate or lessen the
damage. And in a late case where a father had
commenced an action with his daughter,

Plact 241. The Defend being a married man, Sir Kenyon decided

that the act would not lie - it soon after decided

that it would be subject of the daughter lives in the
parents' family, for she would be deemed a tenant
as a matter of course if the son of service would always
be presumed. This is not opposed to the great rule.

And it is well settled that the age of the daughter
is not material, if she actually lives her father

It is not necessary to prove a contract for service.
Parent & Child

March 18. D.T.R. 146. Made between parent & daughter. It appears there have been letters where the daughter was 21 years old. This distinction however may be taken. If the daughter is under 21 yrs. of age, she is of course innocent. But over 21 yrs. of age, for the mistake there is a London.

It is laid down by Elph. that for the purpose of maintaining this action the daughter must have been in the house of her father at the time of the injury. This is not correct. Suppose the daughter is living at a boarding school will this prevent the father from recovering? or suppose she is living in another family.

3. Brown 1478. For the benefit of the father would he not have an action? There is no authority in the books to support this opinion.

In the case of an adult it is necessary that she should be proved to have actually seen her father as a kinsman.

Elph. also says that the parent cannot maintain this action unless the child is a minor & cites same case when it is not so.

This action will lie in favour of any one standing in loco parentis, father, mother, guardian or master. It has been supported by an aunt in the case of a niece.

Rule 55. In the presence of one who has adopted the child or is under the name under which he is adopted.
Parent & Child

Sec. 14. In the action for gross excitement, the daughter is a competent witness on either side, for or of the parents, even while the rule was that an interest in the question disqualified the witness, the witness, she was permitted to testify ex necessitate sei after she had an interest in the question—thus the rule now established is, that it must be an interest in the event to disqualify the witness, which the daughter has not for the son an act, whether of course not.

1702 161

The act is properly substantially an act on

Law 5.9. 160. 1st. Case where there is no illegal entry into the

9. 13—Off of home—this the form in any how form

5 10 3 3 1—other notice, 1st. First, 2nd, 3rd, 4th, 5th, or 6th, or 7th, or 8th, or 9th, or 10th, or 11th, or 12th, or 13th, or 14th, or 15th, or 16th, or 17th, or 18th.

11 Part 23. —Consequent damages to the gift of the action

and them it is always case—And if

But when the Defect is illegal

entry the Off's home becomes the injury

500. 10. 32. The Off may sue for breach and

512. 26. 64. 2nd. 16. 8

2 14. 5 5 5 the ground of consequential damage,

and the actions must clearly be

1st. 3rd. 5th.

July 16, 1810
Parent & Child

But it is to be observed, that whenever the action of Trespass is at common law stated in such a case as this, where the gist of the action is founded on the force, anything which justifies the original trespass will come. The whole declaration will defeat the action, as in the case supposed if defence can prove a licence to enter the house - and this is precisely analogous to the rule in other cases. For it is submitted that, if one see another for unlawfully breaking in entering his house, a matter of oppression, states that the defensor signifies his furniture, and his wife and children, &c., if the defensor can prove that the original entry was by licence it defeats the action. It is always, therefore, better to bring an action on the case.

212 R. 108.

211 R. 114.

214 R. 191.

& Co. 116. 3d. 8th. 2d. 45th. 7th.

216 R. 120.

216 R. 121.

216 R. 122. 12th.

218 R. 78. Thirteenth.

190 R. 48.

217 R. 78. 12th.

& Co. 116. 3d. 8th. 2d. 45th. 7th.

216 R. 120.

216 R. 121.

216 R. 122. 12th.

218 R. 78. Thirteenth.

190 R. 48.

217 R. 78. 12th.

211 R. 114.

212 R. 108.

211 R. 114.

212 R. 108.

211 R. 114.

212 R. 108.

211 R. 114.

212 R. 108.

211 R. 114.

212 R. 108.

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212 R. 108.

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212 R. 108.

211 R. 114.

212 R. 108.

211 R. 114.

212 R. 108.

211 R. 114.

212 R. 108.

211 R. 114.

212 R. 108.

211 R. 114.

212 R. 108.

211 R. 114.
Parent & Child

There has been a question much debated whether an act which is for taking away one's daughter, with alleging loss of service on any other special damage. The authorities are contradictory. The better opinion is that an act which is for taking away one's daughter, with alleging loss of service, is void for lack of consent. The parent has certain duties to perform. The law gives parents certain rights to custody, service, and their child. Now it would be negligent for the law to give a right and yet give no remedy for a violation of that right. It would be a violation. The right to custody of the child is vested in the parent, not in the master. The right to custody, service, and their child are two totally distinct things.

The present authority of the father over the child ceases when the latter attains the age of 12 years. Everyone becomes an adult at once on the day preceding the twenty-first anniversary of his birth. The mother as such has no authority over the child. By this is meant she has none during the coverture, for if so she must exercise a jurisdiction in spite of the said act. The authority is vested in one alone. When the former dies, the adult mother, guardian. The present authority over the child during the years of minority. She is such case has certain duties to perform, therefore must have a power of control over her child. It is very notorious, however, that mothers do exercise family discipline in all this. I suppose she is presumed to act with the utmost cord.
No for the Parents may be liable for the acts of
the Children. This has been noticed under the
title of Master and Servant. I will only lay down a few
such rules:
1. The Father is liable for the acts of his
minor child, under his care, to the same extent
in which a master is liable for the acts of his servant.
He is liable in the character of master. The
Children should be under his care, for if he has delegated
his power to a master, the master would be liable.
2. As to contracts made by minor children, a parent
at Common Law can be otherwise liable for the contracts of
his minor child, than as a master is, on three contracts
of his minor child, in the name of a child's con-
tract for necessaries. But the rule is, master is liable
in the contracts of his servant for
necessaries. When he is bound to support, he is bound
by a contract express or implied, a father a mock
is bound to supply his child with necessaries, with
the exception, the liability for the contracts of the
same as in both cases of Parent and Master:
3. Where the Stat of Eng. shows, there are certain cases

where the Parent is bound to, pay for fines inflicted on minors
Children. And likewise, master and servant. As in for debt, bail, false
highway, neglect of being miles, malt.
And under no title of a minor Child, is any attempt to
by the master, for himself, does no contract for Father is bound, for being permitted
him to make it. In this instance under our State, the master is bound
found in the same cases. Some general rules will in clear and this
making under the Head.

Stat 215
308.3
Stat 205
Lect. 15th - Different kinds of Guardians with their Rights & Duties.

A Guardian is defined to be a temporary parent, or person standing in loco parentis during a child's minority, and a child under the care of a guardian is called a "ward." In every case, the Guardian has the charge both of the person & estate of the ward. This proposition the true rule qualification. The person & estate are both under the care of some guardian, & it the person may be frequently in under the care of one Guardian & the estate under the care of another.

By the Roman Law the person was under a duty guardian from the estate - the former was called Vater, the latter Curator.

The kinds of guardianship known to the common law are four - 1st.

Guardianship in Chivalry - now out of use.

Guardianship by Knight.

I obtained only when an estate held by Knight

21st Nov. 71 - when came to the age by descent, it continues by main bane till they obtained the age of 21 yrs. & females till 15 or till marriage. When found to be person 17 yrs of the male within the reign of the assignor. This was abolished at the revolution.
Guardian & Ward.

(3) Guardianship by Practice. The 3rd ed.

3 Co. 32a. 3 Comm. 41b. 1 Part. 84b. Note 11.

3 Co. 32a. in some of the books as if it was confined to father
3 Comm. 41b. in some as if confined to both parents. But
1 Part. 84b. at law, father 2 another among other ancestors
Note 11. of the minor might be guardian by practice.

Thus the claim of the father in point of the mother
record, or among more distant ancestors claims,
sure according to seniority of blood where
there is an equal claim between two or more
seniority in the possession of the ward.

This kind of Guardianship is limited to the person
only, not to the estate of the ward or continues
until ward attains the age of 21 yrs. By this, it is not
meant that the father has no control over the
estate of the ward in any relation. He has such
control, but not as natural Guardian — (post)

This Guardianship extends only to the heir
1 Part. 84b. 88b. apparent of the ancestor. No other person can have a
guardian by nature by con. law. It does not extend to the
other children. And it is questionable whether a female
may have a Guardian by nature as she cannot
be heir apparent. Their only heir presumption.

But here it is to be observed, that in cases all a
male's children are heir apparent by the statute.
Guardian and Wards.

1. Under our law the courts of what may call a natural guardian extends to the estate, as well as to the person of the ward.

2. In this, the Father may supersede the claim of all other ancestors by appointing a testamentary guardian, i.e., he and as well to his heirs apparent. By virtue of the Stat. 12 Geo. III.

3. When the Father is the natural guardian, the person of the ward is in his custody in preference to the Guardian in Chancery. But this is not the case with any other ancestor. But it is of no consequence.

4. It is true in England, that the natural guardians of all their children. By this, it is not meant that the parent is such as some law that such as the law of nature designates as the proper guardian of all their children, and the Chancellor, having no guardian to the younger children appointed by statute law, will settle the Guardianship when the Father has no case may be upon the mother.

3. Guardianship by Spouse. This takes place only when an infant under 14 is held of lands, either by descent or by gift, by some person. This guardianship belongs to the necessity of time to the right to whom the land cannot possibly descend. This rule is founded upon the necessity to abate the testamentary committee upon other.
Among those who may claim this guardianship, there is no distinction between the whole or half blood. If two or more are in equal degree, priority of persons of the person of the ward determines the right; and among brothers and sisters, where the eldest is preferred, among collateral male and female. By brothers, sisters, are meant those of the half blood, as those of the whole blood may always be possibility inherit.

The guardian in loco may leave the estate of the ward until the latter attains the age of 18 years, may maintain ejectment in his own name to recover it. This kind of guardianship extends to the property of the ward, his loco estate, personal and personal interest; the custody of the ward in loco known after every species of the property. This is not true of the guardians.

The trust of the Guardian in loco is not like that in guardianship. The office is fiduciary, for the benefit of the ward, not of the ward.

At the age of 14 the ward has a right to enter into and the Guardian is secretly to turn himself. The guardian is then liable to account with the ward for the profits accrued during his possession.
Guardian and Ward

Lect. 24, 1823. It is entitled to be reasonable expenses and compensation for his trouble in taking care of it. He is then a kind
of a guardian. In loco alteri, there is no longer any
control, the same other person has. There is no necessary
substitutity in the law of guardian and ward in creating a
number of duty of guardians.

The Guardian in loco may be superseded by
an appointment of a testamentary Guardian by the
father.

A Guardianship for Minors. This takes
place only where there is no other guardian appointed
to children who are not their appointment. It is divided
only to the person only to the estate, determines
when they arrive at the age of 14. It is specially only
by the father or mother. This appears to me to be
a very arbitrary distinction in the law.

It seems clear that the father cannot be guardian
for nurture, i.e., heir at armament, because he is
guardian by nature to his until 14. On this point
the law is clear that in law, there can be no guardian
by nurture, because all the children are here.
Heir at armament, therefore, natural guardian to
them all. And natural guardian, take the preference
to Guardians by Nurture.

There are also certain kinds of guardianship being
created by law. Under Mat., Pt. 3, Sec. 32, a father, whether
of age or not, may say well on deed subscribed by two
witness, appoint a guardian for all his children who are left in unmarried. The father must have the age to make a will. This is impossible from the very nature of the thing. It is true, the may appoint by deed, but this is not to take effect until the dies, and it is the nature of a testamentary disposition to therefore a letter to write.

The may appoint guardians until his children

reflective arrive at the age of 21 years or any other age under 21. This species of guardianship is due to the

trust of all the estate to the

presum pt. all the estate of the ward. We have no split

trust in common. The trust of a testamentary guardian

is not assignable. It is strictly fiduciary. The father

whore a special person confidence in the guardian

when he has appointed a no other.

Then there another species of guardians created by

Stat. 9. 9th. 1st. May, which is limited to females

under 16 - this need not be dwell upon.

There is another class of Guardians appointed by

custom or local usage. They are invalid.

But there are certain kinds of guardianship not

enumerated by the old Common Law writers, which are

more important than those mentioned of them

1. Guardianship at the election of the良

This takes place only where there is no other guardian

by law, or appointment of the father.
The Act has no limit, but it does by knight service
the less than an guardian in behalf of the heir.

The Act has no limit, but it does by knight service
the less than an guardian in behalf of the heir.

1 Bk. 87-89. From 14 he has no guardian by nature, but is
not heir apparent. His father then is not his
natural guardian, but has appointed him none
since one may be his guardian at his election.

This peculiarity of modern origin in the

1 Bk. 374.

1 Bk. 87.

1 Bk. 89.

1 Bk. 89.

Note 18.

Note 19.

1 Bk. 465-470.

1 Bk. 89.

Note 18.

Note 19.

The Law has prescribed no form in
which the infant is to make his election.

As Balmain elected his guardian by deed. It
seems probable a deed election would be
not considered material, because the judge
may or may not sanction it, as he please.

There is some confusion as to the age
at which he may choose his guardian. The
age mentioned by statutes is 14. Nor is also said
he may make his election before 14.

If so the Law has fixed no age. Bannerman says
before the restoration the practice was confined
to Rfta. under 14. It may be at 14. The only
doubt is whether the election may be made
by an infant under that age.
Lect. 16—Observed yesterday that there were several kinds of Guardians not known by the ancient common law, one of which has been mentioned above. In the 7th century, the power of appointing guardians was exercised by the Chancery, although this authority was seldom exercised by the Chancellor when the latter had a guardian himself. When there was no guardian appointed, the authority was in the hands of the Chancellor. The power of removal in the case of testamentary guardians was exercised very sparingly, until the reign of Edward IV, when the Chancellor represented the King as paramount guardian of all the Inns of Court.

The Lord of the manor had no such authority. They had no concern with the appointment or removal of guardians. The power was in the hands of the Chancellor. The power to remove was effective in the monarchial power of God.

2 Guardians appointed by the ecclesiastical law. The law in it respects the power of this or to appoint. Guardians appointed not to be well settled. No claim to the power of appointment where the person or the person's estate is the claim. The former has always been denied. The latter, too, has been denied.
According to the late opinion, the conclusive
authority to appoint only a Guardian ad
Litem is the fourth species of guardianship. To commend
4 Guardians ad Litem. This is a special guardianship appointed
for a particular suit, where an infant being a party
has no Guardian. Such a Guardian may be appointed by
any Court where the suit is such—e.g. if to have a Guardian
this is never done where the suit is Civil. Because then he
must always appear by Guardian or next friend.

And in the first year when an Infant under 4 or 10
is baptized for the first time, an Appointed Guardian
is vested, e.g. by Moravian parents, who have constituted him
Guardian. It must have rights and duties. The infant must
approve a Guardian—there must be some time when

A Guardian ad Litem may be appointed by letter patent
rather for a particular suit or as a joint guardian for all suits—
this power is now lodged in the hands of the Court. There are
call kinds of guardianship known to the Law of Ely
under our Law there is no guardian ad litem.

The only Guardians known to our Law are three.
1. Natural guardians. 2. Guardians by appointment
of the Court. 3. Guardians by Litem.
A guardian by statute cannot exist in law, because all the children are heir at law. In case the father is deceased, of course, to be the natural guardian, then guardianship continues until the ward attains the age of 21 years. Natural guardianship by the common law extending only to the person of the wife, and under common law, the person of the father, has to the property also, on the latter's death, it is usually the case that the mother acts as natural guardian over her female children until they attain the age of 18 years. In the case of absence of both parents, the property is usually divided among the children. In the case of the father and mother as natural guardians, the latter is usually the master only. The only way that appointment is possible is by the will of the father. In the case of the father's death, the children may be appointed as guardians. Natural guardianship is a matter of that makes no distinction between male and female. But while father is living another guardian cannot be appointed unless father is removed. No such guardian can be appointed because the father is good. The father is by nature. I have observed that the mother does not attend to this, or of right to be the guardian of her children. While he is the person the appointed guardian is born for her male and female, which could not be even since the natural guardian of the daughter only.
When the court sees fit, guardian or master, unless the court, contrary to the wishes or advice of the minor, refuses to appoint one. If the minor is under the age of 12 in males or 18 in females, the guardian may appoint a successor at his discretion, and, if he does not, his election is final. If the minor is under the age of 18, the guardian may appoint a successor at his discretion. If he does not, his election is final.

This is not usually done when the mother is living, although an application may be made by any one who knows her. When the court decides that a minor's welfare will be best served by exercising the power in the hand in any way or manner, such order shall be made for the guardian to remove the child from the guardian. This rule relates only to that kind of guardian existing under an act that has been extended both to the personal estate of the ward. But when the ward who has a guardian has also a father, it is subject to him. Because he has a power over the person of the ward notwithstanding the guardian is appointed. When a guardian is appointed for an infant under the age of 18 in males or 12 in females, the authority of the guardian continues of course until the minor attains 12 unless the minor attains the age for choosing a guardian before the guardian makes a choice of another guardian to the acceptance of the court.
An act done by the guardian in the name of a ward is binding on the ward in the same manner as if done by the ward himself. This is because the guardian is appointed by the court for the faithful performance of the duties of the ward, when the ward has an estate. The guardian appoints and binds the ward to the same extent as if the ward himself had done so. If the ward attains 21 or before, if the ward's petition to the court is granted, the guardian remains entitled to act in the name of the ward until the ward attains 21 or before. If the court grants the petition, the guardian remains entitled to act in the name of the ward until the ward attains 21 or before. If the court grants the petition, the guardian remains entitled to act in the name of the ward until the ward attains 21 or before.
Guardian & Ward

23rd. 291. They may compel guardian to act whenever they think the ward's estate will suffer.

If the guardian is guilty of any misconduct towards the ward, they may remove him. If there is any variance
between the guardian and the ward, the court may order the guardian to act. If he fails, they may remove him. Indeed, Chancellor
Brown is very extensive and discretionary.

No guardian shall be a parent in bond to maintain the ward at his own expense. Other guardians have a
right to apply the ward's estate towards this purpose or education. But when the parent is guardian, he must
support his/ her child, even if he is unable to provide any education or expensive education as an important care.

They will give him a reasonable compensation only out of the ward's estate, to educate him. The duty of maintenance
does not depend on the relation of guardian or ward but from

If a woman living children among her second parents, she is not entitled to prevent them from inheriting
the parent's grant, his estate must be applied to their support. The reason is the ward's action is not
obliged, she is not able to judge of her. Therefore she has a
parent's duty to provide for her real property.
Guardian + Ward

Section 19. I observed yesterday that a庠ontable montepaten,
children arise not the relation of parent and child, and of
Guard and Ward. I further observed that when the parent or
guard is bound to support his child, no allowance is regularly
made of the child's estate, yet it is in some of the old cases
that for anything more than necessary, ordinary expenses
the father may apply the child's estate, if the same is reason-
able & for the benefit of the child. So it has been that
of mine always do it in the case of bastard or aphania
the Hardwicke has denied this, yet I know that the authority
of Chancellor is very great, or an attorney & therefore the
may do it. So if the prosperity of the child is very great, it ought
to be liberally educated & yet the father may be unable to
give him this education. It would always be prudent
remunere for the father to procure an allowance to be made
before expense incurred. In 1690 the Hardwicke said that he
would not consister of that sort, unless the father is clearly unable

By that case, when the interest of an heir mortgagee
interest recovered by virtue of a bill of no redemption, he
is supposed to make the reconveyance, in case of failure
a penalty is inflicted, and it further provides that if the
lot has no other Guard, the next had better, may do it.
I find no such provision in the Rang Law.

If the lot should reconvey the act would bind him,
because it is an act which the law compels him to do. Certainly
it may be of the 6 English anne in law, for an act of necessity, the necessity,
Guardian & Ward

They own that the guardian of a ward is a Trustee or Trustee in Bank, endowed with the same powers and
responsibilities as the Court shall appoint to make
partition of the lands held in Trust belonging to the ward.
The Trustee may make an equal partition or may do any
court action which he is authorized to do. It is provided
that makes it unnecessary.

The said Trustee in Bank, a Trustee, may make an
equal partition for an equal holder of land with
lands, that a next friend may also. The court shall
mean that an equal may make partition by himself
or her, who is his next friend and further stipulation of
the rule would confer the privileges of Bank.

Thus, any several rules framed with respect to Guardian
trustees to prevent the former from making unjust
transactions with the ward, especially to the interest of the same.

2 Es. 230.
2 Treas. 215.
2 Mo. 084

One of such is: If the ward's creditor seizes from the Trustee
on a compromise a less sum than is due to him, then
the ward and the Guardian shall have the benefit of the
sum of the ward's money, the ward shall have the benefit
of 1/3. The creditor cannot receive anything for himself for
the use of the ward's money. If so, it would be a breach of trust.

If the money of the ward should have been
directed to be appropriated in a certain way, as in the letter
of the guardian, it is apparent to me; neither as in another, as in a beneficiary.

21 En. 629. Then, the ward of the estate may claim the interest which
it would have received. Had it been put in work or the profit
of the trade. This is a breach of trust from making advantageous
speculations for himself by the use of the ward's money.
A guardian is bound certainly when he receives trust's money to account for the Interest as well as the principal. He is bound especially when he knows the Trust could not be obtained, i.e. that he could not safely lend it.

The guardian has no discretionary power to use the trust's money in land. The Act of 1703 may be the agent of the guardian does this, the ward at full age may elect within the money's interest on the land. The right of election in this case deals with the ward. For if the maker of the money dies, he shall not have the land, but his estate.

1st. 4th. 154.

2d. 231.

The Act of 1703.

2d. 235.

1st. 4th. 154.

2d. 231.

1st. 4th. 154.

2d. 231.

A guardian, as trustee, is bound certainly when he receives trust's money to account for the Interest as well as the principal. He is bound especially when he knows the Trust could not be obtained, i.e. that he could not safely lend it.

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And the rule is carried still further. For if one continues in present to take the profits of his land, as he is to do in several years afterward, he has them. He is not compelled to account for the whole profits from the time he took them as well as for those he took before. For when a thief has arrived at full age, the reason is to prevent a multiplicity of suits.

In general, it is the custom for grants having personal supplies of the ward, to pay dower charged on the ward, estate, and of that dower is not paid of his own; because it is thought more advantageous for the ward that personal supplies should be paid to the dower. Then that the specific article should be kept in land to the ward absolutely, pay the quantum interest while he would charge, that specific article will not bear interest in fact, generally decay.

Thus may be care where this rule ought not to be observed. An estate in labor and labor, in a large and personal estate. He has a farm, well stocked, a house well furnished, and many debts. What is the greater? Pay those debts with his own money, or sell the stock and furnish with it? It must be reduced within a few months. The pledge of life in any way, would order them to be paid by the greater out of his own money, to the greater in the same debt, to the same. All that is meant by the general rule is this: that as in common understandings, it is most...
Guardian & Ward

Advantages for the party to have his person looked after by the judge. The guardian ought not to have a discretion as to where or not to dispense —

As the marriage of wards, (if the infant's dependency is such as an infant claimeth) don't unlock. The Chancellor will order new provision for the marriage. He means without the consent of his guardian he can provision when the guardian has given the consent of the match in holy, unquashed case — and after this prohibition he will award as for a contempt all parties concerned in the marriage.

So also of there is only an appearance of a submission that there will be a dispensation by the marriage even with a consent of Guardian, the Court will procure the marriage to be issued. The person of the ward made from the consent — it is not known to his long remainder time when the father or mother was guardian. I have no doubt that the Chancellor may to it, a marriage of some case.

The Ban it is a common thing for a guard to view and his ward as approver — I have no protection for it. It is said by D. Reader that the guardianship of female determines on their marriage of that of male just:

But yet in the same Book, he seem to say, there is a distinction. It appears to me marriage must determine it, as in the first creation a new relation in consistent with the former one.

And the same would hold there as it respects the person in the case of a male. As the other has guarded or non-relation. It there is any distinction between males or females it relates to the property. Than we shall look
Guardian Ward.

The guardian ship in the case of female minors cease of the
married estate... is too hard for the many minors.

In the case of minors managing a small estate the
control of all his property which is wholly inconsistent
with the continued control of the guardian... Besides this
married, a minor? I don't see that it is substantially
right... the husband has an absolute right to the personal
property of his wife in possession her chattels real and
personal as to that he may control them... but the minor
who is to have the control of them? Why surely this
Guardian... the same in trust of her real estate... the guardian
has the control of this also.

...Web. 91. In those a male minor marriage is a greater
disadvantage to the minor. The legal capacity in
acting for himself would not necessarily for himself
endure modified by the marriage... the rule then
is this... as to the guardian... she may control it... and
reside the female marriage does not respect the male
with regard to the person of estate as to both.

Greek 18. These already mentions the relativity of legitimate children
husband... it should mention from more particulars... as well
as to the original... acquire it... right... as to them there are severable... that... provide
for them classes of cases... the first relate to those who are not
inhabitants of this or any of the states... i.e. foreigners... properly
called... and a man cannot gain a political... by vote of the town
any sort of civic authority or... being appointed to a
especially... public office...
second part of same statutes relate to probate of other states and can't gain a settlement with poor qualification before appointed in the settlement of foreigners or has an estate in fee during the continuance of the same in his own right till the year 1803. This provision relates to those who belong to one town and wish to gain a settlement in another. It provides that such may gain a settlement in another, in the same manner, as in the case of an inhabitant of one state gaining a settlement in this state by living there with the intention of the town, settlement may also be acquired in other ways.

1. Big Birth. The place of a man's birth is prima facie his place of residence until another can be shown.

In all cases, if neither parent nor another has a settlement, the child is born in the place where the birth is born. In the case of illegitimate children, the father of course, the presumption is that the place of a child's birth is his place of settlement may be rebutted in the case of legitimate children as born in the case of illegitimate children as the mother's settlement is the place of her illegitimate child. Settlement may be shown there in the nature of a presumption settlement and rebuttal is the nature of a presumption and rebuttal is the nature of a presumption settlement and rebuttal in the nature of a presumption settlement and rebuttal in the nature of a presumption settlement.

II. Settlement may be acquired by marriage. The father

The place of a man's birth is prima facie his place of birth.

There is no evidence as to how the settlement is to be shown except as to legitimate children.

In this case, it has to be shown that the father was residing there with the intention of the town.
The presumption may be rebutted by showing that it is, in the ordinary state of affairs, the child's and the parent's interest. The parent is a natural guardian, and the residence of the child regularly follows that of the parent. In the first instance, therefore, the residence of the child is decided by the residence of the parent. Minors not emancipated continue regularly to follow that of their parent. When the parent gains a new residence, she immediately communicates it to her minor children. The last residence of the parent becomes the child's residence, and, after the death of the parent, the residence of the child.

But if the mother of minor children marries a second husband at the same time as his place of residence, the residence of the children does not follow her, because the second father is not bound to support them. The reason why the mother gains a residence for her children is because she has bound herself to support them; therefore, in this manner, the last place of residence of the children is the residence of the children.

By the Deed Law, minor under 14 are to follow it.

Residence of minor to the last town in which they resided may be used to support them.

In case a minor gains no residence, by evidence with the guardian appointed by the act of Probate, the rule that if his residence is supporting himself, obtains a settlement does not apply in this case. For he does not support himself.
Guardian & Ward

One settlement is lost by the acquisition of a new one. This is the only way in which an old one can be lost.
Brow. 21, 341.
Salk. 39, 397.
1 Pet. 363.

An infant under some circumstances may gain a settlement by comonancy, but only, Thinks, where he is emancipated. Then the derivitive settlement is lost, as long as the child remains a minor, of course a new settlement can not arise. If his own, but if in certain cases in any. In care for he who serves as an indentur or for a certain time in certain cases provided by law, shall gain a settlement. But in, the case he is not the son of his father.

3 S. 25, 366.

And whenever an infant has gained a settlement by comonancy, he is no longer subject to the control of his father, he is emancipated.

Prov. 13, 9. An infant, after a certain time, does not gain a settlement in care.

123, 125, 137, 163, 533. After a child is thus emancipated, he cannot take the benefit.
8 1 Th. 477.

A new settlement acquired by the father.

It may thus be further observed, that after a minor child has thus acquired a settlement for himself, if, of course, becomes emancipated, he has nothing to do with the settlement of his father. The settlement over and above his father. This he has with him as a part of his family. He is as father's heir, and is as a heir in relation to him. The right to a derivitive settlement is gone forever by the last demonstrat.
How a Child may be emancipated

1. By attaining the age of 21 yrs. He then ceases to be a minor.

2. By marriage. By gaining a settlement of his own. By going by contracting any relation inconsistent with his remaining under the care and government of a parent or in the case of a soldier who enlisted in the army, he is under the government of another.

The rule that a person becomes emancipated by attaining full age requires some qualification. He is not emancipated if he continues in his father's family as their son in the latter decision. And in those cases it is necessary that the child should continue in the character of a minor for a term of a decade, or the period from the time he may be emancipated, at any rate he may emancipate himself whenever he pleases. There are the leading distinctions with respect to settlement by marriage.

III. A settlement may be acquired by marriage on marrying the husband's settlement becomes the wife's immediately she becomes a party. If the law did not permit the marriage of a husband's wife.

And it has been formerly held that a husband's settlement, wife married thereon during coverture, but removed her. When a wife married to a man in law, it was thereafter set as law. If, by marriage at settlement continues. In fact the marriage of a husband has no settlement her continues and her children by the marriage in this case are entitled to another settlement.