of the Estate of a deceased Person

Under the English Law the law respecting the Estate of deceased persons is as follows. The Estate is of 2 kinds, real and personal. When real it vests on the decease in the deceased's heir, when personal in his administrator. The Real Estate in the hands of the heir is not liable to pay any debts of the deceased, unless the intestate has bound his heirs by some specially under seal; in such case the heir is liable or rather as it was at common law. The lands in the hands of the heir by descent were liable for such debts and the defect was void as to creditors, for the judgment levy of execution it was conformable to this idea; but if in such case the heir aliened before such breach the heir was not liable and the lands in the hands of purchasers was discharged of to him. This defect is remedied by the Statute of William & Mary—the lands remain...
discharged but the heir remains liable to the value personally — Real property in the hands of a devisee was not liable but by the same statute they are made so — Real property is not the only fund for payment of debts that are specially for personal property in the hands of the administrator is also liable to pay all debts of any description; specially as well as others and such estate is liable to be exhausted by the specially creditors; for they are not obliged to resort to the heir — Under the English Law that priority in creditors is to be observed as in the 1st place debts due to the king in the second place debts obtained by judgment 3 specially creditors 4 5 simple contract debts. If therefore there be no more than sufficient to satisfy the king's debts, it must be so applied then if any surplus it must be applied to just debts or — The specially creditors may resort to the real estate but should they resort to the personal estate the heir may enjoy a large estate depending from his ancestor whilst his
his debt remain unpaid. Inst: £500 real estate in the hands of the admin. £1,500 of the Estate is due and £500 also of the Estate in the hands of the admin. and also £200 simple contract debts. If in this case the specially creditors resort to the personal Estate and completely exhaust the fund the admin. may plead (sine admisjuravit) and the simple contract creditors must remain unsatisfied. Suppose that there £700 simple contract debts and no specially debts and £500 Estate in the hands of the admin. it is clear that two of the £700 must remain unpaid. However Chancery affords a partial remedy and if there are specially creditors who refuse to resort to the hire and in this way the personal Estate of the due is exhausted so that the simple contract debts may not be discharged in some instances but Chancery in such cases upon application will pass a decree in favor of the simple contract creditors to the extent of such specially debts as have been satisfied from the personal estate which might have been satisfied from the real. Inst: £600 simple Contract debts and £300 specially debts. The specially creditor resort to the personal fund and at law the simple contract creditor will obtain 10d only upon 20s; but Chancery will place the simple contract creditor in the place of the specially creditor to the extent of the speci
cally debts taken from the personal fund or Estate.

When such a decree is made, there is no priority, but all are paid, unless the being equally liable for the debt. But in this country no such system exists by reason of the Statutes of Insolvency, and others respecting the creditors' rights of Estate.

Personal property in the hands of the adm' must be paid in the order of the debts as before mentioned, to the full extent of the apportion, and no further and the debts are to be paid according to priority of rank above mentioned and the adm' must observe this priority at his peril if he does not observe this priority of rank. He cannot protect himself by pleading silence administravit. Example: £300 special debt and £300 property also £200 simple contract debt. The adm' pays 2 bonds of £100 each and yet another due before the simple contract which exhausts the whole fund, in this case silence administravit is not a plea at all.

In an action brought on a bond which is not settled but in order to change the adm' or Eq' on this ground it must appear that he had notice of such debt of an higher nature than subsisting. It may be observed that among those creditors of equal degree or rank, there is no priority to be observed, and the adm' or Eq' may prefer whom he pleases unless by legal diligence the one creditor has gained...
a priority by judgment &c. If the administrator becomes a bankrupt and wa...tors may resort to adm's bond to the extent of it. But if an Esq. becomes a bankrupt there is no bond in Eng. to resort to unless such Esq. has, been compelled in Chancery to procure bond as it may be done when he is about to waste the Estate. This bond may be obtained by the application of the creditors: but suppose the adm. has paid all the debts that came to his knowledge and has paid Legacies and distributed the residue among the representatives and after such distribution a creditor appears and claims the adm. provided he had notice of such debt will be liable to the extent of it; but the adm. may afterwards call upon the Legates or those who have the distributive share and compel them to refund to the amount of the debt — So if the creditor does not elect to pursue his remedy by the adm. he may in equity pursue the Estate into whosoever hands the Estate can be found — A material question here arises of which no authority can be found — It is agreed on all hands that the adm. may resot to such Legates for as long as there are assets; they may be taken when found — But the question is, can they resort to such Legates after adm. is gra...ted and bonds given by the adms. who has
become a bankrupt - The question may they waive the bond and resort to the Legatee? It is my apprehension they the creditor must first recoup the bond to the extent of it: But in the event of the bondsmen being a bankrupt he may resort to Chancery and compel the Legatee to refund him as assets in Equity and not in Law - Institut. Amongst pleas of an Equity of redemption in worth £1000 which depends to the heir - Law will not compel the heir to redeem but Chancery will consider such Equity as assets and by an application to them by creditor Chancery will compel the heir to redeem and to sell the land and the money arising therefrom is averaged among all the creditors without any regard to priority of rank. Although the real Estate is not the fund for payment of debts yet the testator may charge his lands with the payment of his debts in many ways which is to be correct only in Chancery - Thus he may empower his Esq. to sell Land and the deed will be valid and the money arising from the sale then of is assets in the hands of the Esq. for payment of debts. If the Esq. will not sell the lands then in his power the Creditors may apply to Chancery who will decree that the Esq. shall fulfill his trust.
And after the Eqs. has complied with the decree and
affected a sale of the lands the money is consid-
ered as legal effects and a priority is to be obser-
ed. 2d. The testator may give his lands
to the Eqs. to sell for the payment of his debts
and the difference between empowering
and giving appears to be this—that when the
Eqds. is empowered to sell he has not the fee
of the land but is in fact obliged to sell— if lands
are given to him he has the fee of it and may
pay out the value of it from his own Estate and
leave the land best if he does not he will be
compelled in Chancery to a sale. 3d. Testator
may devise to such a one with the incumbrance
of paying his debts—if the devisee in this case
will not pay the debts the lands descend to the
heir at law and the intention of the testator
is thwarted. But if the devisee has proceeded
to discharge a part of the debts and does
not discharge the whole it is a breach of his trust
and the heir may claim—yet if by a species
of conduct the heir waives his Claim Chancery
will compel the devisee to proceed and the heir
shall not be admitted to compell the inheritance
So lands may be devised to be sold for a special purpose as if lands be devised to D. to raise a portion for the testator children the money arising from such lands when sold is not estate in the hands of the Executor of the testator lands are assets in the devisee's hands to satisfy specially creditors whose estate is to the prejudice of specially creditors. So if a man be entitled to a reversion of an estate which after his death depends to his heir yet it is considered as assets for ye pay of debts. But a reversion after an estate tail in a man is not considered as assets on account of the almost impossibility of its being spent. Besides it is liable of being docked away and turned into a fee simple of action or not assets until recovered and the Ee is not liable to action until it has been guilty of negligence. To charge the Ee however judgment must pass into the hands of the debtor quash accident. And when the debt shall be collected by the Ee the court on a motion will issue an execution to the amount of the charge collected by the Ee. So all the profits of personal estate as land for years after rent paid if there be any plays arising from the profits is assets for payment of debts true indeed in accounting before the Ecclesiastical Court or Court of Chancery they are not compelled to account for the profits.
of the first year. the law allowing them that space of time to obtain possession. so again, the inter
est of the testator's money must be accounted for. so for damages recovered for injuries done to the
estate of the testator whether in the lifetime of the testator or after the testator and must be accounted
for. And to recover them, it seems to be immaterial, whether he brings the action in his own name or
as executor of the deceased and, as if there should be a lease
of land made by the testator, and after his death, then is rent due on such lease the executor in such case may bring an action for the recovery of the
rent either as executor or in his own name.

The estate vesting in the hands of the adm. may
case to be assets and yet the adm. liable to account
for them. As if goods be lost without any neglect
of his or a lease should die he may plead simple administration but if the goods were lost
and his neglect the creditor may reply over
a swamstader. Goods in the testator as trustee are
not assets and the reason assigned is that the legal
estate is in the cestui que trust. Suppose the
cestui que trust should die the estate in trust is not
assets in law in the hands of the exec. of cestui que trust
for they say, the legal estate is now in the hands
of the trustee. But Chancery lays hold of such
estate and considers it as equitable assets in the
bound of the CoE. There are the principal kinds of assets which vest in the hands of the Ex. or
Adm. — The next question that arises, what is
to be done with this property? We have already
seen what becomes of the real property —
Of the duty of an Ex. or Adm.

To bury the dead & to pay the debts of the deceased
by an application of the assets in his hands. Of
the residue to distribute to the persons mentioned
in the Stat. of Charles 2d. — And it is observable that
this distributary share on the death of the intestate
vests immediately in the persons pointed out in
the Statute, that should the persons entitled to it
die before distribution made it would be trans
missible to his representative and not to the
representative of the first intestate — in short such
distributary share is properly compared to a
legacy vested in the legatee. An Executor's duty
as to paying debts is the same as an Adm. And
he is to discharge all legacies and in doing
this, he must observe to perform all specific legacies
in the first place and next the pecuniary lega-
cies in their order and should there still be
residuum if there is one residuary legatee he
must pay it over to him and if there be no
residuary legatee the former rule was that he the
Ex. took it himself: but as the rule now is
if there is a legacy given the Ex. he is considered
as a trustee of the residuum so the next of kin
provided the Legacy be such as plainly shows
the intention of the testator that such legacy
was all that the testor intended to bestow up
on him: and the residuum must be dis-
tributed according to the Statute of distribution.
But if the Legacy given to the Ex.
be of some trifle or some particular thing
for a particular purpose or a diamond ring
suit of mourning clothes to which
does not raise the presumption that the tes-
tator did not mean to give him more yet
he will be entitled to the residuum.

The first case of this kind that occurs is Fos-
tin and Morth on which all subsequent

cases seem to be founded (Vide 1 P. Wm. 9 530
St. 360 2 Viz. 162 91 27 2 Ath 220 3 P. Wm. 40
2 Ath 226)
Again Courts of Chancery will let in parcel proof to show the Testator's intention that the Exeq. should have the residuum notwithstanding he has a legacy given him. On the other hand they will not let in parcel proof to show that the Testator intended the Exeq. should not have the residuum where there has been no legacy given him. For say they is a well-known rule in Chancery that parcel proof may be admitted to rebut an Exeq. and to oust an implication of law which an apprehended to mean one the same thing.

Co. 136

R. 136

C. 160.

It is said his debt is old and extinguished but it is only a release of an action and he is accountable for his debt to the creditor if indeed there be a residue he will have it for there is no one to act with. But it is apprehended that the reason given why the action is released is not a true one (viz.) That an Exeq. cannot sue himself for the debt absurdly would take place in case of another fall. and yet it never was pretended that the action
The duty of an executor as to legacies

If the executor has assets in his hands, he must discharge the legacies in the first place, specific legacies in the order bequeathed, and if there be an insufficiency to discharge the pecuniary legacies after the payment of the specific legacies, they must abate and share equal proportions, but the specific legacies are never to abate. Of a legacy: There needs no additional words to constitute a legacy; but any words which show the intention of the testator are sufficient. Legacies therefore may be given...
by implication as if the testator should say "I release, I promise, It is my desire" Inquest my
Ex. to pay" - As a case in the books where the testator said "I give and bequeath to B £100 beside
my cloak" - The cloak although not mentioned
before in the Will was held to pass - Legates
shall have aid from the real estate in place of
specificly creditors and the same rule applies to
them in this respect as to simple contract
creditors - Inst: Lands are devised for the pay
of debts and such devise includes all debts if they
for all the personal Estate should be exhausted
for the payment of simple contract and spe-
cially debts nothing being left for Legates - The
Legates shall stand in the place of creditors and
have their Legacies out of the Lands so devised
the intention of the testator being clear if
the personal fund should be exhausted in sat-
isfaction of Legacies - So again when
lands are devised for payment of debts and the
personal fund be exhausted the person entitled
to a distributary share shall in Equity stand
in the place of creditor to the amount of the
personal Estate.

Legacies are either lapsed or vested. A legacy is lapsed when the legatee dies before the testator. If A makes his will and names B as a legatee - B dies before A - the legacy is lapsed and is not transmissible to the representative of the legatee but reverts back in the personal fund. If there be a residuary legatee it vests in him, otherwise it is disposed of by the will and the testator's devise in the estate as to that particular legacy.

There appears to exist in Chancery a very nice distinction with regard to lapsed and vested legacies and the legacy may be lapsed at the testator's death. If the legatee die after the testator - Inst. A legacy is given to B3 which he shall receive at the age of 21. If the legatee die before he arrive at the age of 21 it is a lapsed legacy notwithstanding the testator having died first and the reason of this is because it was to be paid to him at the age of 21 and therefore it is not considered as vested in him till the age of 21 and if he die...
before that time, it is a lapsed legacy: But if the Estate is given to be paid at the age of 21 then it is a vested legacy because so long as the terms of the Will it is given to him at the present time to be paid not until he arrives to the age of 21 —If there is any thing evincive of the testator intention that it should be a vested legacy then it shall be considered as such by the Court as much as if the testator should say "to be p'd at the age of 21 and to run upon interest till that time." In this case it shall be a vested legacy notwithstanding that it was mentioned to be paid at the age of 21. So in all cases where it is given over on the event of the 1st death of the legatee it is a vested legacy and goes to the representative of the legatee. It has been strenuously litigated whether a repetition of a Legacy in a Will should be considered an accumulation or as a repetition only. Inst. I give £1000 and soon after in the same Will give £1000 — or he gives £500 in one place and £1000 in another place in the Will: the question litigated was whether B should be entitled to both sums in the Will as given. The rule now seems to be established that where the testator desires a
a legacy to B of £1000 and in the same will
and to whom soverairy devises £1000 more to B.
it is considered as a penalty only and B shall
be entitled to the first £1000 only. But if he
gives to B £1000 and afterward mentions another
£1000 with the word "more" or "further" be
by which you may discover the intention or
if it be in a codicil or different instrument it is
cumulative and B takes £2000.
It was formerly held that when a man gave
a legacy to a creditor which was equal to the debt
more it was in satisfaction of the debt. A short history
of this and the rule afterwards made may offer
perhaps some instruction as well as satis-
faction to the curious in researches of legal know-
lledge. More than a century has elapsed since
it was an established rule in Chancery that if
a debtor gave a creditor a legacy in his will it
was applied in satisfaction of the debt. Under
this rule several cases were obtained and it was
lust carried to a remarkable length in Graunman case
when the debt was contracted subsequent to the ma-
king of the will and the legacy was held to dis-
charge it. Another circumstance which gave
rise to such construction was that when a man entered into articles of marriage and therein wa-
rented to settle a portion on the intended wife and afterwards in his will gave her a portion to the
same amount both portions could not pass for
it was presumed the Testator had performed his
covenant. By this time it was apparent the
Chancellor did not relish the rule; they therefore-
laid hold of certain circumstances in order to evade
the rule and by degrees utterly to abolish it. These
circumstances it will be necessary to examine
which will be illustrated by cases. The first
case in which they attempted to break in upon
the rule was a case in which there was a Legacy
given to a Crutier of a larger sum than the debt; the
Legacy was to be paid in a different kind of prop-
erty from what the original contract specified. The
Chancellor in order to get rid of this case observed
that this could not be intended as satisfaction of
the debt it being of a greater value and not
Ejusdem generis. Many cases seem to have been
determined upon this principle — a case
however soon arose when the Legacy given was
to the same amount of the debt and to be paid
in property ejusdem generis but it happened the
debt was payable six months before the Legacy, and the Chancellor laid hold of this incautiously and said this case did not come within the rule and that the testator must intend the debt to be first discharged and the Legatee should be entitled to the Legacy.

A third case arose where the Legacy was to the same amount to be paid at the same time that the debt became due and in prosperity's justest genius. The Chancellor now found himself involved in some difficulty but in order to take this case out of the rule he laid hold of the common expression in the Will "After all my just debts are paid" from hence he concluded that the testator intended the debt should be paid besides the Legacy; he therefore decreed both the debt and Legacy to be paid. Soon after this a fourth case arose in which the legacy was to the same amount payable at the same time of the debt and the Will was destitute of the common expression "After all my just debts are paid" but the Legacy happening to be given to a bar-
said, the Chancellor observed that as there was no precedent relative to a bastard he should be favoured: and of course decreed him his Legacy. The case arose stripped of every circumstance that the Chancellor had heretofore been favoured with. He then was obliged to have recourse to his own feelings and accordingly declared that unless something positive could be found in the intention of the testator that the Legacy should go in satisfaction of the debt, the Legacy should have both sums and to complete the overthrow of the rule the chancellor in another case declared that unless the testator made use of direct expressions in the Will that the Legacy should go in satisfaction of the debt it should be presumed that he intended it should not. Thus have the Chancellors by a series of adjudications and varying one after the other attended each with their particular circumstances evaded and completely overthrown a rule which perhaps might be said to be founded in Equity and to
accord with the mind and intention of the
testator (Vide) in order to corroborate the above
observations, the following authorities—
1st Will. 410  2d P. Will. 416  3d P. Will. 274
2d 4th. 900  3d 4th. 96  4th  Vco. 521  2d  2d  409  
2d 636  1st Brown in Chari. 129  195  195  195

Of a legacy carrying interest—

under the English Law—

It seems from the English Law to be a general
principle that after a legacy becomes payable
it carries interest, if not paid, until it is
paid and this principle seems to have obtain
in this Country except in Connecticut. This prin
ciple has been founded upon the
principle that it was thought necessary that the
latter. The rule in England with regard to the
interest of a legacy that if it be given payable
for 4½ at a future time it cannot be on interest till
that time arrives nor even then until the
legal legatee make a demand of it—yet in
this latter case the authorities seem to be on

tradictory and it is laid down in one case that it cannot carry interest after a demand until a Will be filed or until it be actually instituted. But if a legacy be given by a parent to the child under age payable at a future time and no maintenance provided for such child in the Will it shall carry interest in the mean time for the parent is bound to make provision for his child—but this principle extends no further than as relative to parent and child for if a legacy be given by a Grand-parent to a Grand-child it is in the same situation as if given to an adult. If a legacy be given to an infant of full age and a term is limited the legacy is on interest from the time it is payable and if no time is limited in the case of an infant it is on interest after a year of an adult after a demand so that it is not on interest until a year has elapsed. To this rule there is an exception—in all cases where the thing
given carries interest (as a Bond), the legatee shall be entitled to interest after a year as if it has a bond of £100 which he bequeath to C. such bond shall carry interest at the end of a year. So in case of stock or if a legacy be chargeable upon land which yields rents and profits the legatee is entitled to interest after a year. As if A devises to B and also bequeathes £100 to C out of the land devised to B, in such case C shall receive interest of £100 after one year has elapsed.

The case cited in P. Williams serves to point out how for a Court of Chancery will enforce interest to be paid upon a legacy given to a child and no provision made for its main

tenure. It is a case when a husband will not pay a legacy given to his wife when a child. To be paid her on marriage and there was no

further provision made for in the Will.
The husband in accounting with the Ex. received interest from the time of payment, only supposing he was entitled to interest only from that time and executed a release to the Ex. of all demands and claims he had under the Will — the husband afterwards being acquainted with his right he filed his Bill in Chancery to be relieved which was granted — This case furnishes a striking instance of a Court of Chancery's interfering against a transaction executed by ignorance of the law and that by a man's own act.

It may be asked what becomes of the interest in the case above mentioned where the legatee cannot take it? If there be a residuary legatee it doubtless belongs to him; if there be no residuary legatee the Ex. would be entitled to it provided he had no legacy given him and if the Ex. had a legacy given him it would work into the residuum the distribution as the law directs — It has been before mentioned respecting specific and
Of Secummary and Specific Legacies

A specific legacy points to some identical thing as a house, so is a person given money in a particular drawer not specifying the sum it is a specific legacy. But when a sum of money is given in a box and no more said about it, it is a specific legacy. It appears to be immaterial whether a legacy be specific or pecuniary as it relates to the Ex. for they both are liable in his hands for the payment of debts but if there be sufficient Estate for the payment of debts without the application of legacies and yet the Ex. will apply the legacies in discharge of the debts he shall be accountable to the legatee but if the legacies be exhausted by the specially creditors the Ex. may plead insolvent administration, the legatee may proceed.
...and the legatee may resort to the heir to the extent of pecuniary debts so that a legacy is no more than an inchoate gift not vesting immediately in the legatee but liable in the hands of the Ex. for the payment of debts. A specific legacy is also liable to be taken by execution but if an Ex. goes to a legacy neither he himself nor creditors can dispose of it unless the legatee by negligence leave it for the hands of the Ex. If the Ex. has committed waste in consequence of which the legatee is deprived of his legacy and the Ex. plead's sale and administration the legatee may rely over a spurious will, throw the burden of proof upon the legatee and he must prove that there has been waste. This being done he recovers in amount of his debt if so much has been wasted and if more has been wasted he recovers only the extent of his legacy. But suppose the Ex. has committed waste and has paid the legacies in discharge of a...
specially debt. The legatees in this case shall
stand in the place of the specially creditors to
the extent of their legacies.

P.W. The Ex. must first pay off specific legacies in
toto and in the next place pecuniary legacies
and if there be not sufficient to discharge
the pecuniary legacies he must advance
them as the law directs for their interest—but
provided there be not sufficient
to discharge the specific legacies it seems
they are not to abate but are to be paid ac-
dording to their priority and in Chancery

See there is a case in which the specific lega-
tees were compelled to abate—but the autho-
ritv in P.W. is founded on different prin-

Then according to these rules a devisee
land is also specific for the land in the
will is pointed out and we have seen the
lands in the hands of a devisee is as much
appropriate to the payment of debts as land
in the hands of the heir when bound by his
ancestor and if legacies be exhausted for the payment of specially debts, the legatees may resort to the heir; but a legatee cannot resort to the devisee because the devisee is a specific devisee (more properly heir legatee) who claims a priority — so when there is a specific devisee the specific legatee shall never contribute upon an average with the heir at law towards satisfaction of creditors whose real effects of the heir are insufficient. It is easy to conceive that specific legatee may be totally deprived of his legacy by the specially or simple contract creditor and yet other specific legatees be entitled to their legacies as if I gave to B a horse, to carry the oven and to certain note and there is sufficient property to discharge all the debts except the value of B's horse which is taken by a creditor — B in this case is remedied and the other legatees shall not abate but the law is otherwise respecting a pecuniary
legatee and he cannot be deprived of his legacy by any accident as if a house be con-
sumed by fire with a pecuniary legacy in it which is destroyed the legatee in this case
does not loose his legacy provided there is property suff. to discharge the
It seems that there is one case wherein a
pecuniary legatee hath a preference to a
specific legatee as if A give to B £300
all his estate — by specific legacies and
then gives to E £300 as a pecuniary lega-
cy — this legacy shall be paid out of the spe-
cific legacies and they must abate amongst
themselves — It is easy to see that the before
mentioned principles may cause great in-
justice in the doctrine of legacies and op-
pose the express intention of the testator
for a man may not be professed of so lay
an estate as he supposes he does — inst. a
person gives a farm of land to one of his
son
and money to the same amount to the other when in fact the sum of land is all that is left of the testator's estate after payment of debts — the devisee of the land being a specific one will take the whole of the land while the pecuniary legatee is deprived of any part of the estate when the intention of the testator is manifest that they should share equally — When an Ex. pays a legacy and assets fail to payment of debts the legatee shall refund provided the Ex. has taken a security for that purpose or has paid it by direction of Chancery otherwise Chancery considers him as having been negligent and will not compel the legatee to refund so if an Ex. pays a pecuniary legacy in full when assets fail to pay other legacies he is liable to make satisfaction. But the creditors in the first case or legatees in last case may if the Ex. be insolvent come
come directly ag. such legatee so paid & compel him to refund or the creditor may pursue the effects and take them where he can find them - but he must resort to the ordinary course (viz.) to the Ex. in the first place - The principle is precisely the same in case the debts are all paid & the Ex. has paid the remainder in satisfaction of one legacy - The Ex. must first be pursued and in the event of his failing the other legates may compel the Legate who has been paid to refund -

It is apprehended the legatee ought upon principle to refund in all cases to the Ex. when new debts are discovered and that the legacy so paid may properly be considered as money paid to his use and an action of indebitatus assumpsit will lie to recover for the nature of the payment is that it shall operate only in the event of the Estate's holding out...
There appears to be a case in Vernon where

Chancery compelled the Legatee to refund

where the Exr. did not take heed but where the Exr. took all diligence to see if there were no more debts due before he made distribution of the Estate and after that a debt appeared and Chancery compelled the Legatee to refund.

Where a legacy is due given with a power to some person to distribute, and if that power be not reasonably exercised Equity will control the power and when Chancery does step in they generally distribute it equally among the Children. As when a man gave his two daughters £1000 vesting the wife to dispose of it according to her discretion one of which being a daughter in law she gave only £100 and to the other £900. In this case Chancery ordered the one to refund to the other and they should equally.
So again when there were 3 daughters whose father gave to 2 of them £400 each and empowered the leg. to exercise his discretion respecting the 3rd daughter; and he intended to give her but a men trible but then being established their chart ordered to her £400.

There appears to have been in the book a question by whom was meant "children" and the rule seems to be this: where the term has relation to the time of making the will and where not — in the first case children are living and in the last, not at the time of making the will. As in case a will be made containing the expressions aforesaid and nothing more, it is to be supposed that the testator meant to provide for the children only then in else, as being the only objects. At that time of his bounty — if the testator in his testament should have other children after the making the will and before his death.
should re-published it — it would be supposable that he meant to make provision for the after born children — So if then Beaudevis to the "Children of such a person and at the time of making the Will such person had no children it is clear that the testator meant after born children — So if a man give his Estate to the Children of two persons and there be only children of one of those persons after born child un an contemplated and the children take per capita — It that the word Children includes Grand Children as a devise to A's Children include his grand children — but the rule is established to be otherwise provided A has Child an

Upon the strict intention of the testator the term "Heir" has been construed differently — as if there be a devise to B for life and upon his death to the heir of J. S. which heir at the time of making the will was C. who died before the devisee and at the death of A — the devisee D was in fact the heir of J. S. The question was did the £7/4 of C. the person contemplated by the testator as D the heir of J. S. at the time of A's death take the Estate ? and it
was determined that the Ext. of E. took the devise
that D should not take is clear because the letter
for never had in view an afterwards issue: but
that the Ext. of E. should not take it is as clear
for because the county of E. dying before the
devise makes the legacy 'lapsed and
goes into the residuary.

When a person gives his Estate to his relative
they are no relations we mean except those who
527. can take under the statute of distribution (27)

Charles 2. 13° in the first case of the kind relations
of every degree claimed a share and were let
in. — So when a devise is of all my Estate — all
the personal Estate and that only so far which
he dies possessed of all the acquired after the
will is made. — So again a will made to pass all the
Estate at a particular place — all at that place
over at his death yet if specified thus all
my goods, chattles, furniture and other things
this does not pay money there for in this case
the Chancellor observed that when the testator
made use of the words "other things" he meant such like things as he mentioned and therefore could not mean money.

Of the Ademption of a Legacy

This applies generally to specific legacies as when a man gives a horse &c. to a legatee before he dies, he sells the horse or if a bond collects it—in some cases this will be an ademption and in others it will not for sometimes Chancery will let in the Legatee upon the Estate of the testator. If the rules appear to be these if you can collect from the circumstances of the case that the testator manifestly intended to deprive the legatee of the legacy it is an ademption but if the conduct of the testator be such as clearly evinces that the legacy should still remain with the legatee it is no ademption as if the horse be sold or the bond collected from necessity in order to pay debts or the like it is no ademption. So if a horse be pledged for the purpose of securing a debt it is no ademption.
So if a bond be bequeathed and it be after voluntarily paid it is not an ademption, nor is it if taken by compulsion when it is manifestly done to secure the debt; but if no reason can be assigned why aliened in the first place instance or collected in the last case it is an ademption—these are instances in which a legacy is said to be aliened when it is lost by accident—as when a house is divided and afterwards blown down and destroyed or when a ship at sea is bequeathed and lost at sea—a person gave a house to a devisee much out of repair and in his lifetime made so many repairs as that not a stick of timber of the house when built was left—The question was whether this was the same how that was devised? This case appears not to be determined—but in a case similar to this there was a determination—This was in a case when a ship was repaired so much in the lifetime of the Devisor as nothing was left except the keelson—This was determined to be
The same ship devised and then found no ad
emption of the legacy

Then yet appears another class of cases which
have been determined to be an advancement
of the legacy, as when a man bequeaths
a certain sum to his children and after his
death makes the same provision
as an advancement or suppose he does not
give so much as the sum of the legacy as an 
advancement it is considered as an advancement.

As when a man gave his
dughters in his Will so much each and
before his death set them out in marriage
and advanced to them for furniture an
amount of the sum contained in the legacy.

This was held to be an advancement. To again
a man gave hisfy Will a legacy of £750
and before his death bought him a commis-
sion in the army and expended £600 by way
of advancement. The Court determined this
to be an advancement for so much; but the
money paid out must be actually an ad-
A covenant for if it be only small sums for pocket money & it is no admission.

Cases in the Boston are not uncommon of a man's devise or annuity a condition to the devise - these are generally restricting marriages & as a gift upon condition that the legatee do or do not marry a certain person with consent of parents - and indeed there are cases upon condition that the legatee do not marry at all: but the rule established is that if the restraint be general that the legatee do not marry the legacy is good and the condition is void as annulling an absurd policy. These however appear to be one case in which such a restraint is said to be reasonable and is so determined - this is when the husband gives a legacy to the wife upon condition that she do not marry again - this is upon the ground that in case of the widow should marry a second husband
The children would be neglected in their education and the estate would lose its legacy - but as the event of there being children being the only ground to validate such a condition it is apprehended when there are no children the devise would be good and such a condition inoperative: but notwithstanding all this there are authorities which contradict this restraint and in some cases the claims of the testator have been indulged as to the time, place, and person: but this restraint must not go so far as to defeat the principles of law before laid down. First: a man gives a legacy upon condition that the legatee do not marry until the age of 21. This is such a restraint as Chancery will countenance but if the time be limited to 30 or 40 years it is apprehended the condition would be void and the legacy good. For otherwise it would defeat the above principle. So as to the I shall the testator gave a legacy to his daughter
upon condition that she should not marry in York; she however married in York and lost her will for her legacy; but the Court of Chancery rejected it by observing that since it was not in the Will of the testator and she was not obliged to marry in York, the testator should be indulged—As to the person: if the testator points out a particular person against whom he has an antipathy and therefore wishes his daughter not to marry him and give her a legacy upon condition that she do not, the Court say that she shall be indulged in this restraint and if the marry such person she shall forfeit her legacy—This principle is carried still further—as if a man give to his daughter a legacy of £1000 provided she do not marry a Papist but notwithstanding she marry the Papist her legacy is forfeited. Yet if the condition had been that she should not marry a Protestant it would have been void: but a Papist being an object of inalienable hatred
among mankind it was thought unwise that the testator should be indulged in his restraint.

But in this place it may be remarked that a legacy given upon condition that a person shall not marry another of a particular trade or profession, it is void. The legacy vests if a legacy be given upon condition that he do not marry without the consent or advice of P3. It is considered as being only inter vivos and the legacy is vested but if it be limited over upon condition that he do not marry with the consent or advice of P3. It is a good limitation and the first legatee provided he do not comply with the condition forfeits his legacy — The legacy be given to a minor it seems to be important to know the extent the Est. is to do with it. It has been determined that he cannot pay it at his own risk for in the event of the father or guardian becoming a bankrupt he — it to pay over again.
if indeed he take a security from the father in guardian that it shall be paid over to the child when he shall attain to the age of 21. He has done his duty and cannot after wards be called to an account or if he pay it over by the direction of the Court it will done and he shall not be liable. The case cited in K. Williams is an extremely hard case this was a case in which a legacy was given to a minor, a son to a rich and flourishing merchant, at the time the legacy became due the Ex. paid it over to the father who afterwards used his son into partnership with him and they traded together for a number of years when they both became bankrupts and their effects assigned over and the assignees filed their bill ag. the Ex. and he was compelled to pay it the second time. The safer way there for the Ex. is to apply to Court and they
will see what care is taken. When a legacy is vested and the Legatee die before payment it is transmissible from this arises a question whether the Ex. must pay it immediately to the adm. or whether the adm. must wait till the day of payment arrives and it has been determined that he must wait but if it be given to A and upon his death to B it is vested in B immediately upon the death of A. If a legacy be given generally to B without pointing out the time of payment and upon his death to C such legacy is to be paid to B whereas his circumstances require it to be paid to B. which are considered to be incapacious when he arrives to the age of 21 or if he marry before that age - so if he die before that age or after it immediately vests in B and also becomes payable. So if a legacy be given to the children of A generally and at the time of the
gift A has but one child it vests in him yet if he have after come children ever so many the legacy is continually dividing from the hands of the children and each child at his appearance is entitled to an equal share with the others

In England the Ecclesiastical Court formerly had cognizance of all Testamentary matters and the Common Law Courts had no jurisdiction. However it is long since that a Court of Chancery has assumed a power over legacies yet the Spiritual Courts do still retain its power. A Court of Chancery has taken cognizance upon the ground that the Ex is a trustee and therefore will compel him to perform his trust and if he do not comply with their decree they will deal with him in the ordinary way upon an attachment and even a sequestration as the case may happen In some cases a Court of Chancery has
jurisdiction when the spiritual court has none can have any - then an answer of
issues arising out of a sale of land, for the
spiritual estate was vested with any matters relating to lands, if therefore legacies are
granted issuing from lands Chancery is the
proper forum to obtain redress - all the courts
of law have no jurisdiction over legacies as mentio-
ned above yet if a will is sent to a legacy, it may be recovered at common law - so
again it was held by Holt C.J. that a de-
sivise may maintain an action at common
law ag: a tenant for a legacy divided out
of land; for when a statute on the state of Wells
gives a right the party consequently shall
have an action at law to recover it.
It may with propriety be remarked in
this place that the judgment in an action
brought by a legatee against the testator having
committed waste goes immediately ag: the
Ex. de bonis propriis or the ground that there is no property of the testator's remaining in his hands —

Of the surplus of the testator's estate after part of debts —

The estate under these circumstances is to be distributed according to the Statute of Distribution in the reign of Geo. 2. — In order to understand the mode of distributing in this and all other of the States, where the act of distribution is founded agreeable to the English, the Statute of Geo. 2 must be thoroughly understood. — In the case of an intestate estate the ador after pay of debts must distribute the remainder according to the said Stat. and the case is the same with regard to an Ex. where there is a residue after payment of debts, legacies, &c. — According to the Stat. of the 22 & 23 of Geo. 2 it was the general rule, opinion
that the adm'r was not compellable to distribute the surplus - but that he had the right to retain it himself, as the ordinary did who formerly had the sole power of granting administration which was arbitrarily exercised till the Stat. of Hen. 8: which compelled him to grant administration to the next of kin to the deceased, but by the above mentioned Stat. the adm'r is now compellable to distribute to the next of kin in equal degree - It is apprehended that this Stat. is only a detail at length of the old Common Law only enforcing the adm'r to distribute the surplus which antecedent to the Statute he had reserved to himself in open violation of the laws of the land: for under the old Saxon Law we find it a rule that 1/3 of the personal Estate of the deceased went to the wife 1/3 to the Children and the remaining 1/3 to pray the soul out of purgatory of great harm
to be there, about 2 years after this we find another Stat: of Ch: 2. called the Stat: of Vinculis which gave the husband power to dispose of all the wife's personal Estate at his discretion provided she died before their child without a will which power it seems had before been doubted. Yet this Stat: was in assent of the Common Law.

Of the Statute

The Stat: of Distribution directs that where a man dies intestate leaving a widow and children and there be a surplus of his personal Estate after payment of debts the 1/3 part of 3. Estate shall go to the widow and the remaining 2/3 to the children and their legal representatives ad infinitum if there be no children nor any legal representatives of them then one moiety to go to the widow and the other moiety to the rest of them to the intestate in equal degree and their legal representatives provided that no representation be admitted among col
laterials after brothers and sisters children: if there be no widow the whole of the surplus goes to the children and their representative and in default of lineal descendants to the next of kin. By the terms "legal representatives" is to be understood that if there be
just children of J. S. and one dies leaving child then such children are to stand in loco parentis making part of the old stock and are to take what their parent would have taken but if all the children are dead leaving unequal number of children they no longer stand in loco parentis and take by representation but take in their own right but in the same pro capite. So if one or more of these great G. children die leaving children these last again take the same stipend their fathers would have taken. The mode of computation among collaterals is governed solely by the Civil law and the manner of computing is as follows beginning from

The proposer, the Intestate, you are to count up till you arrive at the common ancestor of him who claims a share of the intestate's effects from thence you are to count down until you arrive at the claimant. Instance if J. S. die leaving 4 children and two brothers the children we have seen take in exclusion of everybody else: but then are no children and the brother claim as next of kin, and the statute you will remark directs it to go to the next of kin in equal degree in order to find who are next of kin among the claimants you are to begin at the intestate and counting up to the common ancestor of the claimants who is the father of the intestate will be one degree, from thence to the brother will be the 2d. The brothers then standing in equal degree to the intestate and no other relation living are entitled to the Estate.
For the more easy explaining this subject the following table is inscribed,

**Table of Consanguinity**

<table>
<thead>
<tr>
<th>Lineal</th>
<th></th>
<th>Collateral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Great G. Father</td>
<td>3° Degree</td>
<td>Great Uncle</td>
</tr>
<tr>
<td>Grand Father</td>
<td>2° Degree</td>
<td>Uncle</td>
</tr>
<tr>
<td>Father</td>
<td>1° Degree</td>
<td>Brother</td>
</tr>
<tr>
<td>John</td>
<td>Sister, Intestate</td>
<td>Nephew</td>
</tr>
<tr>
<td>Son</td>
<td>1° Degree</td>
<td></td>
</tr>
<tr>
<td>Grand</td>
<td>on 2° Degree</td>
<td></td>
</tr>
</tbody>
</table>

By attending to the before-mentioned principles and the above table there would seem to be no difficulty in determining every case that should occur but the words and their legal representatives seem to have occasioned many disputes. I shall therefore only just mention the cases which have been decided under the statute. If there are brothers and one die leaving children such children take after in surfeiture what their father would have taken: if all the brothers die leaving unequal numbers of children
They take the same as above-mentioned.

It has been determined under this Statute, that brothers and sisters take in exclusion of the Grandfather who stands in the same degree of kindred as the son of Englin and Eglyn, determined by Sir John Holt—now this case could be determined agreeable to the Statute of Can. 2, which says, "to the next of kin in equal degree, it is difficult to account for the Grandfather and brothers stand all of them in the 2nd degree—exclusive of this principle and the rules of descent have been sacrely adhired to."

The Mother by the Statute of James is degraded from her rank and put in the 2nd degree by Statute, with brothers and sisters in the 2nd degree but when the brothers and sisters are dead leaving no issue, the mother seizes upon her prior rank and takes the whole yet if there are children of brothers and sisters the mother is still considered as being in the
degree forming a part of the old stock of course such children are to take just shares what their fathers would have taken. Under this statute no distinction obtains between brothers and sisters of the whole and the half blood they both being in the second degree. Again the grandmother excludes the aunt.

It has also been determined that posthumous child of a brother shall share equally with the other children. The authorities to the above points are 1 P. W. 25 31 394 2 P. W. 344 3 P. W. 49 4th Atk 436 1 Rev. 136 333 4th 710 Salt. 30. 2nd Rev. 213. It may be remarked that in case the father and mother of the intestate are both living together with brothers the father takes the estate in exclusion of the brothers being in the first degree of advancements to children.

Under the law a child who has received an advancement from his father shall not be entitled
In after the father's death to a distribute share under the Stat: unless such child will bring such advancement into his office or else his election either to do this or keep what he has and from the issue of the other heir, taking more than himself for if there be more than sufficient to make others equal to heir and he retains his advancement he can claim no part of the overplus. This perhaps may make a question in our law and that of other States where it is not a copy of the English law.

It has been determined by a set of adjudications which have formed almost an entire system on this subject which hold forth the idea that an advancement must be an actual furnishing a child with some substantial property for a future support.
as a farm of land &c for occasional presents to a child as pocket money from time to time it is not an advancement - so money for an education of a child is not an advancement - but in some cases this may be questioned - especially in this country where an education will amount generally to as much as the other children - I will have - so again to pay out money for a child to be an apprentice is no advancement - but the father's buying an office for his son, this at will, as a Gentleman pensioners place, or a commission in the army have and are considered as advancements - so when the father makes a marriage settlement it is an advancement. The case is the same where the child advanced is dead leaving children. It is to be observed that the doctrine of buying property into both just in condition...

dying intestate is within the Statute as well as the Father.

Of a Will without one with an Ex. and when there is no Will made.

In case of a Will without an Executor appointed Administration is granted at testament to annuities in which case the Adm. stands in the same place as an Ex. would, invested with the same powers. But when there is no Will Adm. is by the Ordinary to be appointed and in this the Ordinary is not to exercise his own authority and wishes in the business but he is to conform to the Statutes of Cod. 3 and Hen. 8, which direct him to appoint the widow or next of kin to the deceased and if at his election which to appoint or may if he pleases appoint both. Finally he may go still further and appoint one to one part of the Estate and another to another.
part. Yet these are joint and the acts of
one bind the other and they must one and the
same stand together. But if the intestate leave a
bond of £300 the Ordinary cannot grant adm
for £50 to one and the other part to another
because the bond is one in the thing.
When there is no widow and a minor are
in equal degree the Ordinary may appoint
one or more or whom he pleases adm. with
this exception whenever they are either
Black; in the ascending or descending line those
704. in the descending are to be preferred.
It has been a question of litigation whether
the Ye blood could be appointed adm. as well
as the whole and now is determined that
they may be admitted to adm. for the equa-
It appears to be the criterion for
sub.; Ordinary to appoint and the Ordinary
may grant adm. to a sister of the Ye blood
or brother of the whole blood at his election.
I this there appears to be an exception that if the female be married the Ordinary cannot appoint her as adm't in any case whatever or on the ground that in appointing her he does not appoint the rest of him for the moment she be appointed it falls into the hands of her husband. Of course exceeds the intension of the statute. If an infant be entitled to adm't he must be appointed but the Ordinary must take care to appoint some other person adm't. Surante minore estate which lasts till the infant arrives to the age of 21 years but if an infant 25 he may act at 17 years of age. This adm't for the infant may be any person whom the Ordinary may please to appoint provided he be a direct person. If all the rest of him refuse to administer a (auditor may be appointed and if he refuse any direct person the Ordinary may appoin
at his election.  Of the death of an adm.

If an adm. die before he has completed his administration, his Ex. or adm. cannot administer unto the goods of the former intestate, but an adm. of bonis non must be appointed who is to compleat what the former adm. had begun. But the case as it relates to Ex. we shall find to be different when an adm. dies leaving his executorship uncomplicated. Where there are two adms. appointed and one dies, the administration survives to the other.

The duty of an adm. in England appears to be much the same as it is in Connecticut. He is to give bond be the conditions of which is the same of which ours is a copy. It is a general opinion that upon the construction of the condition of this bond the surety is bound for the adm. in every point of view, that he make due administration of the goods.
not pay over the debt due as the law directs, that the surety may be sued — But it is apprehended that this is not the true idea. That the condition of the bond will warrant neither can it be said, from authority neither can it be supposed that the common construction just upon it was the intention of the Legislature. But the only person liable is the adm'r. and if he abuses his situation the C. can displace him. The nature of this Bond is not that the adm'r.
shall pay over debts or to secure the Bankruptcy of the adm'r. and the construction of the words "to administer truly according to Law" is that the adm'r. shall return a true and perfect act of his administration and the performer fully as it relates to the Ordinary and Adm'r. A creditor then cannot sue the bond and assign as a breach that the adm'r. has never paid him his debt neither can he assign as a breach of the bond a deviation for this he could do.
on a suit to recover the debt against the adm. Suppose the adm. has caused in a perfect inventory of all the property and will not pay to the creditor a debt of 1100 which is due him. Till the creditor cannot sue the bond but the adm. alone is liable and can be compelled by a suit of another kind to pay the debt—but if the adm. has made a false inventory the bond is liable—and it appears the creditor is to run the risk of a devastation and not the bondman of the revocation of an administrator.

The power of an adm. may be revoked for a reasonable cause. And it ought to be removed that if an adm. does not make an inventory by the time appointed he forfeits his bond but the forfeiture is only for small money as it is called. This power as before mentioned may be revoked but if there be no reasonable cause for a revocation the Sup. Court here will issue a mandamus and compell the adm. to be restored to his former situation.
administration is granted to wrong person or granted when there was a Will, or the admr.
becomes incapable to perform the trust or runs away and leaves it not performed
the power given will be revoked---formerly when admr. was granted to a
person incompetent his acts were not con
sidered as valid in law or if a Will after wards appeared but now it is held otherwise.
The acts meant are sales of property or
but if property remains in his hands he
is liable for it and Trower can be tried for
it even though if he will not surrender it and he can in this case be
sued at law in such action as is adopted
to the nature of the property—Your admr.

Under these circumstances has com
menced a suit it must suit—last for the
after appointed 2d. or 3d. as the case may
be to recover the judge, he must commence
a new suit stating the whole proceeding
of admr. being granted forever being revoked and this being appointed in fact to the facts as they exist and being Sirs: on the judge: and you will allow of the right of the admr. over the property of the deceased.

The admr. is vested with the same power over the personal estate as the Intestate himself had, and may collect demands and release debts, may retake property taken away by wrong, severally all duties which were incumbent on the Intestate are incumbent on the admr. The admr. however has nothing to do with such actions as come within the maxim "Actio personalis mortuorum personal, such as actions committed upon the body of the Intestate and vice versa. Originally at common law the admr. could have no action for a trespass done to the personal property of the Intestate, as taking away his goods, killing his horse &c: for these all
came within the before-mentioned maxim, but as to contracts the adm. generally had a right to enforce them. By a Statute of Edward 4th, a remedy was given to the Eq. which he had not at Common Law. The Equity of this Statute was soon extended to adm. This was called the Stat. of de Consis asportatis. The terms of this Statute that no action could be brought only for goods of the testator which had been taken away and this undoubtedly was the intention of the Legislature, but Courts laid hold of the circumstances and the equity of the Statute and thereby extended the remedy by giving an action for all injuries done to the personal property. And all the cases which are to be found in the books are founded upon this Statute—yet notwithstanding this Statute, the action respecting an injury to the person of the intestate is as it was at Common Law, falling within the before-mentioned maxim.
The rule respecting the action liability to be held - that Advance

acting apparently to be held - that Advance

is necessary to the action - let it if they have

not been effects by the persons no action

of the tenant. Effects have been effects by

when this equity appears to be the. Whosoever

have been beneficially the amount of the (be) or

being or not the question - As to the

not liable for the half of the day. The

will of court, he is liable for he is not in all cases liable for

parts they more valuable and desirable. This case

acting apparently to be held - that Advance

is necessary to the action - let it if they have

not been effects by the persons no action

of the tenant. Effects have been effects by

when this equity appears to be the. Whosoever

have been beneficially the amount of the (be) or

being or not the question - As to the
As Ex or Admin. is not liable for the upset
of A, I have not been benefited thereby but
suppose A takes B's horse from pastured
it is not known what he has done with him,
whether killed, sold, given him away or any
thing else with him. A dies, his Ex. in this
case is liable; the presumption is that the
upset of A have been benefited and the court
will not presume otherwise and will not
admit proof to rebut such presumption.
For injuries done to another person by
the testator as Assault and Battery, slander,
the Ex. is not liable for these acts within the
meaning before mentioned as to personal
nor in persona.
Perhaps the equity of the above rule may
be questioned and in all cases where the injury
is vindicative such as slander, assault, battery &
assault it seems that the testator's property ought to
be liable to respond damages. What gave
rise to the rule before mentioned was the rise of prosecution: for all the admr. is liable for torts by which the intestate property died, property has been benefited yet he is not liable to an action adapted to the tort done--as if A trespasses B's horse and dies, his admr. is not liable in an action of trespass as A would have been, but he is liable to an action on the case adapted to the particular circumstances of the case. This may be more perhaps but the other understood by attention to the case reported in Newdigate, Hamley and Trott from which we may infer that an action of indebitatus a summisit may be brought to recover the value of the horse; for A in his life time might have brought trover of indebitatus a summisit and by his death the tort also died; the rule therefore remains good as to the indebitatus a summisit, for A by the very taking of the horse assumed upon himself to pay the value of the horse; this being
in the nature of a debt it is reasonable A's Adm. should be liable in such an action. The adm'r is not liable for all the contracts of the intestate. He is liable for such contracts only which carry with them evidence that the dec'd. has had a value received—inst: A promises for value received to pay to B $500 for such contract the adm'r is liable. So again A promises for a valuable consideration to build B an house this is sufficient evidence to entitle B to an action. But such contracts that the dec'd. would receive no advantage from except by the act of performance the adm'r is not bound to fulfill. The liability arising from the dec'd. own engagement or undertaking to do a certain act is not transmissible to an exec. or ad'r but comes within the maxim "actus personalis necessum est una inst: A meeting a merchant in N.York promises to collect a certain debt for him by such a time in the event of A not col
luting the debt at the time, he clearly is liable. But if no suit be brought during the life of A, it cannot be brought after A's death or E's, and of course the merchant is remediless for this goes within the maxim "actus personalis mortuorum personae". So if A takes a note and promise to collect it and for which he gives a receipt. The rule is the same if he does not collect it. So again, A being an officer to whom B delivers an Ex. which he receipt, in order to collect within the time, A is liable if he does not collect the Ex. But if A dies before a suit be brought B cannot recover for it being a contract founded on the undertaking of A. It comes within the maxim "actus personalis mortuorum personae". Upon this principle the Ex. of a Sheriff is not liable for an undertaking of the sheriff to keep a Goal in repair yet the sheriff upon such undertaking would be liable.
There are cases when the Esq. or Admr. has it at his election whether to bring a suit as such or in his own name alone. And this perhaps may better explained by example. First, we have seen that the admr. has all the care of the personal estate and it may happen that his estate may increase in his hands, as the interest of money arising on the profits from the estate. In such case he is to make an additional inventory of such estate and for these he may sue in his own name alone; in short that debt or duty which grows by the act of the admr. may be recovered in his own name and when recovered is still property in his hands for the payment of debts—but when he seeks for a debt or duty which arose during the life of the intestate he must sue as Admr., or as Creditor he made admr. for.
may retain his debt, tho' not to the prejudice of creditors of a higher nature. Yet in some cases it may be important to be a creditor to be appointed adm. as if he be a simple contract creditor, and there are others still on the same footing, he may retain his own debt to their disadvantage. If the adm. be a simple contract creditor, and there are specialties due he is just in the same situation as tho' he had not been appointed adm., but if there are no specialties due he can better himself.

Of that estate which vests in the adm.

The estate vesting in the hands of the adm. is that which is moveable—yet there is one species of moveable property, which does not vest in the Ex. or adm. but descends regular to the heir-as Dece in a park, Rabbits in Warren—fish in a pond & leases for years.
are considered as personal property vesting in the hands of thedebtor, so lands extended for the payment of debts are chattels real vesting in the hands of the Ex. as heir.

An Estate for a term vie

At Common Law this kind of Estate could not go to the heir of the person to whom it was given because there were no words of inheritance in the grant—it could not go to the Ex. it being a freehold Estate—neither could it redisturb the grantor because he had completely divested himself of it by the grant. Of course it lay open to the first occupant until a Stat. of Car. 2. was enacted which gave it to the Ex.

In this State we have no such Statute respecting it and the Stat. of Car. 2. being too recently enacted to affect this Country of course the question may be litigated here yet and whether this Common Law of Eng.
would be here adopted may be a question.

Of the Embelments

Embelments are annual artificial profit growing upon the freehold such as corn and grass if it be such as clover sowed by
and all husbandman pays in the Ex. So all her of Roots such as parsnips &c. pays to the Ever. Of things affixed to the freehold.

Such things as are affixed to the freehold as
dyns kettles, stoves, grates in a chimney.
It ancintly depended to the heir. So it was
the same as between landlord and tenant
but the rule as to landlord on tenant
seems to be somewhat relaxed and if the tenant so affixed a thing to the freehold as
that it can be removed without any peril
the injury he shall be permitted to remove.
Finally he may remove it when the Engi.
my would be great provided he will pay.
The damages upon this principle (i.e.,
with have been removed.) The rule be-
tween heir and creditor seems not quite
so relax. Yet if the Ex. can remove a thing
affixed to the freehold without an open
damage as a (same affixed to the heir)
may as before mentioned he may do it.
Of heir Loams
The things that are considered as heirlooms are
a Chest, Desk, &c. used for the purpose of keeping
title deeds &c. and do not pass into the hands
of the heirs, or Ex. but descend to the heir.
So the heirs or Ex. is not liable to the full
extent of his inventory provided he has in
ventoried bad debts and he may screen him-
self by plene administrat and by giving Rol.
the bad debts in evidence as if he inventor
a Ship at sea which is lost he will not be
liable to make it up in the inventory.
How the adm'x is to proceed in a suit &c. &c.

Originally, at Common Law, if a suit had been commenced by the dec'd in his life-time and before its determination, died. The suit also died with him, and so vice versa. The adm'x might revive it by a new action, but the action commenced by the dec'd, when living, was completely annulled and destroyed, but by the intervention of a number of Statutes the suit commenced by the dec'd is at this time kept alive and remains in the same situation as the dec'd's death. The Statute of W&e. &c., the first upon this subject appears to be defective, which has not been remedied by any subsequent Statute. This Statute has made ample provision for the Petition suit, but does not seem to have contemplated a Defendant. The adm'x in case a suit has been brought by his intestate, pending
at his death, has nothing to do except to resort to the Court and enter his name in the Docket and cause to be added to the name of his intestate the word mortem. So if the Defend. had died pending the suit the Pl. may sue a Scire fac. ag. his Ex.or Adm. relating the former suit & which Scire fac. attaches itself to all the cost that has arisen upon the suit to the present time. Thus far the Stat. has proceeded with propriety. But if the def. had sued a claim for which there is no ground for a recovery and then dies and the adm. will not proceed with the suit knowing perhaps the claim to be false - the Defend. in such case cannot enter ag. the adm. of the Pl. for the cost that has arisen let it be ever so large a sum. This then is a Casus omissus in the Statute, in consequence of which great injustice may be done. It is however capable
of making a question arising from the
words in the Stat. which are &quot;The Ex. may
center &quot;would&quot; and therefore be equitable
that the word &quot;may&quot; be in such can construe
&quot;must&quot; although this would hardly come within
the rules of construing the word &quot;may&quot; to
mean &quot;shall or must&quot;—It seems to have
been a principle in the English Law that
when the admin. sues in right of his intestate
and facts of a recovery the defendant shall be allow-
ed no costs. This as a general rule for there are
cases in which he will be liable to costs as
much as the intestate would have been: as
when he sues for a debt or duty which has aris-
en from his own act since the intestates
death, as if he sues for interest of money which
he has loaned &amp; and if in such case he
sue as admin. yet he shall be liable for cost.
In mortgages the interest that the mortga-
gee has in the Estate nominally goes to the
heir yet if the mortgagee dies and the mort
gage be paid, it must be paid to the Ex. or Adm. of the mortgagee and is subject in their hands for the payment of debt.

So where the law day is past and the mortgagee has still a mind to redeem he shall pay the money to 1/4 Ex. of the mortgagee and if he neglects to do this and pays it to the heir the heir will be considered as a trustee to 1/4 Ex. compulsable in Chancery to fulfill his trust and even if the heir obtain a foreclosure he is still accountable to the Ex. for the rents and profits and may be compelled in Chancery to convey the land to the Ex. unless he chooses to retain it by paying the mortgage money. It appears to be an unsettled question whether an Ex. or Adm. has any right or interest in an appurtenance of the deed. It is apprehended that as he cannot upon English principles be assigned over to
and the person the Ex. or Admr. has no authority over him, hence it would seem unreasonable that they should be bound by any covenants entered into by the dec. yet the authorities on this subject are contradictory.

Of Ex. and Admr. duty

The Ex. or Admr. having inventoried the estate in the first place is to pay the funeral expenses after which the debts of the dec. according to their priority of rank before mentioned. 1. debts of the Crown in doing this he is to pay fines and amercements 2. those debts which are provided for by the Statute or debts due for the last sickening. 3. all debts of record as debts on judgment. 4. debts by specially. 5. all simple contract debts as the laws direct. The Admr. as it relates to this may be in critical situation he is to pay debts but he is to find out whether they be real debts or
out, for if the claim be unfounded and he discharges he will be liable to restore it; this is a general rule; yet if he has used due diligence and care to inform himself of their legality he will be excused; and when debts appear to him doubtfull he may file his Bill in Chancery and call in all the Creditors and the Court will examine the claims and determine whether they be just or not, after having done this they order the admr. to pay over in which case he will be safe.

The admr. is not obliged to take every legal advantage to avoid a claim: for first, he will not be compelled to plead the Statute of Limitations. It is laid down in Bacon that an Ex. must take advantage of an usurious contract; but this may be questioned since the testator was not obliged to do it. The most of can be made of it is that if he will take advantage of
Of an Exeq. de son tort

This is an Exeq. called in his own wrong and is one who without any authority under the Will or from the Ordinary deals with the property of the dec'd in the same manner as a lawful Exeq. or Adm'r would deal with it. Were there no law upon this subject we should be led to conclude that such an Exeq. would be mere trespasser only, but an action may be commenced against by the creditor as tho' he were a lawful Exeq. yet the form of the action is different for he is described as being an Exeq. of a man who had no last Will and Testament he is liable like any other Exeq. to the extent of assets and may shield himself by pleading plene administrat. This Exeq. has not
the same privileges of the Ex. for he cannot retain his own debt and when he pleads plena administravit he cannot give in evidence that he had £1000 property that he has paid out £900 and retains £100 for his own debt; for were this the case it would be an object among creditors to get the estate into their hands. It is settled law that there can be no Ex. in a contest where there is a real one or Ed. appointed for in either case he is a mere trespasser - to this there is an exception. First: there is a certain kind of estate that the Ex. has nothing to do with: as if the testator in his lifetime has made a fraudulent conveyance of personal property over this the Ex. has no power for he is bound by a Stat: of Eliz. which declares all fraudulent contracts good ag. the grantor, his Ex., his heirs, &c.
yet the conveyance is not good at all.

This principle applies itself to a Donative causa mortis, which is a gift of the testator to some person when the testator is on his death bed or on condition to revert back on condition proved he recovers; however, this law simply and this is not good at all. Creditors, for voluntary conveyances, generally are not good at all. Creditors, but are good at the law. He is bound to make an inventory of it.

Of the testator's power to dispose of his personal property.

Every person by the laws of the land except those under legal disabilities may dispose of his property as he thinks proper. It would occur to the mind of every man who is a stranger to the law how for—
such power of property extends can he create a
perpetuity to endless ages? In answer to this, the
law has prescribed certain bounds beyond which
he cannot go. The original Common law idea was
that a man could not transmit his personal
property further than to the soil (Donae et
sed the force property vested absolutely in him
but it is now settled law that a man
may limit his property to as many per-
sons as he pleases provided they all are in
esse at the time he makes his Will so it may
be limited to a person unborn vesting in him
at the age of 21. It is also settled that the
use of personal property may be given to
one and the fee (to use the word improperly)
to another, and in this case the second Dona
takes the whole. But there cannot be
an entailment of personal property be-
cause it would create a perpetuity for it
cannot be barred by fine and recovery.
But the term "Sies" in this State having
a different signification from the same word in England and if an Estate be given to a man and his heirs the heirs take an Estate in fee after the first Donesse and it seems that it may be questioned whether personal property may not be given to and his heirs and the heirs take an absolute Estate after the first

In consequence of these Statutes no land could be given to Corporations. The design of them was to prevent persons properly from being engrossed by the hands of the ecclesiastics, to the exclusion of the rest of the community. For lands thus given were said to be given for pious uses &c. But at and soon after the reformation a different construction was given to these Statutes and it was held that they extended no further than to
To prevent lands from being given for superstitious purposes and that lands given for public utility did not fall within the Statute, yet still considering the case evil a Statute was made in the reign of George II. declaring that all devises for a public or superstitious use was within the State of mortmain and consequently void.

In Connecticut no such Statutes exist; therefore a devise to a Corporation would be good. Attempts have been made to evade these Statutes by bequeathing money to be laid out in land, yet this method has been held to be within the Statutes. But a devise to an University or College is an exception to the Statutes.

Of persons incapable of making a Will.

Persons of non sane memory arising
from any cause whatsoever, as a person intoxicated with liquor &c. - To the Will of persons Deaf, Dumb or blind if it is in proof that such persons could be understood from signs &c. will not be void - To the will of a blind woman an unlettered person is good if written and read to him and it according to his instruction. Many times Wills made under the influence of threats have been vacated - yet deugs is not a proper criterion and how far threats would operate to vacate a Will is not ascertained, but it is apprehended that whenever a person is imposed upon in such a manner as to prevent a freedom of choice the Will would be void and this seems to con-
ground of imposition and is operative in a Court of law. The case of Windham & Chetwynd in Bun. goes upon the ground that a Court of Chancery in such case has no jurisdiction; yet there are cases in which a Court of Chancery have established a Will even where fraud has been used. Fraud operates more strongly in a Will than in a contract for the least fraud in a Will renders it void and the person who made it died intestate; therefore there appears to be an exception, that when a fraud is used, a small commonly called a prious fraud, the Will notwithstanding will be good. As where a man being about to give his estate to a profligate fellow and so far deceived that he devised it to a much influenced, the title to his property to his wife and children. There are certain criminals in the English law whose Wills are void the not on the ground of incapacity as is commonly supposed but because that they have no property it being forfeited to the
lying by the criminal act of which he has been guilty, such as Treason, Felony &c.

The great maxim in the English Law is principally to govern which is that the intention of the testator is to be pursued when it is consistent with the rules of Law. Then the only question which can arise is when does the intention come within the rules of Law? Some have supposed that if the testator makes use of technical expressions in a Will which the Law does not admit and yet it is clearly understood what was his intention that such intention cannot be pursued and this entirely defeats the maxim. Inst. A gives 175 and the heir of his body an horse in this case it is clear that A intended to give the horse to A and his heir living and in being which he might do but the Law has said that such expressions create an estate in land which cannot be done in personal property. The true construction of this maxim is that
pretended to be that if the intention of the
intestate was legal it shall be pursued let him
make use of what expressions he will and if he
does use unapt words to convey a legal in-
tention still the intention shall govern yet
there are cases where the intention would be
totally repugnant to the rules of law and therefore
not to be pursued as if A devise to a person
and the heirs of his body and declare that
such Estate shall not be docked the intention
in this case is not to be pursued it being in-
cident to an entailed Estate to be docked
So if A gives to B to and the heirs of
his body his library of books to descend to
them at infinitum the intention here is
dearly repugnant to the rules of law that
personal property cannot be given to wate
a perpetuity the intention therefore is
only applicable to the subject matter over
the Court have only to inquire whether the
devisor could thus devise
OF THE ADMISSION OF PARDON TESTAMENT TO EXPLAIN A WILL

As a general rule it is laid down that no proof can be admitted to explain an ambiguity which arises from some matter extraneous from the will of the codicil. Proof will be admitted to explain it. Inst: A devises to B's son Jr. and it happens that B has two sons of that name; this being an extraneous circumstance to the will, pardon testimony will be let in to show which son he meant. But if A give an estate to B when he designed to give it to C, pardon proof will not be let in. The case cited in Brown clearly admits that pardon testimony may be let in to explain an ambiguity arising from the face of the will from the disposition of the property. Hence given S. Chancellor Shulow observed that the testament's hand not expressed by the will what she intended and on this ground pardon testimony was let in.
She had given property which if one construction was given the Will would amount three times as much as she was worth and the legatees would be deprived of their legacies, but if another construction was given the legacies would be paid. The Chancellor let in proof to ascertain the state of her property in order to give a right construction to the Will he did not let in proof to ascertain the persons to whom the Estate should be given for this was already done but to determine which of the persons ought to take. It is apprehended that this furnishes ample ground to say that any facts may be proved to give a construction to ambiguous expressions in the Will.

Of the requisites to a Will

To make a Will of lands, it is requisite that there should be three subscribing witnesses but in a
in a Will of personal property three witnesses are not necessary, if signed by the testator it is sufficient to pass the property and it is immaterial in what part of the Will the name of the testator be written provided it be in any part to make sense in reading the Will. It is not absolutely that the name of the testator be in any part of the Will as the case may be. Inst: A Will was found in which there was no name and in this case formal proof will be let in to show that the testator acknowledged the same to be his Will. So when the testator did not write his Will himself neither was it signed but it appeared in proof that he gave directions and afterwards acknowledged the same to be his Will and was held to be valid

Of those who may be Executors

An infant may be appointed executor.
he cannot act until of the age of seventeen
and all acts done by him as an infant are
binding which in other cases would not be so.
The release of debts, etc., if he releases
a debt which has not been paid his infant
care still protects him and he may plead it
and avoid the release.

Persons incapable of acting are idiots, lunatics, etc., who cannot act as Cs. and if appointed must be displaced — yet no profanity
of manners will prevent an Cs. from ac-
ting unless it be such as leads to the distruc-
tion of the property. In England if an
estate be given to the wife generally it vests
in the husband but in order that she alone
shall have it, it ought to be expressed thus:
"to her sole and separate use." Then the hus-
band can have no right to it. This
seems to oppose to that inviolable rule that
"a spouse cannot hold property in her
session but is her husband's, yet it may
right that such a request ought to be good

Under the head of legacies it ought to be ob-

served that when a legacy is given to so

many such a person as one which the

P.W. gave is to you from land, it is not coni-

dered as being in terrem and if the

party making contrary to the Will of

the testator the Legacy is Void

Of a Donatio causa mortis

This is a gift upon condition to revert

back to the Donor and need not the usu-

of the Easement in order to have it pass to the donee

but it vests immediately in him. If it

be a donation of horses or upon a certain

sum it will not pass for it must be such

property as was in the immediate posses-

sion of the Donor at the time of the gift

P.W. 466 and must be actually delivered over to the

donee. It is a question whether a bond

can be given as a Donatio causa mortis?
If it can the Ex. has nothing to do with it. The case in P. Williams is a case of a bond being given as a Donatio De and held to be good.

Of Nuncupative Wills

A nuncupative Will is a disposition of the testator's personal Estate by an oral declaration of his will while in extremis before a sufficient number of witnesses and afterwards reduced to writing. From the writers upon this subject it seems to have been usual for men to reduce their Wills to writing yet at Common Law this was not required. There is not to be found in Connecticut an instance of a nuncupative Will with in the knowledge of Mr. Reeve. Perhaps it may therefore be questioned whether from the constant and universal practice of reducing Wills to writing there could exist such an instrument in this State as a nuncupative, or if it could exist to what extent?
The 29th of Charles 2. that is the St. of Treads and injuries has laid certain restraints upon a nuncupative Will (viz.) It shall not alter or revoke a former Will written unless reduced to writing in the lifetime of the testator, read to be approved by him and also proved by three witnesses. A nuncupative Will cannot give away a sum exceeding £30 unless proved by 3 witnesses who were specially required to bear witnesses thereof and by the testator himself and made in his last sickness in his own dwelling house or where he had previously resided 30 days. A Will of this kind cannot be proved after the space of six months from the making unless reduced to writing within six days. Nor shall it be proved 14 days after the death of the testator nor till proof hath first issued to call in the widow, next of kin, or some person interested to contest it if they think pro
There appears to be an important principle in the English law which it is apprehended does not comport with their own principles. Instance...

It is an established rule in the Eng. Law that if a man makes a Will not with the requisites to pass the Deed but at the same time sufficient to pass personal, it is settled and the authorities are that such a Will will pass the personal Estate and as to the real it is intestate Estate.

This is directly in opposition to the manifest intention of the testator and that principle in the law which declares that the intention of the testator shall be pursued and in this instance mentioned a part of the intention only is complied with. By this defeating the intention in many instances great injustice may be done especially under the Eng. Law. Example—A having 3 sons and as many daughters he devised to his 3 daughters £3000 personal Estate and £3000 to his sons real Estate the Will signed by Devetpers, only—in this case the personal Estate
gives by the Will, the real is intestate of course, the eldest son takes all while the other two sons have none of the Estate and of course that provision which was intended by the father is absolutely defeated, but if the will was made void for such defect it does the unfortunate two sons for a distributive share of the personal Estate, and says Mr. Reeve, in a case of a Will like this, I would always contest the point for it may be supported from principle and justice although not from English authority but that says he does not militate at all, contest the point when opposed to principle, of the power of an Ex' before probate of the Will.

The situation of an Ex' is materially different from an Admin. An admin. can do no act till the probate of the Will but an Ex deriving his authority from the Will may do any act before the probate of the Will that he can do after.
with a single exception - he cannot sue for the
Will is not considered as being sufficient to war-
rant an action without the sanction of the ordi-
nary; but he is liable to be sued and may release
debts &c. And when he has done anything as
an Ex., he is considered as having accepted of
the trust and cannot refuse to act as an Ex. If
the Ex. will do no act indicative of the accep-
tance of the trust of Ex. The Ordinary may
issue a citation commanding his appear-
ance before him when he may accept or refuse,
if the latter an admittance to annul the
appointment. If the Ex. on such citation
will neither appear nor make acceptance of the
office the Ordinary will use his death-like
instrument (viz.) excommunication, but in
this state the legislature supposing aEd of
£5 per month a much more effectual method
to effect an appearance of the Will before the
Probate Court - after 30 days had expired from the
Of the difference of the law where 2 Exrs. are appointed.

If there are two or more Exrs. and one only proves the will and the others refuse this refusal shall not prevent them doing any act that an Ex. may do and a suit must be brought by them all, but not against them all—b ut if a suit be brought against those who never proved the will neither acts as such, he may plead "never Ex." Where there are two Exrs. the one refuses and the other proves the will, he who refuses may afterwards come in yet if he never acts before the death of his co-executor he never can afterwards act, so that if an Ex. dies his office will devolve upon his Ex. Therefore the last will be Ex. upon the first testator's will but his power does not extend to the adm. of an Ex. Notwithstanding the Ex. of an Ex. is Ex. on both Wills yet he may
No clear content can be discerned from the image.
but if there are 2 Ex? each one is liable separately for debts which they have received if therefore one only commits waste unknown to the other he alone is liable De bonis propriis Inst. one has misc. £1000 - £300 of which he has wasted both Ex? are sued they plead plane administrator or rather administrator in such the case the P? may reply over disposition and just will pay of the one who has committed the waste but if one has received £600 and they jointly give a receipt for it and it is afterwards wasted by the one receiving they are both liable for such waste: if one has received property and delivered it to the other and he wastes it both are liable, it was formerly a rule that when two Ex? gave a receipt for property and one of them wasted it both were liable to creditors but the actual receiver of it was the one only liable to Legatees - this distinction seems
now to be exploded. As to involving the power of an Ex., the law is different from that of an Adm. and if the Ordinary has appointed an Adm. who is in failing circumstances his power may be suspended; but if one has been appointed an Ex. who is in failing circumstances his power cannot by the spiritual Ex. be revoked nor in any other case except that of insanity. Neither can the ordinary compel the Ex. to give bond for the testator his thought being capable of transacting the business but upon an application in Chancery the Ex. may be compelled to give bond. After the Ex. has accepted of the executorship he must go before the Ordinary and prove the Will in which the vulgar form is only swearing upon oath that he believes such a Will to be a true Will of the testator. The Will be of real property only the Ex. must go before a Court of Chancery and if it be disputed
The Will shall be admitted in due form of law which is citing the party viz, the next of kin and the witnesses and then make their objections if any they have. And the witnesses are separately and privately examine their testimony written and handed to the Ordinary. A Will being once proved cannot ever after be called in question. But if proved by the Ordinary in form it may at any time be questioned. If the Ordinary refuse to admit the Ex parte to prove the Will or to grant admission he is compelled so to do by a mandamus from the Courts in Westminster Hall and the Ordinary must obey unless he makes a sufficing return as that the Ex parte is insane. There are many instances in which the Ordinary must grant admission notwithstanding standing there be a Will and an Ex parte thereby appointed as an Administrator.
So if two Ex. are contending about the executorship &c. must be granted fundum late. Of the payment of debts.

When real property is devised for the payment of debts the personal fund is to be exhausted first unless something more appears than barely the devise: so that the Testator intended his personal estate should be cared of the burden. This is said to comply with the intention of the Testator, but it is Mr. A. apprehended to be directly opposed to it for had he designed the personal property for the payment of debts he would not have devised his real for that purpose, when the personal fund was more than sufficient: the Testator therefore intended to have cared the personal property of the debts that it might be distributed among his children — Harman makes a devise for the payment of all his debts (S. Morleyfield says that such devise includes debts.
of every description as well those barred by the Statute of Limitations as those not barred and the general rule of decision has been that it included them because it was an acknowledgment of the debt and therefore took it out of the Statute. But it is apprehended if the true ground is that the debt is still an existing one in law conjecture and the testator to prevent litigation devised them to be paid and it is apprehended that all the authorities are reconcilable to this doctrine and the true idea is that by an acknowledgment of the debt the advantage that might have been taken from the Statute of Limitation is waived and the good presumption which said to prevail is not the true one that a debt with the Statute of Limitations is presumed to be paid but the most that can be said is that the Statute of Limitations puts an advantage into the obligors hands to avoid his debt if does cause because if the presumption that the debt was paid is the ground any evi
that would rebut such presumption would be good and this has not been the case in one instance where the presumption was rebutted that the Statute of Lmi. did not pre
vail. When it would apply whether the evidence was rebutted or not except the contract was revived by a new promise and on this ground agreeable to the general idea the old contract is not revived but considered only the consideration of the new promise and that the action to recover must be lost on the new promise but if by some it must be lost on the old one because in the very terms of the expression say they the old contract is revived if no an action is to be lost upon it.

If real property be devised for the payment of debts due by simple contract not on interest they will from that time carry interest
Observations upon the law of the State of New York as it respects this subject

Sec. 13. It will be necessary to mention here there is no difference pointed out between the English law and the law of N. Y. and of Connecticut; it is the same. As in England the real property descends to the heir and the personal to the Ex; but the heir of a devisee is liable to any debt or simple contract as well as others.

It is apprehended that it will make considerable question in N. Y. State whether the heir is liable to creditors out of his own property or whether the estate descended to him from his ancestor is liable, as there appears to be no statutes respecting it. When the personal estate is not sufficient for the payment of debts the real may be sold by order of the Judge of probate and the money is legal assets in the administare and must
be paid out according to the priority of rank of the debts. Then we clearly see that the object of their law is, that all debts shall be paid and that the heir nor any other person shall run away with the Estate the debts remaining unpaid but if there be property sufficient they all events shall be paid. If the heir claims the property which depends to him the same provision is made in N. York as in England that is the heir shall be liable out of his own property but when the Estate is insolvent and the whole real property must be sold then the money is to be all paid into the hands of the Court of Probate and is equitable assets to be paid out to the creditors pari passu without preferring specially creditors to others — also it is granted to the next of kin according as the statute of Hen. D. directs: Distribution to be made in the same manner as is directed by the Stat. of Charles I. And this difference that children advanced keep what they have gotten without being it into hotch-potch and is accounted as making up a part of their
Share - Bonds are given in N.Y. as in Eng.

Legacies are to be tried in the State of N.York before the Court of Probate who has the same power as the spiritual Court in England and even more for he is to guide himself by the law both of the Spiritual Court and Court of Chancery and the Judge of Probate in order to enforce his decrees agt. the Ex. or can issue an execution in the same manner as a Court of Chancery does for Contempts - the rest of the law is the same as in England in the Spiritual Courts. The Ecclesiastical penaltys excepted.

In N.York the Ex. is liable for any injury done by the testator to another persons property whether his effects be thereby benefited or not but when the ad or Ex. own in right of testator and fails he is not liable for costs.

Of The Law of Connecticut in this respect

As in England the real Estate descends to the heir and the personal to the Ex. or Adm.?
If then an injury be done to real property the heir only brings the action if to the personal the Ex. brings the action and yet the title is defeasible in the event of the personal estate falling short to pay the debts and wholly defeasible in case of involunacy for the real property is in this State as much a fund for payment of debts as the personal but the personal is first to be exhausted in the payment of debts excepting certain necessary articles and what is by the Court of Probate given to the widow and are called the widows necessaries which are those articles exempt from execution pointed out by statute. When the personal estate is exhausted then the Ex. or Adm. applies for an order from the Court of Probate to sell so much of the real estate as will be sufficient to pay all the debts and when the money is raised it is applied in the Ex.’s or Adm.’s hands. Whilst this is doing the heir is entitled to the possession of the real estate for the possession must follow the estate and
in the event of the insolvency of the Estate that the heir has to account for the profits to Ex. — if we never had been acquainted with the English System of Descents I see no reason to conclude that the real Estate should any more depend on the heir than the personal
perhaps it may be a question whether the heir as such can be sued in this State as the Ex. has the whole control of the whole
Estate. I perceive no ground for it as having
the estate upon the principle that adopted in equity they may be sued. It may also make a considerable question in this Estate whether the Mortgage shall descend to the heir or Ex. It has been the general practice for it to go to the heir but it is apparent that the Ex. may claim it but to recover it the heir must bring the suit to pay the money over to the Ex.
In Connecticut when the personal estate is insufficient to pay all the debts the adm'r or Ex' must pay all when called upon after the term set by the Court is expired. When the personal is insufficient to pay all the debts the adm'r or Ex' may apply to the Court for an order to sell land for the amount of the sum of the debts that the personal estate will not satisfy and if the Court will not grant such an order when necessary they may be compelled by a Mandamus from our Sup' Court. Where both personal and real are insufficient the Ex' or Adm' ought to be very careful how they pay debts but it is apprehended that Ex' or Adm' may pay debts in m'to and afterwards the Estate appears to be insolvency it is apprehended that the money may be recovered in an action for money had and that the Creditor cannot hold any more than his averageable part upon the Personal and real insufficient the Ex' or represents to the Court
of Probate that he apprehends the Estate is in
solvent - Commissioners are appointed to ex-
amine the Claims and if a claim be rejected by
them it is final if nothing more is done about
it by the Claimant who may resort to the Court
of Probate and complain to the Court of the in-
jury which he has sustained by their rejection
and if the Court thinks the rejection to be well
founded he will accept of the Claim! Report but
the party injured may appeal to the Super-
intendence Court and show why such report should not
be accepted and if their report is accepted it
is conclusive upon creditors only; the judg-
ment of the Court is appealable from but not conclu-
sive by the Ex't, for if sued he may litigate
the demand without any appeal but not the
endowment - Any judgment of the Court of Probate where
was judicially and not ministerially may be appealed
from - When the Court's return that there is no in-
volucency there is an end of it; but if it is insolvent
by their return the Claim collects the debts and
when it becomes ascertained what assets are in his hands an average is made and all the creditors receive an equal share except admiralties charges. State taxes and debts for sickness have rank and are paid in full, probably perhaps the general practice of the courts will establish the construction of the insolvent act to mean the last sickness only "but it is apprehended that it truly means all sicknesses because it is a copy of the Statute of George II. where the word last is mentioned therefore it may be supposed that it was left out of our statute designedly this construction is from analogy but the same must be given upon principle because if in any sickness except the last the physician if he gets his patient well it losses in the event the greater part of his debt but if he dies gets all therefore to lay aside all temptations of the kind all sickness ought to be paid in full
In case there is not Estate sufficient to pay those debts which claim priority under the insolvent act it is apprehended the admin changes ought to have the preference and indeed says Mr. B. I have known instances of the kind happening and those changes were first paid. The Ex Admr: when sued by a Creditor cannot plead Silence administration but unless there is no remainder after the said debts are paid for if there is no insolving there can be no room for such a plea for nothing excuses but payment in full if there is Insolvency nothing excuses but pleading of the decrees in the Court the average stretch payment of debts in such average but what Legacies sue Silence administration is a proper plea as the case may be for there is no other system of average but what has been already noticed for the English law of legacies is our law When Creditors sue there is no room for the Pl.'s replication of Quasainvit for if there is no
insolvency there is no want of it let them have wasted the Estate as he will for he must pay: if there is an insolvency and an average pled this is conclusive unless appealed from for he will be obliged to answer before the Judge of Probate for every devastavit. Our Statute declares that when in case of an average there appears to be no room for a legatee to plead a devastavit for the whole has been determined by a Court of competent jurisdiction but in case of no insolvency a devastavit is a proper replication for a legatee. Our Statute declares that when there is an insolvent Estate and Court appointed if any person neglects to bring his claim he shall and be barred of recovery unless there is newly discovered never before invented the question then naturally arises how is this person to get at this Estate and his claim to be recovered for inst: A neglects to carry in his claim of £200 it afterwards turns out that the
The rest of the creditors got but 10s on the £1, but after the average was made A discovered £20 property which was never inventoried now if he takes the whole of that £200 which he has discovered he gets the whole of his debt whereas the other have gotten but half and in this manner he takes advantage of his neglect and this would lay great foundation for fraud for a creditor knowing of the estate that is not inventoried will not carry in his claim and then after the average is made get the whole of it notwithstanding the evident unfitness of this to the average law it was and still is practised as if there was no other way to conduct the business but it is apprehended the following is a remedy let the creditor who has thus neglected to carry in his claim and who has discovered new estates report this new estate to the receiver and the receiver at then let this be
debtor take out his averageable part as much on the pound as the other creditors did in fact stand on the same footing with them and if there is any thing left distribute it equally among all the creditors and if the estate will not inventory it on the bond and proceed as in any case of an estate second sort

The existence of such a character as an Ee in his own wrong very much questioned and the law as it now stands in Connecticut except in one particular case where it is absolutely necessary which will hereafter be mentioned if such a character exists as such contingency is not provided for by our Laws viz, Statute, the proceedings must be as at common law & in such case the creditor who sue recovers his whole debt the insolvency of the testator notwithstanding to admit of it unless where an absolute necessity exists in to defray the most prominent features of our laws viz, an a
24. rag among Creditors - In ordinary cases there can be no necessity for it because such a Character may be sued as a Testator and any creditor can become an administrator if he chooses - If the Estate be insolvent the Ex. de son tort can never after being sued recover back any part of that debt so recovered by the Creditor and of course that Creditor will get his whole debt while the others get only a part of theirs: then certainly there can or at least ought not to be an Ex. of this kind unless there must be a necessity requires it which may happen when the true Ex. or Adm. can not make touch the assets as in case of a fraudulent conveyance for they cannot mingle with such conveyances because the Courts have determined that such conveyance are good as the grantor his heirs agin. He found therefore in this case there must be an Ex. de son tort or none and of conse-
Of the liability of the heir for the covenants of his ancestor.

In this case there is a difference between our law and the English: for by theirs we have seen that the heir is bound by the covenants of his ancestor such as bonds, obligations, &c., but in Connecticut it is supposed that the heir is bound by no personal covenant of the ancestor whatever, and he is not bound by his real covenants any more than any assignee whatever. Inst. A by not promising B that he will pay him £10 on demand this being a personal covenant A agrees with B that for a certain sum he shall have the liberty of
dug a ditch in his land and the privi-
lege of always keeping it open this is what is called a real covenant and ac-
companies the real estate viz the land.
Would the heir in this case be liable? He
would but in no other way than any other
vendi or assignee would be for if any per-
son had bought this land if he would have
bought it under the incumbrance of that
privilege and the heir is exactly in the same
situation for if he step it up he is liable
as would be the vendee. In this State
we have no ecclesiastical Courts and the
Court of Chancery has no power over legacies
and as the Court of the Probate has been
come in the place of the Ordinary one would
naturally suppose that he had the power
over legacies but it is not so. It is true indeed
he can order them to be paid but they
are to be recovered in a Court of Law only when the Legatee states in his writ that the
Testator died leaving him a legacy, that if
Ex. refuses to pay it he be

Of the Ex. or Adm. paying Costs

In this State, the Ex. or Adm. must pay cost if
he fails in any writ in the distribution of
personal property. The Stat. of Can. 2d is the guide
in Connecticut with this difference that brothers and
sisters of the whole blood are preferred to all persons
whatever even those in the first degree as well as
those in the second and the heirs of the whole blood
every where is preferred to the 1/2 blood in the same
degree. It is also observable that although brothers
and sisters of the 1/2 blood yield to those of the first
degree yet they have a preference to all in the
second degree except those of the whole blood who
as has been observed have precedence to the first
degree — Of proving the Will in Connecticut.

The mode of proving the Will is here in some
measure different from the English mode which is as before mentioned done in two ways by the Common and the Solomon form but in Connecticut the Court will never substantiate a Will upon the oath of the Ex but always requires the oath of the witnesses. The practice of the Courts of Probate of acting on the witnesses to prove the Will is not warranted by the Statute but only from general practice.

Of a Caveat

Any person wishes to contest the propriety of a Will being accepted and proceeded upon, he may resort to the Court of Probate and there enter a caveat with the Court after which the Court issues a citation summoning those interested to appear and contest the Will. The day on a certain day appointed by the Judge is the judge thinks after an impartial trial that will is invalid the deed died intestate; but as before mentioned an appeal lies to Super Court.

Of a nuncupative Will in Connecticut

That such Wills may exist in this State may be
questioned; however if they do, are different from an English nuncupative Will for under their law they are under certain restraints by the Statute of Car. 2. which has no binding in fluence in Connecticut if therefor a man in this State can dispose of his property by a nuncupative Will it must be under the rules of the Common Law of England but this method of disposing of property is very much doubted since it has been so universal a practice to reduce Wills to writing— 

There is another difference between the Eng. & Connect. laws respecting the compulsion of Ex. to make known whether they refuse or accept, in a default of which under the former Ex. communciation was the punishment but under the latter £256. month after 30 days from the death of the testator. 

Of an infant Ex. under our Statute 

Under the Connecticut Statute it is made a question whether an infant can be an Ex.
from which may make a difference as to our law and the English, that is, whether a debtor being made an Ex. discharges his debt or not. Altho' this be a discharge under the English Law yet there can be no reason why it should be the case in this State for the reason when you get into this Country cases of course the law ought to cease. In England as we have seen the Ex. receives nothing for his trouble and therefore it is reasonable to suppose that the testator intended to discharge him of his debt and give it to him for a consideration to execute his will; but in this State the Ex. is paid delay wages for the time he consumes in the settlement of estates of course there is no such reason exists as under the English Law — the Ex. under our Law is considered as a named trustee and no objection can be made to him as a witness in a suit while in Eng. the Ex. cannot be a witness because he has
a beneficial interest under the Will being entitled to the residuum provided he has no legacy and provided he has a legacy there appears to be no reason to exclude him as a witness he having no interest in the event of the suit; true indeed he has to pay costs here but as and comes eventually from the Estate admitting this doctrine to be true it may make a question whether a Debtor be made it would extinguish the debt.

A practice unauthorizes by statute seems to have crept into our law and opposed to the common law that in the court of probate have assumed upon themselves a power of making a discretionary provision for the widoe.

This happens only in cases where the estate is solvent: for if it be insolvent it might occasion a dispute among the creditors. But in other cases it seem perfectly just and those who claim a distributary share generally feel content.
supposing it equitable this practice is apprehended originated from the Statute directing the Court to take out of the Estate certain necessary articles not liable to execution and distribute them to the widow. The Court considering the situation of the widow gives her such things of household furniture as he pleases. This practice having been long in use it is apprehended that the Court would continue it—and if such an allowance should be indirectly used the Court would undoubtedly check it.

Of Judgment Debts

In our Statute respecting the settlement of Estates there is a clause which says that all judgment debts are to be upon the same footing with other debts and not to be preferred in their payment. The general opinion in this case is apprehended to be illy founded for first if a creditor has attached the property of the debtor and before sale the debtor dies the
general receiption in such case is that the creditor has lost his hold if the estate be infested and cannot hold his advantage in preference to other creditors; but it is apprehended that this is wrongly founded. The creditor does not lose his hold under these circumstances for clear it is had not the debtor have died he would not have lost his hold and since the creditor by his due diligence has obtained a lien upon the property there seems to be no reason why he should relinquish it any more than if the debtor had lived since the law has not afraid so much of the debtor's property as is under attachment for the purpose of satisfying such attachment in fact the attacker by such process invests himself with the property. This compares with the case of an execution for where a person has once obtained just and levied his execution his hold by death cannot be defeated besides it is not a
And the question is not between a judge, creditor and debtor but can attach
any creditor and the debtor.

In England if judgment has been obtained you may proceed to levy the execution
but such a practice in this State would defeat the average law. Otherwise there could
be no objection. For all this the form of the execution be to take his goods & and for want
thereof to take his body yet if his body cannot
be taken by means of death. This can be no
reason why the goods should not be taken:
but if on the other hand, money is to be paid
to the person and he be dead it may be paid
to his Esq. for his Esq. represents him. This
appears to be the English law upon the sub-
ject and there can be no difference between
that and ours upon this subject.

Of distribution in Connecticut

Our Statute does not contemplate a defect
of real property as in England elsewhere.
The Courts may have treated it: and the heir cannot obtain a securably in the land by their own act unless affirmed by the Court of Probate and if the heirs are under age, they cannot effect a settlement of it but the Court of Probate must absolutely distribute it if there be different claimants the judge of the Court of Probate is conclusive as to what each owns in securably but if there be different claimants as Grandfather and Nephew and the Court distribute all the Estate to the Nephew when they ought to have given the Grandfather a part the judge of the Court is not conclusive and does not affect the title and it may be appealed from or the Grandfather may bring his action of ejectment and the question of title is tried in the ordinary mode of proceeding

(eating an Admiralty)
under the English or our law for the action
is not against him but against the proper
by in his hands. The general use opinion is
that property cannot be attached on a Scire faci.
but says Mr. Reeve "I see no reason why and
I have done it several times in the course of my practice and was never disputed."

There is a clause in our Statute which declares
that all claims not brought in by a limited
time shall be barred no recovery had. In
case the estate be insolvent most clearly no-
thing can be recovered but it does not follow
that nothing should be recovered in case the
estate be sufficient to pay all the debts—
Reeve says Mr. Reeve the true con-
struction of the Statute to be thus—and says
you creditor shall not always have it in your
power to harass the Executive with claims
you shall produce your account within a limited time that the Executor or Adm. may rid of the burden of the settlement of the Estate. The Statute speaking only of Executor and Adm. meant only to bar claims against them after the time limited and not that the Statute should step in and defeat that equitable principle Fred will come where you can find them but still if there is property to be found the creditor shall not be defeated who shall not pursue a remedy aet. the Ex. yet he may take the property where he can find it.

[Signature]
March 24, 179

The Real Estate descends to the heir upon the intestate's death, which the Ex. has no control unless it is empowered by the will and is ascertained in his hands to pay especially creditors, who may, if they elect, come upon him. The extent of assets received from the ancestor and judge is rendered agt. him of the lands & in his hands if he has aliened then judge is agt. him to the value, and the devisee is in the same plight as heir, in case there are no specially debts. The heir & receives the real property without being liable to pay any debts although the personal estate should fall short of paying the debts.

21st If the specially credit. No, the real estate is at
That species of personal property in Estate called personal Estate is not devisable by Will but the real as well as personal Estate is.

When the personal Estate has been exhausted by specially creditors a Legatee may come agt. the heir as well as creditors but not against the devisee.
as the personal estate of the deceased to satisfy debts. Such debts are formed after payment of all other debts. The Voluntary Creditors shall have a preference obtaining in their order for the full amount of their demands in their places. Provided there is no personal estate or real estate of the deceased, or any personal estate or real estate which may be required by the laws of this state to be turned to their uses. If there is personal estate, the same shall be applied to the debts, and if any balance remains, it shall be paid to the Voluntary Creditors. If no personal estate remains, all debts shall be paid in proportion to the amount of the debts.
others and to be prepared this idea in our Law

5. Any person of sane memory having pro in this State the age who is of sufficient age may make a Will of personal property and who are of the age of - some say 14 and some 17. Some courts are not an exception for where they have separate property their devise is good so is their devise of those in action for until it be reduced to possession by her husband it is her property. So is her devise of what she has as Executrix in action suit. The blind and unlettered are not an exception but their will must be read to them neither are the deaf and dumb provided that it is proof from those who understand by signs that it was their desire to make a Will and that they knew what they meant.
Almost any person, except when he is insane or has been excommunicated by the Spiritual Court, minority is no objection at all, so such Es. can not act as such until the age of 17 years of age and in the meantime an Administrator is to be committed duurante minoritate.

7. The infant Es. acts as such at 17 and his acts are binding upon himself and others yet if he should release a debt or do any other thing which would work a devastation altho' such shall bind an adult Es. yet shall the infant have his privilege and may rescind such act.

If Es. cannot be compelled to give bond for the faithful performance of the trust in the face of the State or Es. must give bond.
10. In computing who is next of kin the Civil law is to be observed.

11. If the next of kin is under 21 years, must be committed to some other person during minoritatem in this case no respect is had to the next of kin.

12. No person can be made an adm. until he be 21 years of age.
13. An adm. is obliged to give bonds for the performance of his trust.

14. Where there is an Ex. he dies without a Will his adm. is not admi. of the testator's goods but administration Se #/mision is committed to some person and he, in regard, is paid to the rest of his mother would there be if adm. died without completing the business.

15. It is the duty of the Ex. he neglects his duty either to refuse or take in this respect he is liable upon himself the trust. if he neglects to do either he may be summoned and if he does not appear be the spiritual court when this business is done he is to be excommunicated.
16. If the named Ex. does an Item act as Ex. before proof of the Will he is bound to act that is he is liable to all the burdens of an Ex. whether he proves the Will or not but can never bring a suit without proving the Will.

17. There are two or more Ex. one refuses yet may be in the lifetime of his fellow Ex. act as such.

Suits are here brought by the Ex. who accepts only and suits are brought ag. him only.

All suits are to be brought in the name of all but suits are to be brought only ag. the Ex. who proved the Will unless the other acts as such.

10. The Ex. who accepts Item dies and appoints an Ex. The last is Ex. of the first testator although the other Ex. whose fund is living.

19. He did not appoint an Ex. and the business is unfinished. Admini.
Eng: Connecticut

The estate of the deceased now is in the court of chancery, to be granted for the benefit of the remaining estate. The executor cannot act after the death of his father.

20th. The executor is the owner of the residuum, after debts and legacies are paid. Unless there is a legacy given him by the testator in that case, unless the legacy is of some value, or to give a suit of mourning, a ring and the like, the executor is not entitled to the residuum but is trustee to the rest of his estate, and must distribute the estate according to the Statute of distributions.

21st. The court will let in verbal testimony to show the intention of the testator that the executor should have the residuum. If there was a legacy, the executor may not act as in the last case in verbal testimony.
to prove that the testator Vide ante intended that the Ex. should not have the residuum when he left no legacy.

23. A Debtor is Ex. The debt is If this depends of sorts both for creditors and legatees but where they are paid the debt the debt is discharged and legacies after debts are paid. I apprehend the doctrine may be very disputable and in very doubtful here.

24. Ex. and Adm. duty is to pay debts in the first place and in doing this they pay debts in the following order: Debts to the Crown - Debts provided for by certain statute - Judgment debts - Specialty debts. There is no other rank in debts with us only public debts and debts contracted for unknown sickness are to be paid the first place and the usual understanding is that...
Lastly simple Contract and if he should pay any debts of inferior rank leaving a superior debt not paid and apssets fail him he must lose it

as sub judice is est

Where apssets fail to pay all the debts after the death of testator no priority can be gained nor is it at the election noplay priority can be gained nor is it at the election of the executor but all the creditors of every description must have their share by a strict average
26. The Ex. having paid out the whole estate and observed the priority of debts mentioned, may plead at pren ad
ministravit.

Pren ad administravit is no plea in this state if there is any surplus after paying state debts and last
next debts. For if solvent he has enough to pay all if insolvent every one is entitled to his averageable part and nothing excuses but the payment of that average.

27. If the Ex. wastes the estate or is so negligent of it that it is lost up.

on pleading administration, the Pl. may reply a

swastavit and if that is found, J. d. is endorsed at: the Ex. se conis propriis.

There is no such plea

lication as swastavit if the estate is solvent, the creditor stands in no need of it, if insolvent the creditor is entitled only: And in the

making the average, the swastavit if any
Eng:

Vide ante & was considered or if it appears afterwards the auditor must resort to the Bond given for due performance of his trust.

Such a character if admitted will defeat the average law for if any recovery is to be had it must be all this the estate is insolvent upon the principles of the common law for no provision is made in our statute respecting it. When indeed the admi. has nothing to do with the estate as in a case by of a fraudulent conveyance by the dec. no injury is done by supposing such a character may exist.
and liable to creditor to the extent of assets received and no further if he lends a false plea as that he now owes 
£45 he is liable to the extent of the Wt. claim 
but his having paid out the assets goes on 
in mitigation of damages when sued by 
him who is appointed Exec. or Adm.

29. The Bond given by the administrator is not for the pur 
purpose of subjecting the Bond 
man in an action if the 
adm. does not pay the debt 
for this he has his action 
agt. the adm. but if the ad. 
so conducts by not inquiring 
into the Estate as enables him 
to defeat the creditor by plea 
ing plene administrat 
or makes up false accounts 
and procures the allowance

By the Laws of Connecticut the Equal 
your bond and as the 
Bondman is liable if 
the adm. does not dis 
tribute the distributary 
shares so I apprehend 
The Bondman where 
there is an Exec. 
who it 
has been supposed to 
be liable if he did not 
pay over a legacy but 
is there not a dif 
ference if the Ex?
sit, or if he does not distribute the share amongst the next of kin, then is the bondsmen liable —

affords to the legacy he enables the legatee to recover and if he does why should the bondsmen be liable more than when he does not buy a debt, if he does not accept there can be no question but what the bondsmen is liable.

As the N. C. creditor can never reply a defendant and is bound to reduce the average in making out of which the debit is considered it will be impossible for a co-creditor to avoid him self of this principle but must necessarily suffer for the wrongful act of his companion.
31. If an executor is sued for a legacy he may plead "Void Administravit."

32. If a legatee sues and lib., he may plead "Void Administravit," and the legatee may set up a "Dechristavit." Here the same replication is proper.

33. A legatee may sue for his legacy either in the spiritual or in the common law courts. If it is a legacy charged upon land in that court, the suit must be in the Common Law Courts in Chancery. An Ex. may be sued even in a Common Law Court where he has promised to pay the legacy upon such pro
mine and if he has it in his
dands such promise is not within the Statute
of Fraud.$
34. In the payment of

Note here Mr. B. said the rule was not as extensive
as above laid down and in those cases instances
where the specific legates did not.

35. On a failure of assets

to pay all the legacies - specific legates are to be
first paid.
36. On [lack] failure of Aspects to pay all the pecuniary legacies, they must abide in proportion among themselves.

37. Where the whole Estate is given out in specific legacies, and then a pecuniary legacy given out of the Estate it is first to be paid and a charge when the specific legacies.

38. A specific legacy if lost or destroyed, it is lost to the legatee.

39. If the legacies are paid before a debt the creditor may resort to the Court, he to the legatee if he has taken security of the legatee to refund, if he has taken no security he loses the debt:

Under our Statute the Esq. is not in danger of being surcharged with debts for unless the debts are bred in by a certain time allowed by the Court of Probate they are not recoverable.
by mistake and recoverable back

40th. In the event of a creditor's not being paid, the legatee having received their legacies and the executors being unable to pay the creditors, the creditors may come against the legatee who has used his legacy.

41st. As a simple contract, creditor in Chancery shall come agst. the heir or devisee in the place of specially creditors, when they have exhausted the personally to the extent of such specially so shall a legatee have a like advantage agst. the heir but not the devisee.

42d. When a legatee dies in the lifetime of the testator such legacy is presumed...
and sinks into the residuum. Vide ante but is given over in the event of such legatee dying it is taken by the second legatee.

43. When a legacy is given to a legatee at such an age and the legatee dies before that age it is lapses and sinks into the residuum unless given over.

44. If a legacy is given payable at such an age to the legatee it is vested and transmissible to such legatees representatives unless given over upon the death of such legatee.

45. Where a legacy is given to one legatee and in case of his death given to another it is construed to mean payable to the second legatee in case the first dies before marriage or 21 years of age.
46. Where a legacy is given to be paid at such an age, charged upon the land and the legatee dies before that time, it is lapsed in favour of the heir.

47. A legacy is given by a parent to a child payable at such time and no provision for the main tenure of such child in the mean time. It is upon interest if given by any other person it is not on interest.

48. A legacy is given to a le. In some cases payable presently, such legacy after a year is charged is upon interest. If the legatee is a minor, if an adult it is on interest after a demand of the legacy.

49. A legacy is given payable at a future time or presently whether by
Eng: a parent or another, to come... Vide unto... or adult and payable... out of that which yields an annual profit... it is on interest without a demand.

30" To determine whether... admissible... for should he alien the legacy or pled it out of necessity to raise a sum of money... this is no evidence of such intention and the legacy shall be allowed... the life... if there are offsets... If no such necessity could be supposed to exist it is to be attributed to nothing but an intention of the testator to deem it... if the legacy was a bond and... this was voluntarily paid by the obligor no such intention is apparent... or if paid by compulsion it was to secure the debt from being lost... in his necessity for cash occasioned it there is no such intention... apparent...
51. A legacy of all my person

The property will include all such property whether gained after making the
Will or before.

52. So a legacy of all the testator's money goods &c at such a place to pay

the estate there at his death.

53. A devise of all the testator's land does not pass after the testator unless

there has been a republication of the Will.

54. Even a republication of the Will will not pass real property unless after

making the Will that does not fall within the description of the words in the Will

which is supposed to speak from the republication.

55. A legacy is given to the children of J.S. at the time of making the Will if J.S.

had children and the children were born to J.S.
afterwards the afterborn children { Vide ante shall not take unless the Will was republished in that case the children living at the time of publication will take.

36. If J.S. had no children at { Idem
the time of making the Will all the afterborn children of J.S. shall take

57. A legacy is given to the children of J.S. and J.N. neither of whom at the time of making the Will had any children; but afterwards they both have children but their numbers are unequal such children take first.

58. A legacy is given to J.S. to some lawful children and if J.S. had no children at the time of making the Will or afterwards but the time of making the Will J.S. had grand children such grand children shall take but not if J.S. had had any other Child.
59. A legacy given to be diverted or some law excepted if the legatee marry or marry. Such restraint is idle and the legacy good

60. The testator may close a legacy with a condition that the legatee shall not marry a certain person or at a certain place or before a certain age. In that case the age pointed out must be reasonable. This indulgence has been carried so far as to be good where the legatee was restrained from marrying a papist — such general descriptions as that of any denomination is idle.

61. A legacy left by a husband to his [female] widow upon condition that she does not marry. The condition is good.

62. A legacy given upon condition that the legatee marry with the consent of some certain person. The condition is only
in tenor or less. The event of such legatee's marriage without consent the legacy is given over in such case the first named legatee loses his legacy.

63. Where there is a marriage void, same law.

64. Where a testator owes a debt and leaves a legacy obtained in this to the debtor equal or greater than the debt, the rule was that the legacy when received was a satisfaction of such debt which rule was gradually impaired by requiring that such legacy and debt should be equal in gestures and then that it should be payable at the same time and afterwards it was subject to the probate. Connect.
required that there should be no other
of general clause in the Will directly
entitling all debts to be paid to make the legacy
a satisfaction — and that a legacy to a
bastard child was never within the rule it
was then supposed there ought to be some ex-
fpressions in the Will indicative of the testator's
intention that the legacy should be in satis-
faction — and at length it was determined that
it must be expressed in the Will that it was
in satisfaction of the debt to make it so which
resolution restored the dominion of
Common Sense after she had been de-
thrown for more than a century.

[Note: Where a legacy is given in a
Will and repeated in totidem verbis it is
but one legacy — but if given in different
instruments — as in the Body of the Will and
Then in the Codicil or any other writing such legacies are accumulative to the

The Legatee's right to the legacy itself depends upon the assign that he should have it, so that in case the legacy is specific there is no doubt but the assign may use that legacy in the payment of debts, although there are assets without it and in such case it is out of the power of the Legatee to sustain any action at the assign's

Presuppose property in the Legatee; yet he may recover of the assign the value of such legacy upon the ground that there are assets

Upon the death of an intestate after the payment of debts, the personal estate is to be distributed

The personal and real are under the control and subject to a statute of distribution in this State.
according to the Statute of Evidence. The distribution of Eq. 2?

68. The distributary share, some law under the Stat: vests in the person entitled to it on the death of the testator intestate and although such person dies before distribution is made yet such share is transmissible and goes to his Ex. 2-

69. The Stat. of Eq. gives one. Some moiety of such residuum of the personal estate to the wife in case there are no children or their legal representatives and if there are then one third.

70. The Stat. of Eq. then gives the other 2/3 of the personal estate to such children or their legal representatives. Our Stat: gives the whole of the real estate with the incumbrance of dower and 2/3 of the personal estate to such children and representatives.
71. In case there are no children the Statute of Larceny, and the Statute of Frauds, distribute the personal estate to the next of kin and their legal representatives.

72. In case there are no children or other near kin, the Statute of Larceny distributes such as came from some ancestor of the intestate by descent devise or deed of gift, to the intestate brothers and their legal representatives of the blood of such ancestor. And the personal estate as well as personal property is given to such as were in pruressence to the next of kin and also to brothers of the blood who are expressly named to all others in the same degree.

73. By the Statute of Larceny, representation is continued ad infinitum in the deceasing line.
but not admitted among collaterals. Vide ante after brothers and sisters, children.

74° As brothers, children are in the same law, the 3° degree, so among all children in the same degree there is no representation.

75° The Stat. of James 2. places the mother upon the footing of brothers and sisters, but ours prefers brothers and sisters of the whole blood as it respects the personal and real estate which did not come by descent, gift or devise.

65° It seems by the construction given to the Stat. and of consequence no Stat. that the mother is considered as making part of the same stock with the brothers and sisters. So that if they are all dead, leaving children, yet such children, the mother living, can take by representation.
Children advanced in the life time of the father by him they cannot take any part of his estate unless they will bring the advanced portion into hotch potch.

No advancement by any other relative makes it necessary to bring into hotch potch.

Money bestowed on an education or given for expenses in travelling is not an advancement.

Under the Stat of the State it respects only the half blood is equally entitled with the whole blood but so to other estates the whole in the same degree inter
Not by the State of New,

2. The husband is entitled to be admitted on his wife's estate which may consist in choses in action and retain them without distributing them to the next of kin to the wife. This doctrine was not known to the common law. The husband had not a right to the deceased wife's personal estate in action.

But such estate vested in her adm.leadable to the same rules of distribution as his estate would have had he died intestate. It was not a marital right of his at common law to claim his choses in action unless he reduced them to possession in his lifetime but on the contrary he might dispose of them by will. The coverture notwithstanding but as the husband was considered under the State of New.
to be the rightful adm. of his wife and as such had as all other adm. had before the Stat. of Car. the whole estate to himself not by virtue of any law but because the right had true owners was without remedy until the Stat. of Car. gave one and whilst this Stat. prevented other Adms. from taking the whole estate it expressly gave that to the husband as a matter of right which he had been accustomed to take by wrong

02. Brothers and sisters our Stat. expressly pres in the same degree as brothers to with grandfathers and grand mothers are refused to them by the adjudications of the Eng. Courts

03. I find no decision for preferring Gfather or to nephews and nieces the principles of the former case lead us to suppose that such preference would be given.

I can conceive no reason why such preference should be given it appears to contradict the express provisions of the Statute.
04. When real property is left by Will to an Ex. with power to sell the same and it is sold the assets are legal.

05. Where an Estate is given to Trustees to sell and raise money for the payment of debts they are responsible to sell and the assets thus raised are equitable assets.

06. An equity of redemption is lost if all real estate is liable in the hands of Ex. so is an asset in the hands of the equity of redemption. Here and as it is not real Estate the Ex. has nothing to do with it.

07. An estate pursuant to whereafter que is before and after the State of the made assets in the

We have no statute upon the subject and if the common law doctrine takes place such Estate is open to the first of cupance.
Vide ante I can bring a suit on the contract made by the testator would defeat the average law or introduce principles into our law never before heard of—For the court to render judgment for the whole sum would enable him to recover more than the other creditors to which he has no right—for the court to render judgment for an average sum is out of their power. The law has made no provision for such judgment admitting this to be in the power of the court in the case of a surplus of new discovered estate more than such judgment. There seems no provision to be made in such case by which the creditors can get at it and certainly they are entitled to it and the court ought not to retain it. Upon the plan proposed in this opinion the average law is preserved entire and compleat and effectual justice is rend
Vide ante & provide that all debts when
The estate is insolvent shall
be paid from pass & judgment debts shall have
no preference to others. Whether this provi-
sion affects debts where by using legal diligence
a priority has been obtained by attaching in
the life time of the deceased is a question; I should
suppose that it ought not; for by attaching
the property the creditor had acquired a right to
have the property so attached held for the
purpose of repaying the judgment that
might be obtained against him, and I cannot con-
ceive upon what ground it can be that the
death of the debtor should divest that right &
just him to cost without any benefit from
it.

90th. Certain actions to
which the testator or
intestate are entitled
to in their lifetime
die with them and
his Ex. he cannot bring
We have no such Stat.
but it has been as an
tenant as the time of Ed: &
and has always been
understood to be the law
in this country
English Law — Connecticut

Wrong done to the person or Vandalize personal property done with
them as a battery to his person or taking away his personal property — but by a Stat:
a remedy is given when the personal property is taken away and the Courts have
adjudged that all injuries done to the personal property of the testator. And it is not a taking
away but a destruction of it falls within the equity of the Stat: so that the rule seems to
be that where the apsots of the testator has not been injured by the wrong there is no remedy
but where they have there is

q1: In certain actions the Ex. is not liable where the testator it would have
been for an injury done to the person by the testator, the Ex. is not liable,
and for an injury done to property by the testa
for he is not liable in any action unless the to
Eng.

Tutors are to have been bene vide ante cited. It is not enough that the testator has been injured.

- 92. Where the testator property [The same law has been injured by the testator accompanied with a benefit to the testator's interest, an action lies at the party as trustee by the testator's] yet such action must not be in the form of an action adopted to a tort but to a contract upon the presumption that the property so taken has been converted into money which the law presumes he promises to pay, even in some contracts if the nature of such contract is such that the aspells of the testator could have reaped no benefit from it the action dies as where a man undertakes to perform gratis the testator would be liable upon such contract for damage done this negligence but the [the party would not be liable and where he has to have a reward]
which depends entirely upon Vide ante doing the act and it is this negligence omit
d by the Ex. is not liable - as if an officer un-
derakes to execute a writ of execution his
sees depend upon the execution - this he
omits to do and this his negligence an
injury is sustained in such case he is liable
but not his Ex.
A miscellaneous Lecture on Law relative to the acquisition of property

Of animals ferae naturae

A difference exists both in England and Connecticut between that kind of property which a person may have in these kind of animals and that which he may have in other things. The property which a person has in animals ferae naturae such as deer, rabbits, dogs, cats &c. is said to be a qualified property and not an absolute one. This property is commensurate with actual possession and when that is lost the property of the original owner is lost. What shall be construed a losing an actual possession may make some enquiry. If an animal ferae naturae be driven away by some other person the owner does not lose his actual possession but in order to lose it the animal must left his owner voluntarily and
and have lost the animal unvouched, but as long as this is not gone it is an actual possession, the animals are at a distance and out of the reach of the owner. When such animals have voluntarily strayed away and the owner has lost the possession, the first occupant holds it ag' any other person who ever had it. Injury done to such property is to be redressed by an action like that instituted for an injury done to other kinds of property. Making of these animals animal furandi or with an intent to steal is not felony unless the animals so taken are of real use to the owner such as bees &c. but if the animal be such an one as is kept merely for the whim or caprice of the owner such as a dog, cat, parrot &c. it is not theft but an action of trespass only lies. There are two ways of acquiring such things.
1 by what the Civilians call for Industrium
2 for Inpotentiam
3 The first method for Industrium is when a
man by his own Industry has taken the an-
mals and therefore acquired a property in them
occupancy. The greatest content that as arisen
about animals acquired in this manner has
been concerning that

Of Bees

And it is still a dispute in England whether
the property in Bees belongs to the owner of
the soil where the bees are found or to the
finder but generally as to all animals the
property is in the finder. Off the law in
this respect in Connecticut.

In this State there is no dispute and that
which in England has arisen by reason of their
forest laws by which there the owner of the
soil is entitled to the honey found there. But
one way they he is naturally entitled to the
bees, but as those laws do not extend their
unreasonableness to this country they can be no dispute respecting this doctrine respecting bees and in Connecticut it is no trespass for a man to enter another's close in pursuit of these animals; however if the enterer commits any unnecessary injury he will be liable in an action of trespass. In this State a man having found a hive of bees in a tree may cut down that tree whose use it may be, but he must pay the damage to the owner of the tree if there be any damage. This injury is generally so small that it com within the maxim de minimis lex non curat. If the finder is liable it is not an action of trespass vi et armis but must be sued in an action on the case.

2. The other method of acquiring this property is what is called per inscriptio. That is when animals come within a man's possession and cannot get out
Now it is evident that the owner of the soil is entitled to them exclusively as if a Bird
hatch her young on a mans ground he is owner of them. The animal see nature
Of property in Water, light, air.

In these a person may also have a qualifed property, this all the continually
changing while the persons possession is his. All large rivers and arms of the
sea are considered in the same point of light as highways & and belonging to the
Public. While small streams & are private
property of individuals and of those land whose lands such streams use. And the
rule to know a trespass respecting these
kinds of property is; whenever such streams
de of water is navigable for the smallest craft
whatever as for even canoes then it is consi-
derd as belonging to the Public.
be not trespass to fish therein or undeft: then
be an exclusive grant of the fishing in such
stream & to some person by the government.
This property which a man has in water
may be violated, as if a man turn the water
out of another possession & and if this person
who turns out the water while in his own
possession and thereby turns it from and to
be in liable in an action on the case.

This property in water is conveyed
and may be conveyed without the land.
And which it passes this privilege comes
under what is called an incorporeal heri-
tament it cannot be handled seen to
but is real property and descends to the
heir—A right of passage over another
land is also an incorporeal hereditament
and is governed by the same law as that re-
lative to water & above mentioned.
A person who has a dwelling house in any
place has a right to as great a quantity of sale
but of air, freed admission of light be as is convenient and if this right be violated by any person there is a remedy by an action on the case.

Personal property may be held in joint tenancy and tenancy in common like real property and is governed by the same law that is the property is not divisible because the jus accurscendi takes place that is if a joint tenant dies his partner takes the whole. There however to this rule two exceptions—Merchants in Commerce not considered as joint tenants that the jus accurscendi will take place nor are they governed by the law of joint tenancy. So again if two persons jointly purchase stock such as oxen horses &c. for the purpose of carrying on husbandry they are not joint tenants all other personal property may be held in joint tenancy. The above is English Law only for the doctrine of joint tenancy is not
known to exist in Connecticut and this has been so determined by Our Sup Court. In N.York in order to make joint tenancy it must be expressed in terms of the contract, if it is not he holders are considered as tenants in common.

Of a Chose in action

A Chose in action depends entirely upon a contract expressed or implied: for if a person has done an injury by which damages are to be recovered such damages are not a Chose in action until there be an actual judgment. A Chose in action cannot be sold yet a person may devise it, but he cannot devise an action pending for an injury; for a right of action is no title upon this principle it is that a man swear out of Court although he has an action pending for an assault and battery by which he in all probability may recover 130 or £100 - To if
has been guilty of working unscaled leather and he brings forward a quittance to recover the penalty, but while the action is pending B is arrested and committed to Goal. The action brought will be no in judgment to B's swearing out of Goal.

Of Occupancy

There are several cases in which persons are said to acquire property by occupancy. The most common case is where a person finds property lost by another — in Eng. the finder obtains an absolute property (if the loser be unknown) except in some cases where the property is taken away from the finder and given to the publick, as if a man discovers a shipwreck he acquires no property in it but it goes to the publick — In Connecticut the Stat. has taken away almost all the property from the finder so if he cannot discover the loser
partly real or rather the Emblems are sometimes considered as personal at other
as real property: before the Stat. of Will's
Emblems were considered as personal
property. They being devisable whereas real
property of any kind was not: in another
point of light they are considered as real for
before and since that Statute of Land be
sold and the emblems not expressly ex-
cepted they pass with the land: Again
emblems till lately (when they were made
so by Stat. of George) were not considered
as being liable to be taken on an Execu-
tion and was exempt in the same way as
land: So again stealing emblems was
not considered as felony: Therefore they in that
case were considered as real property: but
on the other hand emblems go to the last
as personal property: and when too a man
is convicted of a crime whereby he forfeits his personal property his embleems are confiscated.

A very nice distinction has obtained a to consider embleems personal or real with regard to bringing the action of theft or treason: for if a man enter another close and cut down his sheaf and carry it off immediately it is trespass the embleems being considered as real property but if he enter and cut it down and then go about other busines and afterwards enter and carry away the corn or wheat which he had before cut down it would be considered as personal property and treason or theft might be the action—This is the English law upon the subject and our courts have shown a disposition to adhere to these principles and distinctions.

As has been observed a man may have a right to a stream of water: but this may pass...
Thus the land of 20 different persons and in each case each one has a right to occupy it yet the law recognizes the right of the first occupant and his right is not to be infringed by any one of the others. For instance, A. B. E. own lands adjoining each other and a stream of water runs directly thru' each one's close. C. however was the first occupant and on his land he erected a Mill. A. and B. who own above C. cannot either of them divert the water from C.'s Mill or obstruct it in its natural course yet they both may occupy the stream by other mills provided they let the water run naturally, for so long as C. has the benefit of the water he cannot complain. So if A. had been the first occupant he might have diverted the water from its natural course on other lands of his and leave the mills of B. and C. without any water from the stream what then? Finally the first occupant has an uncontestable authority over the stream and may do with it as he pleases.
Of accession of property

The doctrine of accession being ranked under the head of Occupancy will require the following observations — To define it by example — When one takes the property of another and advances its value by putting it under a state of improvement is said to be property by accession — From this view of the matter arises a question whether the owner shall be entitled to the improvement made by the last occupant or not. The following case perhaps will elucidate this subject: Inst. A having enticed away B's wife furnished her with a rich suit of clothes. Afterwards obtained his wife and then was a question made whether B should also have the clothes and the Court determined that he should hold them — so long therefore as the property remains in a state of improvement only the original owner has a right to the
article improved but when the nature of the property by the last taken is changed as apples made into cider, wheat into flour, of the original owner is entitled to the damages only for by such a change the nature of the orig property is entirely changed and annihilated.

Of confusion of property

This happens when one person mixes his property with another as if it willfully threw his wheat into B's barn when he has become mixed. By the Civil Law such property is not absolutely lost and if it cannot be ascertained how much of A's wheat was mixed with B's or if they cannot agree but if it was not willfully done a recompense will be allowed. A. By the English Law such property is wholly lost and no recompense is granted and the same is the case in New England.
Of the title to property taken from an Enemy.

Property gained in this manner is said to be acquired by occupancy, and we should naturally suppose that any person had a right to take the property of an Enemy when he could find it and when ever he pleased: but this appears to be not the case and to prove private plunder and inhuman bloodshed it has become the Law of Nations that no person shall take the property of an Enemy without licence from the government to which he belongs and if he should do it without such licence it would be criminal and property thus taken after the conclusion of the war and in time of peace be recovered as law.

However if an Enemy introduces goods into the country with which he is at war they may be taken by any person without licence and goods thus taken are acquired by occupancy: but if one nation declare war at another and at the time of the declaration
tion of War a nation of one country lay goods in the other those goods may not be taken. Where goods are taken by an Enemy and retaken the recaptors do not hold the property but the original owner may have them at any time upon paying Salvage unless the enemies who have first taken them have carried them into port, if they after this are retaken the recaptors hold them by occupancy right.

Of the of authors to their labours.

The right which authors have in the productions of their genius seems to have been a question which has been much litigated it is not at present settled — If a man has published to the world a work of his own production whether any one has a right to republish it without his licence or without having bought a copy right is the question. This question is supposed to have originated from apple-
...sions made to Chancery by Authors to grant injunctions ag' persons who were about to republish the works. At length a Statute of Ann was made encouraging Authors by allowing them 14 years to enjoy their Copy rights uninterrupted; but it was still a question whether at Common Law Authors had an exclusive right to the profits of their labours. The question soon after arose and was determined by the Court of Kings Bench in favour of Authors—a Writ of Error was taken to bring the question before Exchequer; but before the trial there, it was compounded. In the reign of George III. the question was again come up and in 1795 it was ag. determined by three judges ag. one (Supreme one of the court in the former case) in favour of authors. On this judg. a Writ of Error was brought to the House of Lords where the opinion of the 12 Judges was called for and 3 questions were made—1. Whether an author...
at Comm. Law has an exclusive right to his productions - 2. Whether the State of
Harr. affected that right: 3. Whether the
present respondent has a right to. The
first question was determined in the affir-
mitive by a majority of two (7 ag. 5) the 2
question negatived by a majority of one and in the
last they were equally divided. It falling
then upon the Chancellor to give the casting
voice who gave it agt. the right of authors
so that it may still make a question.

Of title by prerogative

No such title obtains in this country and
for the English Law upon the subject
Vide 2 Vol. Black: Com.

Of title by forfeiture

Vide 2 Vol. Black: Com. 621

There is a distinction between the forfei-
ture of real and personal property. When
a man by any crime & forfeits his real
estate all the real property he owns at the time
of the commission of the crime is forfeited on
a sale of land between the time of commis-
sion of the crime and conviction would be
fraudulent and void: but the personal in-
security that he owns at the time of convi-
tion is forfeited and a sale in the meantime
would be good—

Of title by succession

Title by succession is where goods that
are given to a corporation aggregal and vest in their successors and the reason
is because a corporation is always
considered as being of same all tho' the per-
sons forming it are constantly changing
but a gift of personal property to a sole
corporation as a Bishop & does not go
to his successors till he is appointed and
from the death of the one to the appoint-
ment of the other the land would be in
abundance which never must be neither agreeable to the English law can be how ever notwithstanding there was goods given to the Chamberlain of London although it is a sole corporation they go to his successor and it is to be remarked that voluntary associations are not consid ered as corporations aggregate until they are incorporated by an act of the legistu-
Of Evidence

There appears to be no subject about which courts are more doubtful than the admission of testimony, and which in fact being called upon without thought of face are never more mistaken. The general rule respecting testimony is, that the best evidence the matter in dispute will admit of is to be had must be produced, but this rule upon examination will not be found to prevail in its full extent in many cases. To explain this rule it may be remarked that the evidence adduced must not carry with it any proof that there is any evidence behind of a nature superior to that adduced. For instance, the copy of a record under the English Law attested by the proper officer or a copy compared to register, book, and sworn to by the party to be a true copy of record is admissible evidence and is said not to carry with it evidence of any higher nature and indeed is the only evidence the case can admit of for the records cannot
be moved from the place where they are stationed. But if a person has a sworn copy which he is about to offer as evidence and it be in proof that he has an attested copy in his possession the sworn copy will be rejected as not being the highest evidence that the case will admit of. The law as in this State is otherways as will be hereafter shown. Further the evidence offered need not carry with it that testimony of an higher nature can be adduced provided from all the circumstances taken together it can be collected that better evidence is left behind. Inst. A has a note of a writing to which B. was a witness and having used it in Court calls upon who was a testimony to prove it such proof will be rejected. So again if personal proof be adduced when it appears that the same is in writing it will be rejected as if A be about to swear that such a transaction was on the 5th of Feb. when in fact he has a memorandum that it was done on the 8th of Feb. His testimony will be rejected until the memorandum be produced.
and then it may be admitted to explain the writing. Thus testimony may be admitted. How the best the nature of the case would admit of, yet if on the face of such testimony there appears to be proof of an higher nature it will be rejected or if this does not appear on the face of the testimony yet if collected from other circumstances that there is better evidence behind it will be rejected.

"Of testimony written." Notes the true spelling.

Written testimony is first that of Records by which are meant Legislative or Judiciary acts. There are however other acts matter of record which are not properly judiciary acts as records of marriages, births & these properly speaking are memorandums only.

So again private acts of the parties as Deeds are said not to be records but memorandums made by the proper officer. The law as to each of these is different as it respects proof.
properly under the denomination of record and the law as just mentioned is different as respects each of records.

The testimony is a copy accompanied with that evidence of the truth of its being a true copy which the law requires but private records as they are improperly called as marriages it may be proved in this state by persons who were present at the celebration of them. There however appears to be no reason why any copy should be admitted in any instance unless attested by the proper officer for in this way a man may at any time forge a copy and have it sworn to by iniquity make out his case. It has been contended that a copy of a record is the only evidence that can be adduced and that the record itself would be no evidence—such an imposition as this seems idle in the extreme and needs not the weight of argument to confute it. For that, any time
may be evidence of which a copy would be evidence - as a general rule a copy of a copy cannot be admitted as evidence. For if you have the first copy duly authenticated then is that in your power testimony of a high nature, if not, proof is wanting of the first copy - Of Legislative Acts

Some of these are public and others private - a public act is that which relates to the community at large - a private act is that which does not relate to the whole days of people but to an individual - finally public acts relate to the genus while private ones relate to the species - The Statute Law Book is considered to be the evidence of a public act in a Court but this is not evidence of a private act but it must be a copy of compared with the Parliament roll but no such distinction has obtained here - The Statute Book is
always evidence of a single act when printed by the printer of the State within do we require any other evidence of a law of another State than their printed Statute Book and Tables. They do in general in all other States if it is a point in the English law it is a general rule that a Statute may be given in evidence under the gen. issue - to this rule may be given a particular exception: if the law which is to be pleaded is such as will avoid any security given for a debt or duty then the Stat. must be pleaded specially: as for inst.: a Stat. is made which enacts that a man committing a certain crime shall be punished afterwards another Stat. is made under which a man indicted on the former Stat. thinks he can shelter himself - He must plead this last Stat. specially - By our law any act of the legislature may be given in evidence under the gen. issue - this true, it has been the practice to plead specially any Stat. that will avoid a security given for a debt duty &
Other things of present interest.

That the French are in many cases using the English

And that they are in the situation where

Our friends are using their forces and

Because the English have fought well and

And the French are using their forces and
Certificate of the officer entrusted by law is sufficient evidence but a copy sworn to by the examiner is admissible—In these cases here if it has been his duty deemed sufficient evidence that the Clerk of the Court certify the copy to be true without a seal or in case of his absence or inability of one of the judges makes the certificate yet when such copies go out of the State they have not been admitted as evidence without a seal when by law the Court has a seal unless it is in proof that such court has not obtained a seal.

In Office copies the Junior officers in the office due to being deemed the only evidence only absence or inability has prevented his certificate, in such case a copy sworn to has been deemed sufficient.

And it has obtained in the English Law that such records or writings as derive their credit solely from the record of the Court or certificate of the proper officer are to be delivered to the Jury who try the case when they withdraw from the Court to aged
upon their verdict — but sworn copies and
other writings used in a trial which derive
their validity from the oath of witnesses are
not to be delivered to the jury — whereas every
writing used on the trial is committed to the
jury — The English law however prevails
in most of the U.S.,
A judge of another court upon the same
subject may in some cases be given in evi-
dence. If this judge, however, is after the ver-
dict of a jury, it is proper the verdict only be
given in evidence rather than the judge.
It is however apprehended that a verdict
never ought to be introduced as evidence
for it is no more more true than the opinion
of 12 men and if these 12 persons had been
evidence in the cause their opinions certain-
ly at would have had no weight and more
over their verdict was founded upon the evi-
dence before them at the term of trial and
too — perhaps the evidence is not the same
A Verdict may be admitted where the parties are the same and the point the same as that on which the Verdict is given. It is not necessary however in a case of trespass for the land to be the same i.e. if the trespasser upon my garden and trespasser upon my meadow: If I sue him for the trespass upon my garden and recover and afterwards sue him for the trespass upon the meadow the Verdict in the case of the trespass on the garden would be admissible. By the "same parties" is not meant exactly the same parties in every case but if the present parties are prejudiced by the former verdict they will be considered as being the same parties for inst: A leases to B a piece of land C brings a suit of ejectment against B. and claims the land as his own. Brooches in A as the person
under whom he claims and recovers: A afterwards leaves the same land to D. C. a
again brings his suit of E. V. of D. The
former verdict is admissible evidence in
the latter case—

It has been a question when A. was sued by
the public for some crime (say breaking the
peace) in committing which he injures B. in
the public action B. is not in an evidence
to prove the fact and the public he recovers: A
afterwards B. brings his action for the injury which
A did to him and the question was whether
B. in the above case could make use of that
verdict. It is now settled that he cannot why it
would have been made a question is
mysterious: for it would be letting B. take a
direct advantage of his own evidence given
in the former trial—

An execution is evidence without the judge
or not according as the person who offers it
if it is the P[] who offers it to defend himself or to establish a title, he must show a judgment so if he had none he is a trespasser or if it was
avoid judgment it is the same thing as if A. imprisons B. on an execution and B. afterwards
sees him for false imprisonment. A. in order to defend himself must bring in the judgment. for the execution will not be sufficient; for if he had no judgment or if the judge was void he is a trespasser if not let him bring it in; but if it be the officer who depends upon the
charged as a trespasser it is admitted by all in many cases it is sufficient to show an Ex.
juring from a Court of competent jurisdiction. On the other hand such execution will
not defend him if it appears on the face of it that there was no authority to issue it: on comparing execution with the general laws of the land which person must know
at his peril. These appears there could be no cur
Privity given. Examples: An officer receiving an
execution to levy, which upon the face of it appears to be for £22. and issued from a Jus-
tice of the Peace—here it plainly appears that
the Court had no jurisdiction whatsoever of those
the officer levy execution the sum of which is not
tryable by the Justice it will not defend him. But
if the Execution on the face of it was but £80. the
officer is not to go to the records of the Court and
find out whether it was recovered in an action of
trover or any other action.

By some it is contended and there are many
authorities to support this opinion that if
the subject matter of the suit was not within
the jurisdiction of the Court all the proceedings
being before a Court not having any such
jurisdiction the judgment is void and every
thing done by the officer is a trespass whilst others
suppose the true rule is where the Court might have
granted an execution for any thing that ap-
pears to the officer he shall be justified as in
the above example—The rule as established
in Connecticut is founded on different principles.
which is apprehended to be the true solid principles to be extracted from the authorities upon the subject (viz.) of the Ex. on the face of it appears that the Court might issue such an execution or by comparing it with the general laws of the land which every man must know at his peril it appears that the Court had such authority. The officer may proceed to execute it as the law directs and in event of the suit being none non judic. the officer may proceed to execute it. The contract would not be liable but if the execution carries upon the face of it a judgment which the Court had no authority to render or it be not consistent with the general laws of the land the officer would be liable. The English authorities upon the subject are as follows. The first case that we find of this is the notable case called the Marshalsea case reported in Coke which contains of the official duties of the levies on ex. 52
which was wound now judge of this it does not appear upon the face of it but it have been before a greater forum. There is Harrington afterwards another case reported in Hardwicke determined the same way and upon the authority of the Marshall case. There is also a third case reported in Willson Prescott it is upon determined like the two former and upon their authority. All these cases were determined upon the authority of the Marshall case. For if that can be stuck to the ground they must all fail with it. The case of Prescott and Carpenter and Mann in it. Raymond it is apprehended goes the whole length of this in that case it is said the resolution in the case of the Marshall case is a hard one and the authorities there cited do not support it which is the same thing as to say that case is bad law and we will adopt a different principle. The example put by the Court in the 10th. Marshall do not support that
decision is the least; it is here said that if the Court of Common Pleas (which has no jurisdiction over murder) should issue an ex. qt. a man for murder commanding the officer to bring him and the officer should bring him the ex. would be shielded but he would be liable; for upon the face of the ex. it appears that the Court had no jurisdiction and therefore he would be liable. Another case next by the Court, is that by the laws of Eng. it is necessary that the shrie夫's court be held on the first tue. Day of May and say the Court if they should issue an ex. on the 2nd. tue. day and the offer should levy it he would be liable. This too is true but the reason why he would be liable would be because it was common misconception and it appeared on the face of it that the Court had no authority to issue on that day. This the officer should know and therefore a law in fact if it did he would be liable.
Therefore upon the aforementioned principles it is apprehended that the case of
the Marshal cannot be law; but the rule
above laid down it is conceived is the true
rule and must govern.

If any fact of a process which has
been used is wanted to be made use of you
ought to have a certified copy from the
proper officer unless it be when a writ
is wanted—then a certified copy is not
necessary but personal proof will be admis-
ted to show that, that writ actually did ex-
it as appearing by the files of the Court.
That the record was such a writ
returned—Proceedings in a Court of Law
such as Declaration, pleading or non
will be admitted as evidence but directly
the reverse obtains in a Court of Chancery
they always being admitted as evidence
so in Chancery the trial pleading pledges him
self for the truth of what he plead and
his Conference at any time may be app

juised to for the truth of what he states— &

no man will be presumed to carry for

ward a falsehood— Therefore proceedings

in Chancery will be admitted either for or

against a person—the Defendant answer in Chan

crey is considered as an oath and may

be admitted as evidence and taken ag

An infant's answer which is commonly

made by his guardian however is now

to be improved ag him

Whenever the answer is introduced

as evidence ag a man the bill to which it

was not answer must also be produced;

formerly however it was held that the

bill when lost need not be used in the

practice it is apprehended originated from

Cour of Chanr's not being a Court of record

as much as any other, the bill must be

used in together with the answer—the bill

and answer being produced it need not be

alleged that the answer was sworn to
for that is presumed unless the contrary appears.

An affidavit is the oath of the plaintiff to the truth of a certain fact as if
A wishes to have his cause continued to the next term because of the absence of a ma-
terial witness, he comes into court and there makes oath that such a witness is out of
the State &c. and such affidavit is good evi-
dence but it must be proved to have been
sworn to — and it must be produced itself
and not a copy as in the case of an answer

Of Depositions

Depositions are the usual evidence in
a Court of Chancery in Eng.? -

Strictly speaking there could be no such thing
as depositions being used in an English
Court of Law and when any witness is such
or unable to attend Court his deposition
may be admitted till the party opposite par-
ty consents and if the other party will not con-
sent the Court will continue his cause till he will consent—but when some person gets in a suit who is willing to have the suit continued, the Court has no hold of him and the other party must go without his testimony unless the writing can be produced into Court. But depositions taken and made up in Chancery may be and often are used in lawsuits. Now whether both parties consent or not, provided the witness who testified cannot be brought into Court by any reasonable means this is the Long Law. These Depositions in Eng. are taken by Commissioners appointed for that purpose.

Can often happen when a person wishes to get the evidence of some person who is old, decrepid, or who it is supposed will die in a short time. When he has no institute in this case by an application to the Court they will grant a Sedimus protestation or a power to take the depititions of that person in memoriam or in justice.
tural memory of the thing.

In Connecticut we have a late statute enabling testimony in perpetuum re probatum to be taken in much the same manner as in England only the application for a Deed of suit taken must be to the Supreme Court. In this State viva voce evidence or deposition testimony is used in our Courts of Law and Equity too. See our statute respecting Witnesses where the causes of a deposition are stated at length. Both by the English and our laws what a person has said not under oath is not evidence neither is it evidence what a person has said out of Court not with standing he has been regularly sworn.

When a judgment is introduced it is not only evidence but it is conclusive evidence and no evidence can be admitted to contradict it unless the judge has been obtained by fraud; in such case it may always be attacked and set aside.

Of foreign judgments

As to foreign judgments the law seems to be dif
sent: By foreign judgment is meant that obtained in courts subject to one and the same power to in different countries and such would be consid-ered in England a judgment obtained in Jamaica or India. But a judgment from an island into an English court carries with it only prima facie evidence of a Debt; it is therefore not conclusive evidence but may be examined into. But a judgment obtained in Westminster Hall cannot be examined into in England. In mentioning this we must advert to a singular practice in Connecticut by which great injustice may often be done. It is well known that a man may be sued and if a judgment obtained without notice being given and this may be conclusive evidence of a Debt. Since the confederation it is the State of N.Y. and B in this State who wishes to obtain a judgment for a sum of money, say A-B being informed that A has property in this State (matter of how small a value) sues out a writ of attachment upon it and this is all the informa-
tion A has of the subject for says our law, attaching a person's property in notice of the suit to the 2nd. The judgment must continue the cause until
That he may have notice of the suit, but no one
feeling interested will not take the pains to give
him notice and judgment in fact is under the second
court against him for the whole demand - the
property attached may not be sufficient to re-
cover the debt - this judgment is conclusive evidence
against unless within one year he will come
petition for a new trial and set the
former trial aside - It is apprehended upon examin-
ation that the prevailing opinion respecting this
may in some instances be shaken - In the first
place the law goes upon the ground that there
was notice given - and how does the law say this
way by presumption; then it is founded on pre-
sumption and presumption in this case is as
good as all other until rebutted and when it
is positively rebutted by other testimony such
judgment can be attacked as fraudulent on-and
say - Mr. B. I once sent a man 60 miles on
inquest to convey notice in case exactly similar
to the above mentioned - This also is the nature of our
foreign attachments - they upon abounding duties - A
person who resides in N.Y. and leaves a copy of the
writ with C. who is said to be his agent, factor, att' or trustee: comes into Court and declares that he is not an agent or of B. yet notwithstanding standing this the Court will render judgment agt B. for the whole demand and this is the practice of our law and will always do so, except justice but they will not suffer execution to go out agt the att' or D.

The mode of letting collecting judgment after an assignment settled is to bring a sacci facias or a judgment agt D. The factor D. provided he will not expose the goods &c. in the case but A is careful not to bring his sacci facias for he knows C. has no present title of the debtor in his hands for he waits untill B. comes into this State and then levies his execution upon heirs or him in the case but go into the State of N.Y. and bring an action of debt on judgment and procure a copy of the judgment as evidence.

Our Courts seem to have contrived a plan to get rid of this act by saying that a foreign judgment is good for no other purpose than to bring a sacci facias: if therefore a judgment be obtained against a man in N.Y. and should come into
This State with even so much property it could not be attached only by a Writ of Farcia

Of the records of Marriages,

The Law respecting these records is different from that of other records and indeed the law upon this subject appears to be extremely loose and careless. A record is always expected to be produced but it may happen that there is no record that it is lost or cannot be found & in such case other proof will be admitted upon satisfying the Court that due diligence has been made in search of the record.

The certificate of the Clergyman who married the parties is said to be conclusive evidence without being sworn to, he being considered as a civil officer acting in a legal capacity. He must certify that he was a minister and the usual certification made use of is U.D.M. That is the "Minister of the word of God."
So again there is an instance in the Books of a man setting down the names and births of his children in a Bible or Almanack which was admitted as evidence —

Of Deeds

There is this extensive significance taken in not only deeds of land but many other written instruments.

It is a general rule in the English Law that he who claims by deed must make proof of it in Court, that is produce it in Court on the ground that if he does not produce it he would not be obliged to show it at any law. But by our law it makes no difference whether he make a proof of it or not, but if challenged he must produce it in Court; the former only then is dispensed with, the law being substantially the same —

In this a distinction obtains in the English
Law that the deed not be shown at the
reallace be shown it when the party is not
entitled to the custody of it - Inst: A brings
an action of ejectment agst. B. who is tenant
in Dover and places his reliance on a deed from
her husband - but the deed being not in her
 custody having been delivered to the heir together
with the land she is not obliged to produce it
for the assignement of dower is sufficient for her
and throws the burden of proof on the Mt. and
he may cite in the heir by a warrantory called
a Success term. But a tenant by the Curtesy
must produce his deed for it is in his custody
No such distinction will exist here
to the same extent for as all our deeds are recorded
a copy may always be produced - Still however
the law is the same when the challenge is of
the Deed itself
By the English Law the deed itself
and not a copy must be given in evidence but
in this State a copy is sufficient - It must be
proved to have been executed and delivered by at least one witness — the same law obtains in this state. This however is leaving the subject in
dependent of any regulations when acknowledgment and recording are necessary. The mode of proving the execution and delivery is to call
upon the subscribing witnesses and if they be de
posed from their handwriting from which the ex
ection is inferred. When the deed is 40 years old if
possession has gone with it, the deed need not be
produced for this carries with it conclusive evidence
of an execution and delivery of it — so if a deed be
burnt a copy is evidence if no copy the contents
may be proved. If the deed be in the hands of
the opposite party a copy proved to be a true
copy is good evidence —
of the effect of an acknowledgment before a
Justice of the Peace —
The fact of an acknowledgment being
acknowledged proves the execution of the deed
but not delivery — this it is said may be facily
presumed from its having in the possession of the
Grantor after proof of the execution

By our Statute Witnesses are required to appear and it is a rule that if the subscribing
witnesses are alive they must be had and it
cannot be proved by other persons on the
ground that this is not the best evidence the
law will admit of.

The witnesses signing to a delivery is evi-
dence of a delivery of the Grantor stand by it
see them sign and makes no objection—This
implies a delivery.

As to comparison of handwritings—Gilbert
says proof of a man's handwriting in civil
cases is good testimony but in criminal cases
not—Later writers disagree to this and says
Morgan it is either admissible in both cases or
weak in either. Muller says it is not good in
either case. The practice of our Courts in general is
to reject it in criminal cases and admit it in civil.

A copy of a deed which has been recorded has
always been supposed to be sufficient evidence but it
is understood that this is a most unwarrantable
practic and would open a door to fraud. For a man might forge a deed carry it to the town clerk and get it recorded and then when called up being in a copy of the record and got a good title and it is conceivable also that this is indirect admission to the rule that evidence shall not be admitted when it carries with it evidence of a higher nature being kept back. This must certainly does for it carries evidence that the deed which is certainly higher evidence is kept out of sight.

It was before mentioned that 40 years possession was evidence of the execution and delivery of a deed. When this is proved in a trial of a case of this nature the jury ought to find that there was an execution and delivery, but if the jury find a special verdict, that if there was an execution and delivery it was more than 40 years past and that the grantee has been in possession 40 years holding under that deed, when such a special verdict is found it appears that the Court cannot find that there was an execution and delivery but must give the cause of the person who holds under such deed for say they the Court can make no instru
It is in known where a demand of the thing to
hand and a refusal to deliver it up is full proof
of a conversion and when that is proved the jury
may bring in that there was a conversion, but
if they bring in a special verdict that there was
a demand and refusal or still the court cannot say
there was a conversion: for here again the rule
comes in, that the court is to make no inference.

This doctrine appears to be very idle for one would
suppose that the court in such case could easily
make the inference as the jury——

A deed without witnesses or any other iden-
tify whatsoever attending it except delivery altho'
it will convey no land may still be considered
good as a covenant. For example——A. sells a
such a deed and afterwards with a good will to C
agreed on all hands that no land is conveyed by it
and yet B may recover upon that covenant agt. A.
for he acknowledged himself well if he acknowledged
a consideration and that he would defend
the land to B. From all claims whatever this he
cannot do now evidently for he sold it to C. B
however may sue A upon the covenant contained
in the deed and will recover. But the covenant may be waived and B sue for the money which A in the deed has acknowledged that he has received, but let us proceed one step further. Let us suppose in this case that B had interposed into possession on A and not sold to C nor any body else and A in this case get B? He could not for Chancery would not compel A to a specific performance of that deed and whenever Chancery will decree the specific execution of a contract, Law will not intervene and thwart that power of Chancery.

There must be 3 witnesses to a Will to convey land if any one of those three only cannot can be called in to swear to the fact of his and the two other signing it will be good proof of the Will but if the witnesses did not all sign at one time (as the case will often happen) that will not be good proof for then he cannot swear to the other signing.
Of rasure and interlineations in a deed

Where there is an alteration in a deed occasioned by the rasure or interlineation under the matter made by the party who does not hold the deed it does not hurt it: but if it be made in a material part whether done by the holder of it or not (even if by consent of both) the deed is utterly void—so also it is if made by the holder of the deed whether in a material part or not.

But if the property sold was of such a nature that it would pass without a writing as a house, &c. it would vest notwithstanding the rasure for that only puts the thing in status quo—and as the house would pass without a writing so it will vest. When there is a deed of this kind with a rasure, &c. the writing then invalidated would be considered in no evidence of a sale—Even additions by consent of both parties after the execution of a deed destroys it
by the English Law for say they it is not
the same instrument that it was when it
was sealed and therefore it shall be void.

If the seal be broken from the deed by
either of the parties or eaten off by the seal
or gotten off by any other accident it shall
be the English Law that there is an end to
the conveyance unless the seal be broken
off in a Court—in that case the conveyance
remain good for say they when the party
has got under the protection of the Court
he shall be in no way injured.

In case of a joint deed the seal of one of the
signers be broken off the whole conveyance
is thereby destroyed the reasoning given is that
one seal being broken off say they is evidence
of a discharge to that party whose seal is bro-
ken off and one being discharged both are
It however is apprehended that the seal being
broken off is no more than presumptive evidence of a discharge. If then this presumptive evidence can be removed, the conveyance will still remain good—The Court then it is conceived ought to admit hearsay testimony of the seals being broken off. However, if this obligation is several and not joint, the conveyance is destroyed as to the one only of those seals being broken off. These principles are not settled in Connecticut.

There is an authority in Salisbury: 201 Newport. E. Williams says when it is said that the acknowledgment of the party in a Court of Record is good evidence of its being sealed and delivered and such an acknowledgment stops a man from pleading Novus factum and said the fact it is the acknowledgment which gains credit and not its operation on contents. They also held a sworn copy of a deed good evidence—Butler N. P. 252.
As to writing a note under seal as note
Bills of exchange &c. by the English law the
holder may bring an action of indebit
status of purport declaring as on a fraud pro-
15. mine and give the note bill &c in evidence
In Connecticut it is said all our notes of them
it must be considered in the same light
as specialties are in England and therefore
the action must be founded on them and
not on the promise and it is true it is the
universal practice among us to bring the
action upon the note itself. It is how
we apprehended that this opinion carries
the matter too far. The true rule as extract
from principle, practice &c it is approver
did as the only true one is, that if the wri-
ting acknowledges a value rece'd (as do our
notes) then are they and not tell them
as specialties in England and the action
must be brought on the writing, but if the
writing does not acknowledge Valuation as a bill of sale - single Bill or the action may be founded on the promise and the writing given in evidence

**Of parol Testimony**

Of those persons who cannot be witnesses

Persons are said to be incapacitated from testifying on two grounds: 1. For want of integrity and 2. Want of discernment. Under the first of these heads are included interested persons. A person who is interested as a general rule cannot be a witness because his want of integrity in that particular case; for it is supposed that the most upright person whatever would be inclined to testify in his own favour - but when a person is only apparently interested (as a Guardian in an action best by an infant - a trustee in an
action but concerning the property of the
he is interested (2) he may be admitted as evi-
dence,

There is an interested eye in the event
and interested eye in the question litigated.
As to that in the event it is when a person
becomes liable to pay a sum of money
by the determination — interested eye in
the question when a person is in the same
circumstances as one of the parties contending
by Amos at the same time borrow money
of another and give him an usurious
security both alike for the payment — one
of the borrowers is sued and his defence is that
the contract was usurious — the other borrower
is interested in the question — So again
if A assault B and is sued by the public
for a breach of the peace and B is called in
as a witness — he is interested in the question
for if the public prevails he can no

being his action agt A and recover but on the contrary if the plaintiff said he cannot maintain an action agt A.

Having premised what is meant by an interested witness in the event and in the question we shall now remark that by our law and the English Custom a person interested in the event is excluded always from being a witness.

Formerly persons interested (by the Eng. law) in the question were sometimes excluded and sometimes admitted and the authorities are directly contradictory appearing to be governed by no principle whatever.

But it is now absolutely determined and the rule fixed in the case of Bent v Baker 3 Dun that a person who is interested in the question is an admissible witness. The same doctrine was hinted at by Lord Mansfield in the case of Abrahams v Burn
The rule was not established then. In this State it is determined directly by the contrary that its application in the question excludes persons from being witnesses. It is agreed on all hands that where a judgment can be made use of in favour of a witness he is interested in the event. Inst. A and B are assaulted by C. A brings his action agt. C and offers B as a witness to prove the fact for if A obtains on the testimony of B. B will also bring his action and offer A as a witness but suppose A obtains his cause agt. B. in an action avoids himself of the judgment obtained by A? The Courts say not for the fact of his obtaining judgment agt. C is not a record of which B can avail himself. B therefore would not be excluded as a witness.

When Members of Corporations are admitted as witnesses, in this case, the law are materially different.
The rule seems to be: Where the question is such that they may be supposed to have as much interest on the one hand as on the other, they courts will admit the members of a corporation to testify—considering the town a corporation—then for it to apply the rule:

In the case of an indictment for not repairing a bridge. In this case the inhabitants of the town are admitted as witnesses all the interested in the event for they pay their valueable proportion to support the bridge although perhaps small yet the law will not notice any distinction in the sum or quantity of interest. The ground of such an admission as just mentioned is: that although the complaint is against the town yet the inhabitants are called upon to testify for their general convenience and public safety will more than over balance their small interest in individuals and it is a rule where the balance of interest is equal the witness is to be admitted as
for inst: if A in consequence of his swear-
ing would oblige himself to pay £20 to B
or C they being the parties interested
if either obtained in the suit he would be
admissible but if swearing for one the
would be obliged to pay £20 or for the other
£10 or any less sum than the £20 his in-
test would be clearly discoverable and of
course not admissible - In the case of the
town just it would be different if it was an
certain to recover damages for a loss suffered
in consequence of a bad bridge - for this pay-
of damages would not be of general concern
one to an individual inhabitant therefore
not an admissible witness - So it seems if this
be a private action an inhabitant not admi-
sible but if prosecuted by an indictment or by
the publich such inhabitant is admissible -
for then the consequence will be that there must
be a bridge.
Of Donations to Corporations

The members of a corporation are witnesses to a donation, as if to make a present of a bell to the parish of S. in this case the inhabitants are admissible testimony but it is otherwise if that publica purpose was such as they were obliged by law to be expenses about and were relieved by the donation.

By our law members of corporations are admissible testimony except the agent and there appears to be no sound reason why he should be excepted any more than any other person and in one case where neither agent or other member can be witnesses one which is this that if the contract was an agreement which might have been reduced to writing and which was neglected for inst.

The Minister of S. promised to receive his salary in Continental money as it was when it be came due this he denied his parishioners were
offered as witnesses and excluded—but knew of the Episcopal society were admitted—by being minister of the Presbyterian society.

So when there is a Statute which must fail of being put into execution for want of witnesses—interested persons will be admitted according to the Stat of Can. 2. Whoever shall fallow. Deem unlawfully shall forfeit £20:
one moiety to the informer—Jennings & Hare—keys & Mod. 114. since the defendant was convicted by the oath of the informer on the before mentioned Stat:—"It is not a material objection to say that the informer shall not be a wit-nesses because he hath a moiety of the prosecution for in cases of the like nature the informer is always a good witness."—In Strange 316

Dominus i. S. Tilly where the informer was no witnesses on a conviction on the same Statute and agreeable to this was a determination of the Circuit Court—
As it respects the Pl. and Def. the cases here cited do not furnish a complete instance in account they are always good witnesses and there appears to be no other instance when the Pl. and Def. are admitted witnesses in a Court of Law - Rest in Pharmacy.

But in Chancery ordinarily the Def. is not a witness, but the Pl. may rely called where by the defendant is not a witness, they are not however witnesses in the sense that persons are witnesses at Law for it is no contempt of the Court if the Def. will not testify as it would not be an a Court of Law and the Def. in no case can be compelled to testify, yet if he does not the Pl. statement in his bill is taken as confessed with a single exception if the thing charged would be subject the Def. to a penalty or punishment he is excused yet if the penalty belong to the Pl. he may waive it in that case the defendant must testify - This rule extends no further than has been mentioned and by no means supposes that the
shall not disclose his own wrong or fraud, or any other matter that does not subject to punishment. For such an idea would defeat the law. If such penalty be based by statute upon limitation still by a decision of our courts, the defendant would not be obliged to disclose. It is apprehended however that this is not founded upon principle for the penalty being once waived, whether by statute or the party, it can make no difference.

It seems our legislature have made very wide encroachments upon the common law by statutes respecting our book-debt action: in this action all the parties are admitted to prove the facts charged. It was formerly understood that this extended no farther than to prove the delivery of the article charged but they are now admitted to prove the agreement. If this principle appears to be calculated to create great injustice for instance A has a note for £50. B makes several payments and takes receipts which
lost 13 afterwards sues A and recovers the whole sum then 13 changes the receipts on book and comes into court and swears that A owes him so much money. The court however will not let in proof of a collateral matter as where two are joint venturers and one of them sues on both the court will not permit the defendant to prove that he owed the defendant debt to both joint venturers.

In a private assault although the plaintiff is admitted as a witness yet he is not allowed to swear to no more than the single fact of his being assaulted— he cannot swear how much he has been injured by the battery.

Again we have a singular statute respecting injuries done to real property— as if trees have been cut the plaintiff must make it highly probable to the court that his trees have been cut. Leaving done this he must swear that he believes the defendant cut them in consequence of which the defendant must swear that he did.
not or he will be subjected.

So again our statute enabling a person receiving counterfeit money to return it back from the person of whom it was due. which appears to be another encouragement upon the common law for in this case the party is admitted as a witness to prove the fact of his receiving the money of the defendant. The court in this case are enabled to call upon both parties under oath and search the truth the same as in a court of equity.

When the law arbitrarily makes a person a defendant with others on purpose to exclude him from testifying his name may by the court be erased from the record and he admitted as a witness. If there be some proof agst him the not sufficient to convict him his name as before said may be erased or not as the court think proper.

Of husband and wife being witnesses.

Husband and wife are excluded from being witnesses for or against each other and even of all parties.
are agreed to such admission the law says not.

The wife however is admitted to testify with the able

man against herself if it does not affect the hus-

bands interest - I conceive this can happen in no

case except she have separate property - The rea-
ground of this doctrine is to prevent family conten-
tions.

There are however exceptions to this rule as if
the husband has been guilty of treason it is said
she may be admitted, tho' it is doubted by Mor-

gan whether she could be compelled to testify on

not - Another exception to the rule is when they

are parties agst. each other or in a suit to do-
tain bonds for good behaviour and this is rei-

procal - So again where the husband has been

prosecuted on the part of the public & for an in-
jury done to her she has been admitted as a wit-

ness; tho' this is said to oppose the principle of

the Common Law - A case of this kind is that of

L. Audley reported in Hutton 115 - This case has

always been reprobated by the Common
writs and denied by them as being good Law but upon examination one case only has been found in which the case of Shaidley has ever been questioned. This was a case in which Holt was judge. The case in Strange is one in which the wife was admitted and Lord Hudson's Case cited as was not objected to. Subsequent to this is a case in Burr's Reports, in manuscripts in which Lord Mansfield expressly adverted to the case and says that although it had been considered as bad law by the writers yet he considered it as good law and not to be denied. This case says Mr. Broune Lane was reported in a pamphlet.

No other relations are excluded from being witnesses either by the Common law or our law tho' by the Civil law Children, Servants, &c. are excluded.

There appears to be no principle in the Common law that excludes an Attorney from being a witness either for or against his Client. The rule as retained by our Courts seems to be this:
An attorney shall not be a witness for his client agt. the opposite party when it is in proof that the attorney introduced or led on to the conversation between him and the defendant respecting the dispute and about which is about to testify. Just A and B have a controversy and C's atty. meets B. and enters into conversation with him concerning the controversy. C. shall not be admitted to testify what B. said. but if B. had voluntarily entered into the conversation C. the atty. would have been a good witness to testify what he said. There appears to be no such principle in the English Law.

An atty. cannot at Common Law be a witness agt. his client to testify any thing communicated to him by his client and is not compellable to testify by the opposite party to testify.

A person who is particularly amiss is admitted to testify as a witness and there appears to be one.
case which opposes a principle of the Common Law. 

First: A, B, and C, have committed an assault upon D, who may sue A, and introduce B and C, as witnesses, to prove the fact, and D obtains judgment against A: it is conclusive as to B and C, and they are forever discharged from any liability — it is clear then, that B and C are swearing directly in their own favour being interested in the event yet the Courts admit the testimony of Confession.

The Confession of a person has always been considered as good evidence in civil causes but when a person out of Court has confessed himself guilty of a crime uncorroborated with other circumstances the jury ought not to find him guilty upon such confession — yet they cannot be restrained from it. A confession must not be extorted by threats or promises but it must be voluntary in order to be improved as evidence — By the English law what a person has said before a Court of enquir
my cannot be introduced from any quarter except from the minutes or memorandums which the Justice in the lower Court took down on paper. In this State instead of minutes the Justice is called in to testify to the confession viva voce.

When a person is dead what he has declared under oath is admissible testimony; but what he has said when not under oath is generally inadmissible testimony: for although the last man is under oath yet the other was not. Therefore what he has said cannot come into Court. It is however apprehended in many cases that such evidence ought to be admitted for in certain cases it may be the best evidence that the nature of the case will admit of and what the person when living has said cannot otherwise be come at. To this rule there are exceptions. Inst. what a man has said in contemplation of death is admitted as good evidence for in such a situation a man is supposed to
supposed to speak the truth as much as if he were under oath; yet if he did not die his declarations are not admissible.

What a living person has sworn to is not good evidence for the purpose of establishing a fact; but if it be introduced for the purpose of impeaching testimony it is good evidence.

What a witness has said at times when not under oath may always be introduced to impeach or corroborate his testimony — as if a witness had always told one and the same story about a certain transaction and often told it to his neighbours friends & afterwards being called upon to testify about the same fact in a Court of Justice he tells a story totally different; in such case what he had said before he was called as a witness will be good evidence to impeach his testimony and generally such observations made before a person is called upon to testify are more commonly believed than when under oath. So also such declarations may be admitted to corroborate his testimony.
Infamous persons are also excluded from being witnesses by whom are meant those who have been guilty of any crime punishable by law which destroys a man's institute of integrity: but he must in fact have been convicted of such crime as if a man has been convicted of the crime of forgery, perjury &c. But persons may be infamous in many ways and yet be good witnesses till convicted of the crime of falsity. A person guilty of bastardy has been considered as a crimen falsi; this perhaps not so infamous as others. In order to prove a conviction of the court, the record of the court must be read in order that the witness stand unpunished.

Our courts appear to have made an innovation upon the common law by letting in testimony notwithstanding the record of the conviction to show that he has since for a number of years lived an honest and virtuous life. So in England a pardon restores a witness to his former situation and is admitted to testify.
It is said this was formerly refused by our courts - a man convicted of perjury however is an exception to the rule. For by Stat: he is expressly forbidden to testify in any case. By the English law all unbelievers except Jews were formerly excluded as witnesses but now Infidels are admitted and sworn according to their Creed. Quakers are admitted to swear in civil causes the not in criminal cases. Upon English principle a Deist would be excluded were it not for his having partaken of the sacrament; for although he has no creed by which he may swear yet under cover of Christianity he is admitted as a witness on oath. Atheists are expressly excluded. By our Law there never has been a time when any of these persons were excluded except Atheists: I protest this is owing to the form of the N. England Oaths. "By the ever-living God" if thereon any person can swear by the Ever-living God he is a witness on this
ground it is that atheists are excluded.

Excommunicated persons are also excluded by the English Common Law — and also Papish Recusants. We have nothing of this in our Law.

Of the quantum of testimony

One credible witness by the Civil Law is not sufficient to convict a person unless corroborated by the testimony of circumstances. This also is the case in some of the English Courts as have derived their authority from the civil law; but in other Courts no quantum of evidence is by law prescribed — and indeed a man may found guilty and judged rendered against him without a single witness, as in case of a presumiptum: sometimes a deposition is enough as the case may be and yet a single deposition is not that quantum of evidence which the English law seems to require when it is speaking of the oath of a credible witness — it however is evidence and
and the Court will weight it as they think proper —

Hearsay evidence, as a general rule, is inadmissible testimony; yet testimony may be admitted to show what the witnesses testifying have before said on the same subject when under oath — There is however one kind of hearsay evidence which is the first and only evidence that can be adduced. It is what others have said of such a person's character as to truth and veracity — For this all we can add to this is the only method of knowing his character. Any other part of a man's character cannot be inquired into as it be enquired into to them.

So again credulous persons cannot be excluded from testifying nor any objection made to them.

In actions of book debt it is asked whether the P'ty is an honest upright man —

It is not generally the practice to enquire into the character of the parties as
a malicious prosecution be laid forward &
it is enquired whether the Defendant has been a
vicious man & addicted to quarrels etc.
Our Courts have made different rules at different
times & formerly it was the practice to en-
quire whether the Defendant would be guilty of
such a transaction & but such a practice is
now exploded & the enquiry rejected.

Children are always admitted as witnes-
s wherever the obtained with regard to the
age of their swearing some say 12 &
others 10 & others 9 years of age to be
the proper age. The practice in this state
is not to put them under oath if however
the Court supposes the child to be acquain-
ted with the nature of an oath they will swear
them otherwise not.

Witnesses are generally to give no opinion
of their own they are to state the facts &
the point & jury are to make the inference
but this inference is not just in every case
for the manner in which the fact was done
in many times material and no one can well judge as the witness.

In some cases two witnesses are absolutely necessary and in other cases when witnesses only are admitted. In treason there are two acts of treason one witness to prove one and another to prove the other will suffice. The good sense of this may be questioned.

So in case of forgery two witnesses are required, because while there is only one it is oath against oath and therefore another must be introduced to turn the balance.

In Connecticut there is a statute by which every thing is left as at common law except in cases where life and death are in danger in such case two witnesses are required or something tantamount.

By the ancient Common Law the witness on the face of the writ was sworn.
either in treason or felony. But it is now made necessary by the Statute of Anne.

It has been before mentioned that a person interested in the court of a suit cannot be a witness to prove his interest. It is, therefore, necessary to introduce witnesses directly to prove his interest. If, or secondly, if you think you can't make out such proof, you may challenge him upon the Verdict. If you elect one of these methods and fail, you must resort to the other, and if it appears that such witness is not interested in the suit, and he still thinks himself interested, he shall be excluded.

Of getting witnesses to Court.

This is effected by a subpoena which issues from lawful authority, viz., the Clerk of the City or Justice of Peace. To make the witness liable in case he neglects to come to court, his
expenses must be tendered — and there is no
authority which says there must be tendered
to him his travel to and from court and
expenses while there but this last it is to
seemed will be dispensed with for no one can
tell how much the expense would be — On
Martinis is to tender on days attendance
beside the travel — After having done this
and the witnesses does not appear or allege
a reasonable excuse he shall be liable to
pay all the damages that the party may
have sustained in consequence of his fail-
ure — But the rule of damages may be
uncertain for it may not be known whether
the witnesses was a material one or not or it
may be that the party would have lost his
case had the witnesses came: if indeed the
party — can prove what the witnesses
would have said there can be no question
but if the witness has never told what he
would say there can be no rule to accept
damages unless it be presumed that the
witness was a material one and it is all
probability would have saved the party from
being In order to lay a foundation for
the neglect of a witness's not appearing
the substance must be returned into Court and
the Clerk must then call the witness 3 times
and then enter the substance on

Of presumptive proof

Evidence derived from presumption is
not generally sufficient to warrant a
judgment but it is said when there is
violent presumption it is sufficient evidence
but however this presumption may perhaps
be removed by proof

Interested witnesses are again admitted to tes
ty when the necessity of the case requires it of
this the courts are judges and these cases are the
following 1. where the State would be defeated
unles an interested witness — could be admitted
2. In an action of account — 3. In an action ag
The Sheriff for a voluntary escape the escape
is a witness - 14th. In an action ag. The rescuer
the rescuer may be a witness - 3. An assignee
is a good witness to prove the delivery
of goods - 6th. When there are two trespassers, or
is sued the other is a witness - 7th. Upon compel-
to procure bonds for good behaviour the husband
and wife are witnesses - 8th. Upon the prosecuti-
on of Bastardy the person interested is a wit-
ness - 9th. A servant may be imprisoned for the
purpose of charging another in consequence of
which he discharges himself. These are all said to
be admitted from the necessity of the thing, for no
wise proof cannot be had.

There may be added to the above under the la
of Connecticut 10th. Our book debt action for
which see our Statute - 11th. Secret assault - 12th.
Our Statute against trespassers. 13th. The Statute
respecting the recovery of Counterfeit money
Of the English mode of proceeding in a Court
When the defendant answers on oath and the plaintiff introduces a credible witness who contradicts this, the matter is sent to a court of law to be tried by a jury—in this state this is done by the court itself.

March 7th, 1794

A Lecture of Desertory Principles on Evidence.

An interested witness may become good by a release from the party "of all demands." 3 Durn. 27.

A person becomes interested after the parties have a right to his testimony—if this was done by one of the parties in order to exclude him, he is a witness notwithstanding. St. 652: 3 Durn. 27.

A witness may swear to the fact of an entry made by himself on paper; but if he has no corroboration of the fact but from the entry in such case the paper must be produced.

Evidence may be let in to have prove that there are other considerations to a deed beside those
expressed in the Deed. This is not however to con
Dun: tradict the writing but to stand with it 3 Dun: 4
707: (vide) a case there is in Dun: 707 respecting how
my evidence in which the Court was deceived

"That a witness who absents himself wilfully
10: may be attached for contempt." Vide Doug: 540

An Ex: where he is trustee only may be a witness

If the party offers evidence inadmissible
because not the best evidence the case will admit
Doug: 152 and if it makes the party offering it it shall
be read; Doug: 752.

The declaration of a dying person is admissible
Burke testimony, tho' no old authorities are to be
Doug: 153 found respecting it 3 Bur. 1253.

We have before seen that if a legacy be given
to a child and afterwards an advancement
on homin given to the same child. it is an
ademption; yet the Courts will let us know
of the bond kind to show that the person did not intend the position should go in satisfaction of the legacy - 2 Brow. in Chan. 163. They will also let in proof to show that legacies given by a Codicil were meant to be accumulative - 2 Brow. in Chan. 519: 521.

It has been a question whether subscribing witnesses can be contradicted by others and determined that they may - 1 Black: Rep. 356.

3 P. Williams 397.

When there is no Stat. of Limitat. a length of time has been admitted as evidence of the payment of a bond - 20 years for instance is mention ed as a sufficient length of time to destroy a contract - this goes upon the ground of presumption which is removed out of the way will let the bond be good - 1 Black: Rep. 532. That a length of time does destroy - there is a case in Dunford which says the presumption may be removed.

When the subscribing witness said he is compellable
to testify Strange 306.

A person apprehending himself in trust when in fact he is not will be excluded the same as an interested witness. St. 129

Pard. Evidence of the contract contents of a deed is admissible testimony. Ng. 205.

See the 2 of P. Will. 136 - for the purpose of showing, the courts have gone in letting in part proof to show the intention of the testator and to vary the operation of a writing and indeed the courts do not adhere to that rule so strictly as was imagined. The Devisor in the case cited gave estate to the heir of his mother's side forever, and he was heir of certain lands to heir from his mother and also of land from his father. The question was who should have the estate the heir of his mother's father or the heir of his mother? And the court let in proof to show which.
The deposition of a person not interested and before trial he becomes interested his deposition cannot be used in his own favour.

1804

An indorsement on a bond rebutts the evidence arising from the length of time of its being discharged. But as to this there is a distinction: if the indorsement be made before the suit has run upon it, it rebutts the statute presumption, if it be after, a length of time is conclusive. But the National Court has adopted a different rule from this, that an indorsement never rebutts unless attended with actual payment.

Evidence of a single witness corroborated by circumstances against the defendant answer in Chancery is sufficient to found a decree - 1 Browne Ch 51.

The verbal declarations of the auctioneer at the sale not admissible to contradict.
the written conditions. Henry Blake 207.

The man who has contributed to give currency and credit to a writing shall never be admitted as a witness to impeach it.

There are sundry authorities respecting the admission of witnesses interested in the question which taken together are inconsistent. Subh. 203. The great case as it is called - contradicted in Strange 395. Subh: 286 - In the case of perjury Buller makes a distinction if the prosecution be upon the State: the informer cannot be a witness, because he is to have £10 - if the prosecution be at Cor. Law he is a good witness for in such case he has nothing.

It often happens that general character and particular facts may be enquired into, contrary to the general rule - the rule to govern in such cases is as follows: Where a general character is just in force...
by the pleadings whether it goes fully to recovery of defence or only in mitigation of damages. Particular facts or general reputation may be engrossed into, but you are not to furnish evidence to furnish evidence that it is probable the thing charged was done. Likewise, in a case of slander—A says B, for charging him with being a thief. I wish to prove B to be a vicious slanderous malicious fellow—can he do it? I mean for what purpose he wishes to make out his proof—when he has made it will he be entitled to damages unless the fact in the declaration be proved? It is clear he cannot recover on this evidence, for you are not to enquire to furnish evidence that the thing charged was likely to have been done; but will it entitle him to greater damages that being the case after he has proved the charge—not greater than he has relied on if it had been a man of a better character? It is not then to affect the damages but for another purpose to furnish evidence that he actually slandered or charged to render it probable that the charge is true. It is to come in aid of the evidence to induce a belief that B's declaration is not ill founded.
For such purpose it is inadmissible and for another purpose it is irrelevant. On the other hand, P wishes to prove that A stole as charged in the declaration. Shall he prove this? Examining him for what purpose it is wanted, will a proof of this fact exonerate P from any damage? It certainly will - it is a complete defense and is therefore relevant to the Defendant, and may be proved. For example, suppose P prove that A stole, it would not be a complete defense yet it would lessen the damages to prove that he stole; in such cases it is relevant for although it does not fully justify yet it lessens the damages and ought therefore to be proved.

Again suppose he cannot prove any particular fact yet A's general character is that of a thief - shall P prove it? Will the damages bear great the fact being once proved? Certainly not if therefore is relevant testimony.

The case in the books of the theft mistake will it be altogether this rule where she preferred her bill for an annuity; the Defendant was desirous to prove
her character (sic) that she was an immodest
and woman before he took her (for observe it is a
rule in Chancery that if a woman's character is that
of an immodest character before the present
defendant had the use of her that no recovery can
be had—but if of a contrary character she is entitled
to her annuity). This being the case the proof
which the defendant was about to make was relevant
to him and therefore proper to be proved. To
again the rule is the same in a case of a bill for
adverse and also the case in an action buss'd by
the parent aqj. the man who debauched his daughter

Of affirmative testimony

It is a general rule that affirmative testimony is
considered as superior to negative testimony; but
there are cases in which the negative must be
proved because the law in such cases presumes the
affirmative till the contrary be proved. For
when a suit is brought aqj. a person in publick office
for not doing his duty and he undertakes to deny it
The negative must be proved, for the law presumes the officer to have done his duty till the contrary be proved.

It is also a rule that whatever fact is agreed to by the pleadings need not be proved by evidence, although it should turn out in the proof not to be true. So again it is a rule that a person for the substance of the issue but you need not prove the issue as it exactly is, if you can prove the substance so that it appears you ought to recover it is sufficient, as in an action of trespass for cutting 10 trees—Plea Not Guilty— it is in proof that 2 trees only were cut here, the proof does not tally with the declaration yet there is sufficient to entitle the plaintiff to a recovery. So again in an action on note the defendant pleads usage that there was more than £6 6s. 8d. owed, £10—The jury find £7 6s. 8d. only owed—The issue is substantially found. If there be evidence adduced which you
suppose falls short of proving the case on the
front of your antagonist — you can leave it
to the jury to determine as it usually the case
or if you chose you may demand to it and put
it to the Court. To effect this however the evidence
must be written or else your antagonist will
not be obliged to join in demand.

If evidence be offered which you judge comes
from a wrong source as an interested interest
or if you judge it to be unpersuasive to the issue
you may object to its admission and argue it.
If admitted you may file your Bill of exceptions

To the opinion of the Court admitting such testimony
which must be stated in writing — and if the evi-
dence comes from a wrong source you must state
the circumstances of the witness — This bill is signed
by the Chief Justice of the Court, and endorsed
several by the Clerk, which lays a foundation
for a writ of error.
Of Bail

In treating of Bail we shall first consider it under the Statute and Law of Connecticut, as a right understanding of that will lead to an easy understanding of the English law and the laws of almost all the other States, upon this subject.

Bail is generally treated of by writers apply properly to two kinds only—General and Special, but in a larger sense it comprehends all kinds of bonds where one man has given bail to another to secure the payment of debts, costs &c. of a suit as well as bail for the appearance of a person at Court.

In certain cases the Plt. gives bail—And in other cases the Defendant, there we shall separately consider:

1. Of Bail by the defendant. By the law of this State when any person brings forward a suit who in the opinion of the Court is not able to pay a bill of cost provided the case should go against him or is likely to cause trouble to the Defendant to get his costs, the Court will order him to get obtain a bondman and give bonds for prosecution. It is also the duty of a Justice of the Peace to take such bonds of the Plt. if apparently a bankrupt or unable to pay the cost.
This is seldom done. The nature of the bond is that the bondman acknowledges himself bound in a recognizance to pay costs of suit &c; and provided the Def. attains his cause execution must first go out. The Pl. & the officer is bound to make diligent search for the property of the Pl. & if found he must take it, but in the event of his not finding property he is not bound to arrest the body of the Pl. Upon a non est inventor being returned as to the property the bond becomes liable; so should he take the body as he may do according to the tenure of execution & the Pl. should decline from suit. Good yet the bondman is not exonerated as soon therefore as it becomes ascertained that the money cannot be gotten from the Pl. the bond immediately becomes liable and nothing will operate as a discharge but an actual payment of the money by the Pl. or bondman. So in all cases where the Pl. issues an attachment he shall give bond whether he be poor or wealthy. With regard to this a singular practice has obtained which appears to defeat both the intention of the Legislature and the original idea of that giving bonds upon attachments. For if the Pl. offers himself for a bondman he is commonly if not always taken without any other person and
generally a bond sufficient to answer the cost, only
This upon reflection will be seen to answer no
purpose for the Plea bond is no better than an
execution ag their. The original idea was that
the Plea had two ways to bring a person into court
1 by summons 2 by attachment, and says
The law if a man will take the rough mode of
attacking by which enquires may often be done
he shall give a bond not to answer the cost but
all damages the Def may sustain and as the
practice now obtains if the bankrupt is worth
nothing the Def can get nothing for the dam
age he may have sustained

Of Bonds for Appeal

The party who loses his case in an inferior
court always has the liberty of appealing to a
superior Court. And in every case when a man
appeals he must give bonds to prosecute his appeal
and the nature of such bond is that it is liable to an-
swer all damages if the appellant does not make
his plea good.

Ordinarily this bond is liable for nothing
but the cost but there are cases where the bonds
is liable for the whole debt and cost - inst. A owes £100 - B appeals but again loses £100 - in this case if B. cannot pay the costs his bondsmen is liable for A. has been just to no damage but his costs and is in as good a situation as he was before for he before had a judgment - B. and that he has now and indeed it appears to be the subject of all kinds of suit to meet the Pl. or Def. as the case may be in as good situation as he was before - If however had been a question whether the bondman is liable for the cost that arose after the appeal only or for the whole of the cost that has arisen in the prosecution of the suit - In practice he is liable for the whole costs - 

But there are cases as was before mentioned where the bondman is liable for the whole debt - cost & inst. A owes B. and recovers £100 - B. appeals but never prosecutes it letting the matter drop there - in such case the bondsmen is liable to respond all damages - for A. has lost all hold of the former judge - it being the nature of an appeal to destroy that just upon which the appeal is taken -
so that execution cannot issue thereon and the
appellant not having prosecuted his appeal so as to give the respondent an opportunity of ob-
taining another judge, he hath no resort but to
the bond. Out of this arises an important question
suppose at the time of the appeal, the appellant
was a man of property but at the time the last
judg't is given agst him he has by some means
become a bankrupt. So that he cannot pay the
sum adjudged agst him shall his bondsmen
be liable? This question is undetermined and
may occasion a great deal of litigation

Of Bail given by the Defendant

Bail that is given by the Defendant when ar-
rested is for the purpose of restoring him to his
liberty at the same time putting the Petorn in as
case condition as he was before and is of two kinds
1. Bail to the officer or Common bail 2. Special
bail on that which is tendered in Court

1st. When the officer has arrested the Defendant upon
attachment for the purpose of carrying him to Goal
if the person arrested will procure sufficient bail for his appearance to Court at the time of trial. The officer must accept the bail and release the defendant if he does not he will be liable to the defendant in an action of Trepass. However if the defendant does not appear at Court it does not of consequence follow that the bondsmen is liable for the act will go by default out. The defendant and execution will issue thereon. And if the defendant delivers himself up to the officer or is delivered up by the bondsmen within the life of the execution the bondsman is not liable for the debt as the cost.

Of Special Bail

This differs from the bail just mentioned in the respect only. When the defendant has been arrested and bail given for his appearance at Court and he in fact does not appear he then is in the case of
the Court who delivers him to the officer to carry him to Goal— he however being still desirous of keeping his liberty proceeds bai'd for his appearance at the ordinary judge—as to the proceedings afterwards his surrendering himself up to be in upon the other bai'd.

The principles of the English Law are the same only they extend their mercy to the Def. much farther for if the Def. does not appear before the execution is run out—a fine is best and if the Def. appears before the judge on that fine: the bondsman is not liable.

The officer returns of Non est: is the criterion of the liability of the bondsman therefore if this Non est be obtained unfairly (inst) as when the officer seeks the Def. when he knows he is gone from home—and the Def. appears to have had any hand in it: the bond is discharged—so if the officer conducts him self he will be liable.

If the officer takes insufficient bai'd he is liable and nothing will exonerate him except in one single case—if the man offered as bai'd is apparently in good circumstances at the time and
afterwards becomes a bankrupt the officer incumbe

When the officer has taken bail and the Dep.
does not appear it is customary for the officer to as
sign over the bond to the P't that he may bring
his action thereupon and in doing this it is the
general practice for the P't to sue in the name
of the officer this it is apprehended this is a won
idea The mode of recovery upon the bond is by
an action of debt or scire fac and the rule of dower
is the Debt and Cost.

Of Bonds of repelvin

There are still other bonds in the nature of bail
where an attachment has issued and property
taken it may be released by bond as well as the
body of the defendant.

If the defendant can procure any body of sufficient
that the property shall be returned he may reply
it the bond is upon the suit of repelvin which is
to respond all damages and when the property
is then repelvin the P't must issue execution ag
the defendant and upon a non est inventio being issued
the bondsman is liable.

A question may rise under this head of
instance. Inst. A issues an attachment of £100. 0s. 0d. but the officer can find but £90 or any less sum upon £100. Worth of property which is replaced afterwards. The defendant becomes a bankrupt. Shall the bondsman be liable for the £100 or the left sum only? The terms of our statute would seem to convey the idea that he should be liable for the whole £100 but it is apprehended that the genuine construction would be that he should pay the value of the property only.

Of Bonds on Writs of Error

This also is in nature of bail. Formerly the statute required no bonds nor indeed does it now but only regular proceedings when bonds are given. A Writ of Error with bonds given is a supersedeas to the former judge. So if the Writ in Error absconds in the mean time the bondsman will be liable.

Of Bonds on an Audita Querela

The nature of this bond is the same as that upon a Writ of Error but different in its operation.
For Inst: A has a debt agt. B. which B has discharged after judg. instead - A sues out his execution and the officer levies at B in this case may have his land: Deed: which must be signed by the judge of the Court. This discharges the Df. from Goal till the sitting of the Court when the Land: Deed: is tried and if found to be true the Defend. gets his damages if not he is liable for costs and in the event of his being unable the bondsman becomes liable.

It may sometimes happen that the Plt. may have two bailis to secure his cost: Inst: A as officer at the suit of C. arrests C. and D. being present gives bail for his appearance at Court - C. appears at Court and D. to give special bail for him. He looses in the case and appeals to an higher Court and procures E. to become his bondsman to prosecute the appeal - the appeal is not prosecuted. E. becomes liable for the whole debt and cost of B. may release E. as to the cost and came upon D. for no security given to prosecute an appeal. But exonerates the special bail in the case.

Of the English Law of Debt.

When a person is arrested under the English Law and
bail given for his appearance the persons giving bail has such power over the person arrested that he may take him and keep him in prison provided he is about to make his escape. In order to do this with safety the bail then taken is insert in a piece of paper cut for that purpose called the bail receipt. The bondman may carry in his pocket which furnishes complete evidence of his being bail for the prisoner and when he is about to escape he may take him. It is not however absolutely necessary that the bondman have this bail receipt to authorize him to arrest the prisoner but to avoid a rescue which may often happen when the bondman cannot show his authority. The practice of a bail receipt does not obtain in this State who we have a certificate from the Clerk of the Court which answers the same purpose. Should the bondman proceed to apprehend the prisoner without showing this kind of authority a rescue might be justified.

This practice in all countries is applicable to mesne process only except in certain cases under the English Law a practice has obtained in P.R. of granting bail where writs of Error are depending.

Ordinarily speaking bail is to be taken by the officer
but a practice has obtained in the English law of a man being bailed by the judge before suit removed about this law however the authorities are contradictory yet thus far the authorities are agreed if the Def. is apprehensive that he is about to be sued him the W. may agree to go before the judge and there enter bail for his appearance and this is accounted good and valid in law. It is said that the Def. may do this of himself without the W. but as to this the authorities do not agree.

The officer in all cases must take bail of a sufficent bail be offered him and it is not at his option to refuse or not as he pleases, if however he should refuse he subjects himself to an action. The form of this action has been a matter of much dispute. Whether trespass or detainer or trespass on the case was the proper action. The English Courts have determined the action on the case to be the only proper one. Gw. Ca. 196. 2 Saund. 59. Vent. 55. 05: 2 Raw. 125. Salk. 99.

The Sup. Court in this state sustained an action ex delinnoe armis agi the officer but the judgment
was reversed by the Court of Errors.

This bail bond is assignable over by the officer to the creditor and he must take it provided it be sufficient to respond his damages: but should he doubt of its sufficiency, and refuse to take it in consequence of which he should bring his action ag' the officer, it is apprehended he would yet defeat in case the bond should turn out to be sufficient otherwise the officer would be liable.

The mode of proceeding under the English Law is, if the creditor detaches the bail bond by move the Court to have the body hot in. Then the Court will annex the officer for a sum in damages; but all proceeding are stayed upon this amount till the officer can have time to pursue his remedy. Any the Bail can recover after which the money is put into Court and the amenement taken off.

There is a difference between our and the English Law — The Sheriff is not arrested here but if the bond is insufficient he must answer in an action to the partie.

Under the English Law there are two kinds of bail — Common and Special. The first is only a matter of form, for in and The Pole
...any Military Women subjected instead of
...the Army...
outrageous assault. In the case of Slander however bail is never required. That special bail may be required in certain cases where the action sounds in damages. See the following authorities, 207, 276, Folio 335, Lev. 39.

No special bail is required in actions on penal statutes neither is an Ex. or Hie; burden to bail except in one case, where a defendant it is replied for them the judge is de Bonis propriis this may be done in this state where the action is by a legatee and no reason can be given why special bail should not be required upon a Scire Fa. ag. the Ex. So again where a process issues ag. Husb. and wife both must be attached or indeed the wife cannot be attached and helden without her husband yet if the wife be attached common bail may be given and the suit still go on but the wife cannot be imprisoned without the husband and should this be the case the Goaler is not warranted to detain her.

Of the proceedings ag. Bail

The proceedings under the English Law are the same
as in this State; but as has before mentioned
the Eng. Courts extend their favour to the Def.
father than is done in this State. When a non
est is returned a seic: sa: if issues and if the Def.
will surrender himself up upon the return of seic
facias the bond is discharged—further if a nonest
be returned after a seic: sa: and a second issue
with a like return—still a surrender of the pris
oner will discharge the bail.

The death of the principal before a nonest be
returned it will be a sufficient excuse for the bail
both in Eng. and this State, and altho' under
the Eng. laws the principal may be surrendered
up after a seic: sa: yet if he die after a nonest
the bail is not discharged—

If the lile Dr. Valentine fle his declaration
within two terms the bail is discharged.

If the Sheriff takes a bond sufficient at the time
but becomes a bankrupt before return to it seen
by the Eng. laws that the officer is still liable for
insufficient bail, but in this State he is dis
charged.
Isaac Shapiro. When bail is taken in 13 B. it is for what shall be recovered in 4 B. for a certain sum.

In case of a judge for the debt and that judge reversed it has been a question whether the special bail is discharged on the one hand it said if the bail is once discharged it is always discharged on the other hand it said there never was a judge legally for it has been reversed and with this idea the authorities can to compact Co. Jac. 95: Moir 330.

Of the Defence of Bail

1. It is a defence for the bail that the prisoner surrendered himself up in the life of execution.
2. That he was taken in execution.
3. That no execution had ever issued ag. the principal if judg. be obtained ag. the principal and then against the bail the R. takes out execution ag. which he pleases Co. Jac. 320.

Where there are several bail, they are joint and several. 7 Lev. 226.

Place us in execution ag. the bail any goes.
no satisfaction he may still resort to the
principal (e.g. Isa. 549. 156: 107. 1 Dint. 3:13).
But if he has once taken the principal,
the bail is discharged for it appears that
the bond answers the purposes of law.
Of the legal procedure and the Jurisdiction of the several Courts in Connecticut

In the State of Connecticut there are several Courts for the purpose of trying causes at law and punishing offenders, with very different general jurisdictions. A Justice of the Peace has jurisdiction to try all civil demands which come before him as a Court of Law when the matter in demand does not exceed £4 except where the title of Land is concerned to the trial of which his jurisdiction does not extend. Securities for money and Bills of Credit vouches with two justices are cognizable by him when the matter in demand does not exceed £10. Whenever an officer receives a writ upon one he may proceed on a writ of Execution returnable to a Justice and shall not execute the same or make a false or undue return; for every such neglect or misprision the officer is liable before the
Justice to whom such writ or execution was returnable, as tho' the Damages demanded exceed the sum of £40. Justices are empowered to take confessions of Debtor to the amount of £20 and this is not to be understood with Costs inclusive.

The judgment of a Justice is final in a suit both on a security for money due, of a Bill of credit endorsed by a witness and in which the matter in demurrer does not exceed £10. Likewise on a former judgment of a Justice if it does not exceed £50. For an Officer's receipt for an Execution purporting the Statute mode of suit except where the Judgment on which the Execution issued was by confession of the Debtor for more than £20.

In all other cases, within the jurisdiction of a Justice where the sum demanded exceeds £50, there is an appeal to the next County Court which appeal may be taken from a Judge on appeal of a plea of abatement in demurrer as well as the merits of the case.

If the Defendant pleads title in an action of trespass before a Justice he cannot try it but must bind the Defendant in a Bond not exceeding £20 to prosecute his plea and bring forward a suit for the trial of his title at the next County Court.
Justices have no cognizance in a matter of equity; neither can they grant a new trial; All actions before a justice must be brought in a town where one of the parties lives. When a justice renders a judgment for more than £4 including costs, yet a scire facias may be brought against the said justice to recover the value of the judgment before the same justice. In all matters cognizable by a justice he has exclusive jurisdiction except when an officer is sued for not executing or making a sufficient return of a writ, returnable before a justice demanding more than £4 damages in which case the County Court have a concurrent jurisdiction with the justice before whom it was returnable. As there is no provision made by law for justices to appoint auditors it may be a question whether they have any jurisdiction in matters of account and also whether they have a power to try a Sureties against a Garnishee, but universal practice is in favour of their jurisdiction in both cases. Neither is there any provision made for giving bonds upon an appeal from a justice, but it is the universal practice to require bonds. A justice’s jurisdiction to try civil —
cases does not extend beyond the limits of his own
town where there is authority in the town for
the cause is to be tried pursuant to try the forms

Of the Court of Common Pleas

The Court of Common Pleas have cognizance of
actions except those mentioned and a few others
of a particular complexion in which the Supre-
court have jurisdiction. All actions where the
matter in demand does not exceed £20 where the
title of Land is not concerned and all actions on
bonds or Notes for the payment of money only on
bills of credit vouch'd by two witnesses unless when
a justice has exclusive jurisdiction are heard &
finally determined by the Court of Common
Pleas. Where an officer is sued in
account for an Execution the judge of the Court
of Common Pleas is final. And in all actions
of account when auditors have been appointed
who have set out and made their report the judge
of this Court is final. The same rule obtains in
Book debts after the return of Auditors: Likewise when the matter in controversy has been submitted to arbitrators by rule of Court: the judge of the Court on their return is final. A judgment of the Court of Common Pleas in an action but in a receipt of a Deponent for goods taken on an execution and delivered to be redelivered at the time of sale shall be final. This Court has exclusive jurisdiction of all matters in Equity from the smallest matter to £100. In all other matters cognizable by this Court then lie an appeal to the next Sup Court and the judge of the Sup Court is final in all matters which come before them by appeal. Whenever an action is brought against an officer in the Sup Court for not executing a writ returnable there or for making a false or undue return their jurisdiction is original and judicial, now speaking of the Superior Court.

This Court has also an original and final juris-
tion when a Sine Fataes is joined upon a
judgment rendered by them. This Court bearer
determines all Writs of Error from the judicial
Justice and the Court of Common Pleas. They
have power to grant Bills of Divorce in cer-
tain cases. They have the exclusive cognizance
of cases, in Ordinary from the sum of £10
to £1600. Writs of Error may be brought
upon proceedings in Equity as well as Law.
It is the peculiar province of this Court to give
Writs of Mandamus. Prohibition and Habeas
Corpus. Of the Jury

All issues joined on a matter of fact in the
Court of Common Pleas or the Suing Court shall
be tried by a Jury, except by agreement, the
parties put themselves on the Court for trial

Of a Default

Upon a Default, the Clerk of the Court makes
up the damages (as it is termed). To be
awarded damages, they will do it. Likewise on a
Defendant judgment is in chief—yet if it be requested the (co-
will hear the parties in (Damages
Upon the forfeiture of a Bond, the Court will
have judgment to the principal, in
trust and costs. So upon a bond with condi-
tion that may be broken at several different times,
and a writ is brought for the first breach, the
Court will render judgment for what is then
Equity due and lodge the Bond with the
Clerk of the Court and upon a subsequent breach
the obliger may have a Scire facias to cite in
the obliger to show reason why judgment should
not be rendered for a future breach.

In trials in Chancery, the Court may inquire
into the facts themselves by a Committee
Of the supreme Court of Errors

This Court has no original jurisdiction but
are constituted solely for the purpose of trying
writs in Error brought before them from the
sup. Court

Of Courts of Probate

This State is divided into districts in each of
which there is a Court of Probate consisting of one judge who has the cognizance of the probate of wills, of granting administration, appointing guardians, and acting in all testamentary matters. From this Court there is an appeal to the next Sup' Court.

Of the Gen' Assembly

The Gen' Assembly of this State is a court for the purpose of trying all suits brought agst. the State by an individual. It is also a Court of Chancery for determining all matters in Equity which exceed £1600—and in all these courts they appoint their own clerks, except justices who have none. The Gen' Assembly grant divorces for reasons for which the Sup' Court cannot

Of process

The ordinary process in civil actions is Summons or Attachment. These if returnable before a justice may be signed by a justice unless the
debt be sued to answer out of the County in which he resides in such case it must be signed by an Assistant or judge of the County or by the Governor Deputy Governor of the State unless it be a Seize Summons which may be signed by a Justice of the Peace. Writs returnable before the County Court may be signed by a Justice of the Peace or Clerk of the Court unless the Defendant be sued to answer out of the County in which case they must be signed by an Assistant & as in case of a Summons unless it be a Seize Summons which must be signed by the Clerk or an Audita Questa which must be signed by the Chief Justice of the County Court. The Judges of the County Court can only sign writs returnable before themselves and Justices of the Peace Writs returnable before the Sump Court may be signed by a Justice unless the Defendant be summoned to answer out of the County in which he resides, in which case it must be signed
by an assistant &c as in case of a summons also in case of a \textit{Dei Gracia} which must be signed by the Clerk of the Court to which it is made returnable in all cases yet if it be a writ of error it must be signed by one of the Judges of the Supreme Court of Errors. If an \textit{Audita Quaerela} by the Chief Judge. Writs returnable before the Supreme Court of Errors must be signed by one of the Judges of that Court.

Of Service

When one is sued by summons the writ must be served by reading it in the hearing of the Defendant or by leaving a true and attested copy at the Defendant's last usual place of abode: but if sued by attachment it must be served on the grantees of the Defendant, and for want thereof on his lands or body and by reading it in his hearing or by leaving a true and attested copy at the last usual place of his abode. When served on the person the body is held in custody to respond judgment and when the body is attached
and final judgment rendered, execution must
issue and be levied on the body within five
days after the rising of the Court. When per-
sonal property is attached it is held six months.
If the estate be attached, the officer must
leave a true copy of the attachment with the
defendant, or at his last usual place of abode
with his return thereon describing the estate.
If it be real estate he must also leave a copy
with the Register of the town where the land
lies, with a description thereof within seven
days after the attachment and before the expira-
tion of the time limited by law for the serv-
ice of Writs.

Of executors, agents, or attorneys

When a person is sued who is not an inhab-
itant of this State, it is good service to leave
a copy with his attorney. In case Estate is
attached and the defendant has no attorney
in this State any reasonable notice to him
of the suit is sufficient.
When a suit is brought against a person not an inhabitant of this State, a copy of the writ being left with any person having in his hands the debtor's property or of him who owes the debtor, the Attorney and Trustee shall be good service and not only so but it shall be a lien on all the estate of the debtor in such persons possession or on debts due to the debtor - and after the judgment, the debtor is bad and none as to the estate is returned on the Execution. A Scire facias shall issue agt. such Attorney or Trustee and a recovery be had of him. Sec. Conis - propris to the amount of the debt. If the Attorney has so much in his hands and in that case the Trustee is called upon as a witness to answer upon oath what effects of the Debtor he had in his hands.

Of Service on a Community

It is a sufficient service to have a copy of the writ with the Clerk of the Community or a Committee or if it be a township, a Selectman.

Of joint Debtor

Whenever there are joint debtors, and any one
of them does not reside within this State the service of the writ on him or them who are in the State shall be sufficient—and in case the absent debtor shall suppose himself injured by the judgment rendered after such service he may obtain relief by Audita Fueela—

Of Limitation of Notice

When a writ is returnable before a Justice service must be made six days before trial the day of trial inclusive—When returnable before any other court service must be made twelve days before the trial including the day of trial—When service is made on an attorney or trustee there must be 14 days notice whether the writ be returnable before a Justice or other court. The same rule obtains when an officer is sued for not executing or making a false return.

Of Bonds for Prosecution

When a summons is issued out of the State he must procure a bondsman for prosecution and whenever it shall appear to the signing an
That the P'r although he be an inhabitant of this State, has not sufficient Estate to respond the Bill of cost which may be recovered against him, ought to require the P'r to procure a bondman to prosecute. And in any other stage of the proceedings the Court may order the P'r to give pledges for prosecution. Whenever an attachment is prayed out a bond to prosecute must be given. Of entering Bail.

Whenever the body is taken of the Defendant is attached, the officer shall take bail for his appearance at Court if sufficient bail be offered or proceeded, if no bail be offered or proceeded the officer must keep his body in custody and have him in Court. Whenever he enter special Bail or as the English Law terms it, "Wait to the action," he is again at liberty. If no special bail be entered, he is to be committed to Goal and if he pleads he must plead in custody. Whenever a judge is ordered by a Justice of the County Court and an appeal is moved for, bonds to prosecute the appeal are required, when personal security is taken a reflexion may...
may be joined to restore the property to the deft.
upon his procuring sufficient bonds to an-
swer all damages which the flt may recover
ag. the deft. When and after a writ is
served it must be returned to the court to which
it is made returnable. When an appeal is
taken it must be entered in the docket of the
clerk of the court before the 2 opening of the
court.

Of plead and pleadings and
of abatement

When a suit is brought to a court and the
proceedings are commenced if the court
has not cognizance of the case ask a plea to the
jurisdiction of the court is the proper
plea. This is what is called improperly, a plea of
abatement tho we commonly term it such
and plead it in that manner. When it is
found that the court have cognizance of the
matter the next plea in order is a plea in
abatement. A plea in abatement is af-

signing reasons why he should
not answer to the Plt's writ. It may be for some defect in the writ or unregularity or deficiency or it may be for some requirenent to obtain a writ: as not paying the duty as by law required or for an alteration in the writ: as when a form sole-sues and afterwards marries: This is a delatory plea and if the Plt succeeds the judg. is respondents' answer. If the judgment be that the writ does abate the Plt. may commence a new writ. But when the Defent pleads a fact on which issue is taken and the jury the judgment is in Chief: It is a rule in abatements that when a plea of abatement is pleaded it must be so pleaded as to enable the Plt. to bring a true writ or a writ and declaration to go out together to be served on the Defent. We con found the terms thinking them to be synonymous yet supposing they do not mean the same thing. The writ properly speaking is that
part and addressed to the officer commanding it and continues until the action is decided. There begins the declaration. The date is applied to both the signing and the duty of the suit. For any fault in the declaration a plea of abatement is not sufficient but a demurrer either general or special as the case may be yet it is very common to plead by way of abatement for a demurrable fault so that if the plea proves insufficient there may be a respondent's ouster instead of a judgment on the

Chief a custom which encourages dilatory pleas and cannot be justified upon legal principles.

There lies an appeal from the just of a justice or the County Court upon a plea of abatement if the case be applicable appealable and it be a question of law to be tried and Error lies—When the defendant pleads in abatement and appeals and again in the upper Court pleads an abatement (for he may upon such removal change his plea) and judg of respondents ouster is again given against him Execution shall issue for that case although he recover on the merits—It is usual in petitions
In Chancery and for new trials to plead by way of abatement matters that go not only to the form but to the substance of the petition. That which would be a general demurrer to a declaration is an abatement to a petition.

When a plea of abatement is found sufficient the PET shall have liberty to amend if the defect be in its own nature amendable as in case of a misdemeanor in respect to the place of residence. Amendments may be made when the matter to be amended are contrary to real truth as if a service of a writ appears by the endorsement to be on Friday the day after the time of service is expired yet in fact if it was the day preceding it shall be amended but if it was served after the time no amendment shall take place. Amendments shall never be allowed without praying costs—

Of Demurrer

When we find that the action is brought before the proper forum and that there is no cause of action abatement we then attend to the
Declaration and if we find it deficient in point of form only we take advantage of it by special demurrer which is particularly assigning why it is deficient. A demurrer admits as true the facts as laid in the Declaration but contends notwithstanding these facts there is no ground for a recovery. In many cases the demurrer goes only to the Declaration which shows there ought to be no recovery when something is omitted which if stated would be a sufficient ground of law. As where an action is brought in which the law requires that notice should have been given of a service performed or a debt due before an action could be maintained then the omission of notice would be ground for a demurrer. For this indeed notice may have been given and there is a ground of action yet both these ought to appear to the Court. Upon such declaration being defeated a new action may be tried and the deficiency supported. At other times the demurrer goes to the
action (vit.) when the pretended cause of action is such as one as is not recognized by law as a cause of action in this case no declaration can be drawn consistently with the truth of facts which can possibly be supported. An a Demurrer is not only that particular action but a judgment. I will be a base to any subsequent action for the same cause as if an action be bad upon a charge of lying as such a charge is not actionable no declaration thereon can be supported. When the Demurrer should be special and where general it is difficult to give a rule. Our practice is so loose in this respect that no very clear distinction can be made. I should suppose that a general Demurrer ought to be confined to what I have called a demurrer to the action and that all demurrers merely to the Declaration should be special. This I mention as what will be a good general rule but not what in fact has place either in the English or our Courts.
may continue to draw the line that in all cases where the demurrer goes to the action it is general but where there is a demurrer for some defect which is only one in formality it must be special. For other defects of a more considerable nature as not alleging a consideration in agreement which if alleged would make a good declaration the common practice is to demurrer generally. The judge on the demurrer is in chief. A demurrer may be taken in any stage of the proceedings as well as in the declaration. If to a plea it admits the truth of the facts but contends that it is no legal defence. So as to replications, rejoinders &c.

Of pleas to the action

When the action is brought before the proper tribunal and can neither be abated nor defeated by demurrer the defendant may plead a plea in bar or the general issue as the case demands. The general issue may be said to be a total denial of the facts alleged in the
in the declaration as Not guilty in Test  
Not Debit in Debt, and under this issue we are permitted by Statute to give any thing or almost every thing in evidence as justification in slander etc. Indeed there is nothing required to be pleaded by our Statute excepting when the Defendant is saved by the act of God as a Release or which must be pleaded of face and in some cases where we may give the special matter in evidence. It is common to plead specially—and in some cases the practice of pleading specially has been so universal that I do not doubt whether the Court would permit the special matter to be given in evidence tho' seemingly warranted by Statute as being saving to the

Of a plea in bar

A plea in bar is an answer to the Plaintiff's charge in the Declaration which admits or in the case of a Demurrer the truth of the facts alleged but assigns some new matter not appearing upon the Declaration as a reason why
the Pll should not recover as in Debt or Bond
the Defendant admits that he gave the bond was
it not that he already made full payment of
it which he plead specially in law. When this
reason is assigned be it what it may the Pll
must answer it which is called a replication.
this may be either by Demurrer which admits
the truth of the plea but denies the sufficiency
of it in law to overthrow the Pll's claim
as if a debtor in a suit on a Note should plead
that it was usurious and in no part of his plea
alleges a corrupt agreement the Pll would deman
for want of that allegation which would bring
the question before the Court to determine whether
such allegation or not or it may be by traverse
of the facts alleged in the plea which is a denial
of the truth of facts and bring the question of the
facts to the trial of the Jury or when the Defendant
pleads infancy; this is traversed. - Infancy or not
Infancy is the question to be tried - or the Pll's an-
swer may be an admission of the facts stated in the
plea at the same time assigning some reason not
incongruous with the declaration and which does
not appear in the declaration or plea why the
Defendant ought not to avoid himself of the matter
alleged in the plea: as where the Defendant plead
in blank his infancy, the Plaintiff admits his infancy
but says that it is an insufficient bar to the case; because he says the debt alleged in the declara-
tion was for necessaries, which the Defendant
of the Plaintiff - to this replication, the Defendant may answer by Demurrer or Traverse; as rejoining
some new matter which has not appeared before
in the course of the pleadings and so on till the
issue in fact or law is joined between the parties.
Whenever the issue is joined on a Demurrer
the Demurrer "ways" all the pleadings and goes
back to the first defect - as if an action were to
an answer and the declaration stated in
consideration and the Defendant pleads such a plea
the Plaintiff thinks a sufficient defence in; therefore
demurs to it and it is found an ill plea; yet
it is good enough for the Plaintiff's declaration when
the Demurrer reaches it. Whenever the declarator
contributes upon some writing and does not read
the writing but counts upon it according to
what the Pl. considers to be the operation of the
Law and the Defend. conceives it to be directly con-
trary and wishes to bring the question of Law pro-
perly before the Court. He will pray oyer of the
writing and recite a verbatim and having then
made it parcel of the record will demand for it now
becomes the same thing as if the Pl. had recited
it at large which if he had done the Defend.
according to his conception of the Law would
have demanded to the declaration. Whenever an
issue of fact is joined to the Country if the evidence
admitted to support the fact be such as in
the opinion of the opposite party is not suffi-
Cin Law he may demand to the evidence. This
is done by stating exactly all that was testified
at the trial in writing and if true the opposite
party must join the question in the before a
Court whether the evidence be sufficient or
not. There is no contention what the evidence
is - this is all agreed to by the Demurrer ex-
cept the legal operation of it. It is frequen-
thy litigated in the course of trials whether the
witnesses added be legal and also whether the matter offered be pertinent to the issue. The first may happen when it is contended that he is interested. The last may be exemplified in this manner: where a plea is pleaded and the defendant knows that it cannot be proved and offers evidence of another kind. Whenever therefore the court admits, as you suppose an improper witness or supposes improper the matter to be given in evidence you may file a Bill of exceptions stating the whole matter as it appears before the Court which the judge must certify to be true. This lays a foundation for a suit of Error in which with the same question if they reverse it is tried before the upper Court as in the lower Court. If the upper Court affirms the judge of the lower Court there is an end of the matter.

Of motions in Arrest

An motion in arrest of the judgment may be
made after verdict for the insufficiency of the
declaration, plea, replication &c. as sup-
pose in an action of Slander, the Charge be
for calling the Pm. a liar. The Defendant pleads
not guilty — Verdict Guilty — The Defendant
moves in arrest of Judge, for that no suit is
maintainable for such a Charge. Judge is
arrested. So where the Defendant pleads an usa-
rious contract and omits the words —
complaint against which is an essential re-
quisite of Lusing. So the Jury find in the
words of the plea that it was usurious — Yet
judg. shall be arrested and in this case a re-
pleader will be ordered. But if it be for a de-
cency in the Declaration if there was no good
ground for a suit then no repleader ought to
be ordered for this suit amount to the business.
Many defects which would have been fatal
on demurrer are aided by verdict and cannot
be taken advantage of in arrest of Judge.
Upon reviewing the declaration something
is omitted which if it had been alleged would
have rendered it sufficient. It shall be presumed that it was proved to the jury otherwise they would not have given a Verdict for the Plaintiff, since it was necessary to be proved in order to entitle him to a recovery. Such omission is aided as suppose a declaration in a suit where the Law requires the Ic to be given and notice is omitted in the declaration. There is good cause of demurrer, but on a motion in arrest it shall be presumed that notice was proved to the jury or there would not have been a Verdict for the Plaintiff. But it appears from the Declaration that there could not be good for a recovery that no supportable allegation could be inserted which would render it a good one. The Verdict does not aid as where a man is sued for calling one a liar. Where there is a motion in arrest foundation is laid for Error. It would seem at such view that the rule did not obtain respecting a Verdict aiding a plea in bar or other subsequent proceedings as in case of a declaration or contract. It is a plea of hiatus be
pleaded and no corrupt agreement alleged altho' the jury find in the words of the plea that the contract was usurious yet the want of the term "corrupt agreement" is not aided by the verdict. It would seem that by finding usury they had found the corruption as in the case before when they had found the usury they had found the notice also but in that case as notice is necessary to constitute the usury it is said to conclude that when they had found the usury that they also found the notice — Whenever there is a Verdict upon a special plea they do not find general but undertake to find specially the whole matter therefore when they find that as being the whole matter and all the particulars of which they can find do not mention corrupt agreement it is not fair to presume that they have found any corruption — But had the Jury insisted in their verdict corrupt agreement as they might have done the plea would have been aided.
By our practice there may be many things shown in the record which are reasons for arresting the judgment—such as misconduct in the jury, a
plaintiff mistake in admitting or proving an account, improper writing, being delivered to the
Court &

After a final trial before the County or Superior Court, petitions for new trials are very common.
The reasons for granting new trials are mis-
pledging; or where a person has demanded when it ought to have Plead the gen-
issue—another reason is for the discovery of
new testimony which is material evidence in the
case—in this case the names of the witnesses may
be inserted in the petition and the substance
what they will testify on the petition will be
if it be inserted the Court will hear the wit-
tnesses and if reasonable will grant a new trial
and whenever the petition is granted the
first judgment is vacated. A petition for a new
trial before it is granted is no supersedeas to an
Excusion on the first trial although the evidence be new yet if the petitioner knew of it before and might have had it at the former trial it is no reason for granting a new trial. And if a witness improved at a former trial now undertakes to remember more than he testified it is no reason for granting the petition.

A third ground for a new trial is excessive damages. This rarely ever prevails it being such that the Court will never grant a new trial for excessive damages unless they are notorious and flagrantly excessive and such as raise a strong presumption of partiality in the jury. Then are however no exceptions to this rule. When the damages arise from contract it is not necessary that this presumption take place but it is discretionary with the Courts in any excess of damages.

A fourth ground is the smallness of damages this very seldom prevails and is in much the same situation as the last. The Courts leave
in some instances granted new trials because the Verdict was at Law; but I believe they do not see it as a ground for a new trial. A fifth ground that the Verdict is at evidence but this is not to be understood when it is the opinion of the Court against the weight of evidence but when there was no evidence adduced on the successful side. When the jury misbehaves, when one of them is convicted. When the witnesses are tampered with no trials are granted. 

Of a Special Verdict

When a Case is committed to a Jury, they may if they please find the facts as proved by their Verdict and leave the question of law to be tried by the Court. This answers the same purpose as a Demurrer to evidence or filing a bill of Exceptions after the Verdict and lays a foundation for a suit of Error. 

Of Writs of Error
error in Law: but it is not to be understood
that it lies for any errors respecting the facts
enquired into at the trial: for it is a settled
rule that no such errors are to be alleged
in the writ. What is meant by an error in
fact may be thus explained: An infant
is sued without mentioning any guardian
and the Court will not appoint one: judge
 renders agt: the infant. This, although it does
not appear on the record, whether they appoin
ted one or not, is an error in fact and a ground
for a writ. Also having been sued and
judge renders upon default it is an Error
in fact. Likewise when judge is rendered by
a default agt: a person who is out of the state
and does not return before the sitting of
the Court: this does not appear upon
the record, yet it is error in fact. Instances
of this with are rare but writs of Error in law
are very frequent and may be used in all
cases where a question of law without mixture
of fact has been decided by the court provided the question made and decided appears upon record — Hence it is that Error lies upon a judgment in abatement when the matter in abatement was a question in law upon Demurrer to evidence, as a special Verdict, a bill of Exceptions and a matter in arrest provided the motion be some cause that appears on the face of the proceedings — No Error lies on an interlocutory judgment till after final judgment neither can an Error in Law and an Error in fact be joined on the same writ — The general issue is "in nulli est quidem error" Upon a reversal of a judgment of a lower court the party recovers in Error and recovers all that he has been dammed but he covers no cost in the suit in Error: yet you will find by our statute that whenever an erroneous judgment by a justice in the County Court he may enter in his action in the Supreme Court as if it came there by appeal — This in practice is the general experience in fact in law.
It is as well as where a Bill of Exceptions has been filed for the admission of a witness and in pleas of abatement where the merits have been not been tried it may be proper for the Pl. to enter — for instance, suppose A sues B and of foes C for a witness — objected to by B but is admitted — B is cast in the suit, files his bill of Exceptions and brings Error — the witness is adjudged inadmissible. Now it would be unreasonable if A might not enter and have his action tried on the merits — Judg in abatement is reversed in favour of the original Pl. he must enter if he means to have his case tried

Upon writ of Error for any such matter as the last mentioned there can be no trial of facts because there is no jury.

Writ of Error may be had in proceedings in Equity as well as Law. A Writ of Error is a superseding to an Execution. Writ of Error without a bond altho sufficient to try the question of Law and on which there may be verbal or affirmances not it is considered
for it would not be reasonable to stop an execution and yet no security given to refund the damage which such delay might occasion. And whenever a reversal is obtained in the Court of Errors upon a point collateral to the merits—as upon issues of abatement where the Court by Law had rendered a page, judgment that it should abate—or for the admission of testimony the cause must be sent back to be tried upon its merits for the Court of Errors have no jurisdiction—When the Error is an Error in Fact it is to be brought before the same Court if that Court be a Court of Error.

Of an Audita Querela

When the Defendant is unsuccessful in his case on the various grounds of his defence which he has mentioned execution will issue upon the judgment against him unless some matter has arisen since the judgment which is it would be taken notice of ought to operate in his favour in such case if he has had no day in cour.
to show this new matter in his exequation he shall be entitled not pro speciali but in de
bito to a writ of AuBita Quersam. In this writ are stated the reasons why Execution should
not be enforced such as payment since judg,
which by negligence fraud or accident is not
endorsed on the Execution. The writ is directed
to the officer who has the Execution to stay all
proceedings on the same untill the complaint
be heard. It is signed by the C. Judge of the
Court after having examined and found
probable cause for the Complainsit. Upon this
writ Bonds are entrou to make good all
damages that may be sustained if the com-
plainant be not supported. The object of the
writ is not only to set aside the Execution but
also to recover the damages which have been
sustained as if after payment of the money
it had been again collected upon the Execution
it would be to recover it back and is in this case
a common count concurrent remedy with an action
of Indebtedness Assumpsit for money had and received. This is in all cases where a man has by fraud been prevented from having a day in court as where A sues B and after service they came together and enter into an engagement to stop proceedings or that the suit shall stop or be withdrawn and B gives himself no further trouble about it; but if fraudulently proceeds and obtains judgment by default—In this case B shall be relieved by Audita Querela.

Of the Levy of Execution

Executions are levied upon the Estate or body of the debtor—If personal Estate be turned out by the debtor the officer cannot levy on a body—Before levy demand must be made of the debtor (if he may be found) of the money due—If personal Estate is not turned out the creditor has his Election to take the body or real Estate of the debtor.
Then personal Estate is taken it must be advertised 20 days on the publick sign post and then be sold at vendue and the creditor paid.

If levied on the body he is to be committed to jail and there remain till released by the payment of the money or taking the poor prison oath or by death. In these two last cases the debt is not extinguished whilst the body was held. It was a temporary satisfaction at as soon as released by taking the oath or by death the debt is revived. It is true that the debtor's body cannot again be taken but his Estate may be which could not be the case whilst the body was held— it will also cure against the Execution.

If real Estate be taken it must be appraised by 3 freeholders of the town where the land lies and be returned to the office of the Clerk of the Court where the Execution issued which shall be sufficient evidence of a Title in the creditor. If Chattels real or life Estate are...
taken they are helden till the profits settled by the appraisers shall pay the debt they then revert back to the original owner. This is the doctrine of the books. If an execution has been satisfied by taking lands and the land did not belong to the debtor but was taken by mistake, the debt is extinguished. This appears unreasonable at this, it might not appear in the power of the creditor to levy another execution, yet I see no reason why he might not have an action of debt on judgment which an execution or a scire facias may give. So if an execution was levied on Owen East and the same was appraised at £10 6s. 8d. and extended for 10 years and the widow at the end of 5 years should die, £50 of the debt is paid and if the left estate I should suppose a scire facias agist her Exe. would recover the other £50.

N. B. New Trials are not commonly granted to the Pl. when the action is founded in malfeasance granted in favour of the public. There can they be in favour of individuals?
Of Bail

Bail upon writs of Error and Audi Dwe
nda should be sufficient to answer all damages as well as Costs otherwise the Defendant in Error being delayed until the property attached be liberated by the intervention of 60 days after judg' on the Statute of Limitations. The special bail might loose his security altho' judg' should be affirmed. --- Bail on an appeal on judgment of a Justice of the Peace in criminal matter is conditioned to appear and abide judgment. I am of opinion that all bonds of appeal ought to be large enough to cover all damages that might ensue from the appeal such as Bankruptcy, Abandoning the Deed,

Of Dower of personal Estate

Our Statute gives 1/3 of the personal Estate to the wife upon the death of the husband — yet she may not hold it as she may 1/3 of the real Estate.
to show reasons if any he have why judg.
should not be affirmed ag: him. Signed by
the Clesk of the County Court when it is retur-
able. But the attorney may turn out the
Estate and satisfy the Execution if he pleases
and it shall account well between him and
his principal

Errata

Under the head of process it ought to have
been observed that when there is a default
to be heard in damages the Court without the
intervention of a jury as of the damages
from this judgment then lie an appeal as
in other cases and when such a judgment is
rendered upon some covenant in writing for
damages that have arisen and there yet
may be further damages by reason of some
future breach of the covenant that when
that event takes place a specific injury
and so on toties quoties
An Essay on Bills of Exchange

A Bill of Exchange is nothing more than a written request from one to another to pay to a third person a sum of money. The maker of the bill is called the drawer and the person on whom it is drawn the payee and the person to whom it is payable the holder. It is regulated by the law of merchant which is general usage of merchants in the United States and among the commercial nations of Europe and their Asiatic, African, and American colonies. This law merchant is recognized by courts as the law of the land and is not provable by the testimony of any person whatever. It is true, however, merchant is not universally the same in every country and wherever a usage prevails, in a country variant from the general usage of nations this local usage is the same to the law merchant as custom is to common law and this like other customs is provable by its course and is sufficient to be presumed that the drawer has no money from the payee and that the drawer has the effects of the drawer in his hand.
to the amount of the Mill, if he accepts it. But this is by no means necessary to the value of the Mill: for whether the drawer has received money of the payee or not, or whether the drawee has effects of the drawer in his hands or not, the drawer is liable to the payee in case the drawee does not accept the Mill or has accepted it and refuses to pay it. When the payee has paid the Mill and presents it for acceptance if the drawee refuses to accept it, it then becomes the duty of the payee to give the drawee notice of such refusal that the drawer may have an opportunity to withdraw his effects if any in the drawee's hands, and by means of this note the drawer becomes liable to the payee in an action of debt or indebitas assumpta: if the Mill be accepted and not paid according the tenor of the Mill the payee must give the drawee notice of the non-payment that he may charge the drawee as in the case of non-acceptance and if this notice be not reasonable given any loss is occasioned by the removal of bankruptcy of the drawee, the loss must fall upon the drawee. So in case of non-acceptance
The neglect of the payee in not giving the drawee notice is considered as a discharge from the payee to the drawee: for he could have withdrawn his effects that were in the hands of the drawee in case of non-acceptance. The payee is considered giving credit to the drawee and the payee has caution on the case as to the drawee and by giving notice of non-payment he has an action against the drawee and it is optional with him: against whom he will have his remedy. And if he does sue one in preference to the other and cannot obtain payment of the one whom he sues he may resort to the other. The mode of giving notice to the drawee of a refusal to accept or pay the acceptance is ordinarily by protesting the Bill which is done in writing and in presence of a Notary-public which protest is entered by the Notary to have been done. If there be no Notary the same is indorsed by two or more respectable men in presence of two or more respectable men and by them certified, which protest is sent back to the drawee by the first post after the time
of payment and when this mode of notice is
pursued not only the contents of the Bill of
in common bills but the damage sustain-
thereby in most countries estimated at
£20 6s. 8d. are recoverable. If the bill be ac-
to be paid agreeable to the tenor of it and not
paid at the time or day of payment there is
by the Law Merchant 3 days allowed call
days of grace—If the Bill be drawn payable
in a month and accepted payable in six mont
this shall bind the acceptor according to his ac-
ceptance and yet if the payee will charge
Drawee he must get the bill protested for my
acceptance—The Law in the form when the
Drawee accepts the Bill for part and refuse
to accept for the remainder. Whatever op-
inion may have formerly prevailed in our
regarding partial acceptance it is now settle
that such an acceptance binds
Any words which indicate the Drawee's
intent to pay the bill on accept-
tance and although in other contracts if
quires that there should be a consideration or evidence of such consideration from the acknowledgment of value (or) yet in case of bills of exchange if there be no consideration for the engagement or it be upon a past consideration the person contracting is bound. When a bill is made payable to order the payee may endorse it over to another person and the property becomes the endorsee's who has the same remedy against the drawer and drawer of the note. Payee had also an; the endorser who is considered as taking a new Bill and if there are ever so many indorsers he may have his remedy at the straw of the elect, and they in their turn of any indorser prior to themselves. What unconsidered opinions be found in the books it is now settled that an indorsee may sue any indorser without making any demand on the drawer or endeavoring to recover the money of him. 2 Barn 670. When an indorsee...
...and an indorser cannot prove the drawer for if it be forged the indorser is liable. Salter 127.

When a bill has been accepted by the last indorser who has a right to the money and can sue the drawer; but if a prior indorser pay the last indorser may sue the drawer. If an indorsee or payee accepts any part of the bill of the drawer he can never resort to the drawer or indorser.

It is not in the power of the payee to indorse part of the bill so as to subject the drawer to more than one but if such indorse will acknowledge satisfaction of the remainder upon the bill such indorsement is good. Salter 125.

An indorsement on blank, with only the indorser's name and in the power of the holder to fill up the blank as he pleases either with an assignment of the bill or a power of attorney and whatever it be the indorsee is included thereby. Salter 128. But until the blank is filled up it is no evidence against the party. Salter 130.

A bill to one or bearer is not assignable. Salter 125. If such bill be stolen it vested no property in the finder of it yet if the drawer pays such bill it shall allow him by the drawer and if such finder thief pays the bill to another person who you pay to the writing a property in the bill...
(Handwritten text not legible due to handwriting style)
indorsee may maintain an action aqj. The
Drawer after acceptance; on the other han the Drawer who has paid the Bill may main tain an action aqj. The Drawer for so much money laid out at his request: But if it ap pears in evidence that the Drawer at the time of payment had in his hands effects to the amount of the Bill drawn he will not prevail. When the Drawer accepts and there is indorsed the indorsee may maintain an action aqj. the Drawer altho' the Drawer's name was forged, but the payee could not maintain any action for in that case he would receive a benefit from his own wrong yet an innocent indorsee is not to suffer. Probably see it upon the evidence it upon evidence of the acceptor who is supposed to be acquainted with the hand writing of his corre spondent. Where the holder of a Bill of Ex hibit an indorsee and takes his body in Execution which proved insufficient to recover the money due altho' he set such indorsee at
The may yet resort to any other indorser.

When a Bill is drawn on acceptor to pay it after paying a prior acceptance which he accepts, although he has a lien upon the goods of the principal in his hands for the payment of his account ag. principal yet he shall not be allowed to retain effects to his own account ag. the Bill so accepted. A note to the beacon is a negotiable instrument. Tho' not a Bill of Exchange; in every bill of Exchange must be made payable to order, and yet it appears an unsettled point whether it be good without an acknowledgment in the note (value sue) Tho' I think the better opinion is that this is not necessary. When an Indorse lien, a draft of goods of an indorser he shall not with standing receive the whole from the drawer. A Bill made out of a particular fund is no Bill of Exchange nor one payable upon a future uncertain contingency.
Of the Law Merchant

The Law Merchant is a Rule of conduct observed among mercantile people and respecting mercantile transactions generally. It obtains in the commercial nations of Europe and their colonies in all parts of the world and in this Country. It is not different in different countries but the same or nearly the same line of conduct is pursued in the whole so that it is in a manner the Law of Nations. It is sometimes, may be called a custom. It is not properly termed a custom as a custom is a mere local usage obtaining in a particular place only. To again a custom if needing to be made use of must be proved in Court in the same way as a fact whereas the Law Merchant is never to be proved but is considered as being understood by the parties as the law of the land. Indeed it may in one point of light be considered as a custom (and perhaps from this might arise the idea of its being a custom) for it obtains among a certain class of people only.
merchants. This there are some things governed by
the law merchant that it does not directly respect.

Inst: Bill of Exchange if between 2 attorneys
or two blacksmiths are good. by the Law Merchant.
So again policies of insurance are good by this
Law. However there are some particular places where
the Law Merchant differs from the rule generally
established - in such case that particular custom;
to be proved in the same way that a custom is
at Common Law.

It will be found that this law
depends upon usage established by the adjudi-
cations of Courts and the concurrence of nations
there-to and indeed it has been altered but very
little by Statutes - nor does it arise from old and
ancient Statutes that are and long have been an-
terpreted - but on the contrary it has all grown
up since Statutes have been recorded and has arisen
merely from the adjudications of Courts.

It is in very many respects different from the for-
mon Law and governed by totally rules and
principle the most prominent of these differences we will proceed to point out.

1. By the Common Law it is absolutely necessary that there be a consideration to every kind of contract and although it is no matter how small this consideration is yet there must be a consideration. The absurdity of this idea is abolished from the Law Merchant. For by that it is not necessary that there be any consideration to a contract.

2. Fraud in the consideration of a contract by the Law Merchant wholly vitiates and destroys the contract, as much as fraud in the execution of it. Indeed all kinds of transactions done under the Law Merchant be as just as Cases wise not even suspect. And suppression veris of as much weight and will vitiate the contract as much as suggestion falsi. This indeed the concealment merely of a man's own speculations does not vitiate or destroy the contract, as if A having a ship in the East Indies, being fearful there will be a war and even beasts from the appearance of things be i
certain in his own mind that there will be a war goes to an insurer and without communicating these apprehensions wishes to get his ship insured. The insurance made in this manner is not vitiated by that concealment—so the insurer had the same liberty to make speculations as A but if in the case just there had a frigate arrived with the news of a declaration of war and it had concealed this from the insurer it would have destroyed the insurance.

3. By the Common Law if a joint debt was any means gets a release from the creditor it is a release of the other—this there be no satisfaction for the release—This rule however does not obtain in the law Merchant. Then the creditor may release one and it will be no release to the other joint debtor unless indeed he has been satisfied for his debt in that case a release to one is a release to both—4th, At common law partial evidence is never admitted to contradict or vary the effects of a writing. But under the law Merchant
Probable evidence has often been admitted to contradict policies of insurance & that probable evidence is not always admitted to contradict writings. And indeed it is very difficult to draw a line of distinction as to admission or not, and there are no exact rules—but when the justice requires it, proof testimony is admitted to contradict the writing.

5. Another very material difference between the Common Law of England and the Law Merchant is that by the latter there is no such thing known as the jus auretendi—the rules established by the Law Merchant however, obtained as Common Law in Connecticut.

On the death of one of the parties the partnership is dissolved and the Ex. of the dead partner takes the part that his testator owned. If they owned in equal shares the Ex. takes one half. Indeed the Ex. is strictly in every sense of the word a tenant in common with the surviving partner with one single exception (viz.) the surviving partner alone possesses the
right of suing and the liability of being sued. The old authorities however are that the partner may join in suing and be joined as a 4444. said. When the partner has recovered more he is liable to the E. for the sum recovered. If the E. will not deliver up the papers and rents in his hands respecting the partnership a compulsory process may be brought against him from Court and compel him to deliver them up to the survivor.

If the surviving partner is a bankrupt and the Executor a man of property the creditors may resort to the E. and he will be liable.

If one partner die leaving a surviving partner and after the survivor die leaving an E. the E. will stand in the place of his tenant as to the right of suing and liability of being sued. If both of the partners should die at once the same contract is by lightning
but it is apprehended in such cases both
1 Ed. must join and be joined in a suit to
2 just against the survivor for a debt due before
3 the death of the deceased partner is a partnership
debt. Formerly it was held as a rule that
4 when judgment was given a partner in his private
5 capacity and not as partner the officer must
6 search for private property whereon to levy
7 it: if that could not be found he might levy
8 upon the partnership property. But now the
9 officer is not obliged to seek for private proper-
10 ty he may look at first upon partnership prop-
11 erty. When the officer has taken the property
12 it is sold by mochlies and the vendee becomes
13 tenant in common of that property with
14 the other partner. First: The officer has taken
15 10 pieces of silk and sets them at what vendee
16 the broker bids 1/2 of their real value and then
17 strikes off to him one half as tenant
18 in common with the other partner by this means
fall: The property of the other partner is not damaged by the
and all the inconveniences that he suffers are that he becomes partner of the
property with the vendor and not his former partner whereas formerly it was the practice
to continue selling jointly till they had recovered the sum of the execution and then half to the other partner—

When a company have become bankrupt
the property which they owed in company
to pay their partnership debts, and their private property their private—first and become bankrupt, they each of them have private property—and they have partnership
property or that which they own in partnership—
their private debts are to be settled by their private property and their partnership debts from their partnership property—If the partnership fund be insufficient and either of
Their private properties is more than large enough to pay all the private debts. The Surplus is to be carried over to the partnership fund and the partnership creditor paid therefrom. So again if the private property of one is insufficient to pay his private debts and the partnership is more than sufficient then the surplus of the company estate is to be equally divided and if carried to the private property of each and the private creditors satisfied out of it so that in this way complete justice is done as far as the estates of either hold out.

From the above it is evident that the Eng. Law as to the distribution of the estate of a bankrupt takes very much with the average law in this State. The object of the Eng. Law seems to be that the creditors shall all be equally paid during the life of the testator but after his death some are to be paid while...
Thus are left unpaid: on the contrary law seems to care but little about the payment of a man's debt when living for his creditor may any time get secure by a judgr but after his death it is determined that his property shall be equally distributed among his creditors at all events.

Of Bills of Exchange (Promissory Notes)

A Bill of Exchange is nothing more than a transfer from one to another requiring him to a sum of money to a third person or order that is to any one whom the 3rd person shall name and the evidence of such order the endorsement of the payee - The parties to bill of exchange are - 1. The Drawer of the bill 2. The Drawee 3. The payee or person to whom the money is to be paid

The acceptor is the
Drawee of the accepts. 5th. The payee if he endorses
the bill is the endorser. 6th. The person to whom
the bill is endorsed is the endorsee. 7th. The person
in possession of the bill is called the holder.

A bill of Ex. is sometimes payable at sight
some time after so many days or months
or at usance. If the bill is payable after so
many days or months a certain length of time
are allowed for payment after the expiration
of the time set in the bill called "days of grace" which are commonly three days the varying in
different countries. If payable in so many months or months "calendar months" are meant. If a
bill be payable at usance it means a certain
length of time according to the usage of the place
where it is payable varying in different pla-
ces. In this country the term "Usance means
30 days" after the expiration of the usance 3 days
of grace are allowed for payment.
Of the terms "from the date"

The terms "from the date" and the day of the date have caused much litigation, but do not seem to have made this distinction, that from the day of the date excluded the day on which the date was made — but there is a case in Lord Mansfield's treat such distinction aside, and says: "We will consider them meaning the same or not meaning the same as justice shall demand."

In Bills of Ex., the above terms are used to mean other and the same thing to include the day of the date. When days of grace are allowed for the payment of a Bill and the last day should happen on a Sunday, the bill must be paid on Saturday and cannot be postponed till Monday. Such promissory notes as are negotiable by the Law of Merchant are such as "promise to pay to"
An order at Common law such note was not negotiable but was made so by Statute. This Statute clearly contemplates them as not Sale being negotiable at Common Law and there 1 B. R. 24. 7 57. 129.

sue expressly declares them so. But M. W. C. u. man of Vermont supports promissory notes. C. H. E. un always negotiable at Common Law. B. R. and endeavors to prove it even from the very nature of the note in consequence of which a number of decisions have taken place in that state declaring them to be negotiable. And this our Courts in Connecticut deny their negotiability yet they countenance a sale of them as much as any article whatsoever unless they are bought for the purpose of villainy.

This manner of making promissory notes is often extremely inconvenient to the maker of the note and to the right obligee, for as the case may be the Drawn may be subjected to a bill of cost and the maker to a double payment of
the note. The vendor cannot bring the action in his own name but must bring it in the name of the drawee and should the fail of a recovery the drawee would at all events, be able to pay the cost because the suit is in his own name. So if the maker of the Note should pay the money to the original obligee still he would be liable to pay it again to the vendor, or should the original obligee release the obligor it would be good against the vendor and he must sue the obligor in an action of fraud for accepting such release.

The Eng. courts have not gone so far as to sustain an action upon such assignments. Other persons as well as merchants may bind themselves by a bill of Ex. but an infant cannot even for necessaries and the reason why he is bound at common law by a single bill does not apply to a bill of Ex. for at common law an enquiry may be made into the consideration of a single bill but to enquire into the consideration of a bill of Ex. would defeat their negotiability.
It has been questioned whether a Bill could not bind an infant for necessaries provided it was enjoined to be for necessaries in the body of the Bill. It is apprehended it would not for its being enjoined in the Bill be more than the minor himself expends, and since the nature of the contract is such that the consideration cannot be enjoined into it, it matters not how and in what manner it is enjoined to be for necessaries when in fact it is not.

When there are two joint traders and one of them accepts the Bill of Ex; it is an acceptance by both and both are liable for the payment.

It is observable that a maker of a Note and Drawer of a Bill of Ex are in the same situation for the Drawer of the Note is the acceptor and engages to pay; after this the parties to a promissory note are the same as to a bill of Exchange.

A Bill payable to such an order in the same us to pay the order of such an one - It payable to
bearer it is still a negotiable note. The remit-ent authorities are opposed to this idea. Such notes become negotiable by delivery only and then need no endorsement, but the bearer must be a bona fide bearer and not a fraudulent one.

**Of Bankers' Notes**

These are considered in the same manner as bills and pay as such. And the bona fide purchaser is entitled to the payment which it came to him by a malefic inscription, for they keeping a cash in the Country, it would injure trade if they were not considered as such. So as appears from the construction given to the annuity act. Bank notes are considered as a good tender. The question has not been directly determined yet if no objection is made on that account, they are a good tend of on Bankers or Bankers' cash notes.

These are not considered as cash but merely as
another as a hypocrite, say not.

If the Banker fails to pay, then the holder of the Note becomes the Lender and he has

right to a reasonable time to pay. Where shall become 1775:

wife of 16.370

2d:9th

Mo.
Of the essential qualities of a Bill of Exchange

or a negotiable note

First: The bill must be for the payment of money.

Secondly: It must depend upon the personal credit of the drawer, and not upon any particular fund, but the fund must be supposed to be in the hands of the drawer. A drawer a bill upon B, to pay to C so much out of his growing substance which he was entitled to receive from his hands. This was determined not to be a Bill of Exchange because payable from a particular fund. The case of the worshipful miners which was to pay so much out of those miners determined not to be good.

So again where the bill was to pay £100 for the steward's money: it was held bad.

So the case of a bill drawn by the owner of a ship upon the freighter to pay so much on account of freight: it was held to be no bill of Exchange, but where the bill was made payable out of
The drawe half pay to become due six months
hence the Court held it to be a good bill, for this 2 May
was only pointing out the fund to the drawee
out of which he might reimburse himself.
So a promissory note to be paid out of rents
and profits arising from the land of the drawee
in such a place is held negotiable - so that a pro-
missory note may be negotiated the payable our 24.
of a particular fund.

A negotiable note must not depend on any
contingency that may not possibly happen.
The time however need not be fixed as 'a note pay-
able in so many days after his father's death.

The event must be such as may possibly or per-
bably never happen so that the note may
perhaps never become payable: but if the pay-
ment depends upon an event which is certain
necessary and no otherwise nor in any other respect
be uncertain than merely as to the particular time
when it will happen the note is good.

It is not necessary that the certainty be also.
If the note is a gift in order to regulate its sufficiency or that of exchange, it is a present to be accepted with the words of the gift.

If the note is a gift to regulate his sufficiency, it does not follow the words of the gift.

And, in every case, upon a note of exchange, the words of the gift shall be sufficient to the end of the note.

If the note is a gift to regulate his sufficiency, the words of the gift shall be sufficient to the end of the note.

And, in every case, upon a note of exchange, the words of the gift shall be sufficient to the end of the note.

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And, in every case, upon a note of exchange, the words of the gift shall be sufficient to the end of the note.
May not evidence of a consideration and since a consideration is not necessary neither are these words —

It has been questioned whether the words "Order or Reace" are necessary in a Bill of Exchange but no direct decision has been had upon it. In 2 Will the ease in Willson it was thought necessary by the 353 jury that no decision of the Court — The general opinion received however is that they must be insered —

Of the acceptance —

After a Bill is drawn and delivered to the Payee it is generally understood unless the contrary appears that the Drawer is in debt to the Payee and after the Bill is accepted by the Drawee he owes the Drawer. But this is not always the case for it may be that neither the Drawer or the Drawee is indebted to the Payee nor the Drawee to the Drawer and whether this be the case or not is immaterial.

The Payee applies to the Drawee for acceptance.
who refuses or not as he pleases but the moment that he accepts he becomes liable to the payee as any other indorsee. The payee may have taken the Bill and any of them may bring their action against him. If the Bill be accepted and not paid at the time it becomes due the payee may sue him on the drawer and it has been held by endorsement that two or more hands the last indorsee may sue whom he pleases either of the indorsees, the drawer, acceptor or payee and having failed of a recovery from one he may resort to another and no failure will be a bar to sue another, and if an indorser be sued he may sue a prior indorser.

There seems originally to have been much litigation about the manner of acceptance whether it could be in any other way than by a writing for it was said that a verbal acceptance would have no operation because of the statute of frauds and restraints which attaches itself to all kinds of transactions but it has since
been determined that verbal acceptance is good &
that the Statute of Frauds does not embrace such
anticipate transactions.

A Bill is ordinarily presented for acceptance
before it becomes due but this is not absolutely
necessary and if it be presented for acceptance
after the day of payment has expired and the
Drawee accepts it the acceptance is good and
becomes payable at sight and all the conseque-
ces of a regular acceptance are attached to it.

A Bill may be accepted by a person on
whom it is not drawn in such case the person
accepting does it for the honour of the Drawee
as it is called and the Drawee is liable to him
as though he had been the person on whom the
bill was drawn. This furnishes evidence of
the truth of the proposition that one man by
the Law Merchant may render another his
debtor contrary to his Will and without any con-
tact or consent on the part of the debtor.

An agreement to accept a bill amounts.
to an actual acceptance provided credit be given
to the person on whose credit the bill is drawn
and should this person become a bankrupt
previous to the draught of the bill yet the
agreement cannot be revoked from even if a
trust be given by the intended drawer of his
refusal to accept on that account.

An acceptance may be binding after
will: then accepted this not according to the
12th day of the Bill as if it be accepted for a left sum
$75
then that specified on it may be accepted up
on a condition as I will pay it if A does
not. Almost any thing will amount to an
acceptance even an intimation that he will
accept is binding as an acceptance. As if he
should say leave the bill and I will accept it to
morrow &c.

As to a written acceptance it is difficult to
set a rule but any thing written on the bill in
left it be expressive of a refusal amounts to an
acceptance as if the word presented be written on
the bill it is an acceptance seen by—
Of the manner of negotiating [Bill]

If the Bill be to the bearer it becomes negotiable by the delivery — if to order it becomes negotiable by an indorsement either specially on a blank indorsement — after the bill has once been endorsed in blank it need not be again. If any indorsement to make it payable to any one who shall not be the holder if the first indorsement be filled up by directing it to be paid to such an one there must be a second indorsement to make it payable to the bearer.

If a bill be indorsed by blank and payer into a number of hands the person last holding has no reason to sue any one but the acquirer the payer and the indorse — yet it is settled law if there are unable to pay he may come upon him from whom he sees the bill and this upon principles of the common law.

It is not necessary that the blank indorse must be filled up to entitle the holder to an

auton: for
A bill may be filled up at any time even at the bar and at may be filled up by any person who has the bill. Such endorsement may be made at any time before or after the time of payment of the bill even after the bill has been refused to be paid the indorsement may be filled up. If an indorsement be made upon a blank note before the sum is put in

down the indorser is liable for such sum as shall be inserted. The holder of the Bill may fill the blank with an order to pay him or may fill

it with a power of attorney to collect or if paid he may fill such blank with a receipt. In the first case if a suit be brought it must be by the holder in the last case it must be by the indorser. If a bill be drawn by A in favor of B C and B endorses to D blank who carries it to E to accept and he pockets it B may bring his action of hand ag C
and produce D as a witness.

It seems to have been a question whether an indorsement to pay the contents to such an one without the words "or order" could be a negotiable instrument, but it is now determined that such general description of the payee does not restrain the negotiability of the Bill. For a bill once negotiable shall not be restrained in this respect by words expressly indicative of a restriction and no proof will be admitted to prove the existence of a usage when it has never been adjudged different by the Court and ingrafted into the general law of the land. Such proof may be admitted to prove it.

The negotiability of a Bill may be strained as mentioned above by proper words, instance A draws a bill upon B in favour of C, who indorses it over to D. to pay it over to E, for his use. Then the negotiability is vested in D to E, and cannot be endorsed over by E.
An infant's indorsement has no operation upon him but is like all other contracts by an infant but if there be an indorsement by an infant and afterwards other indorsements the after endorsers are liable upon their indorsements.

Doug. Bank Notes Mill of £15 0s 10d. when lost or stolen and endorsed over an innocent indorsee shall not suffer thereby but may recover ag. the Drawer or Banker.

An indorsement by one of twoMessrs. in Co. binds both: but when two are not in partnership and a Bill be drawn in their favour an indorsement of one will not bind both. In 13. P. however it was determined by J. Mans. Doug. that an indorsement by one of two who were not in Co. did bind both but this judgment was reversed in the Exchequer Chamber.

A Bill drawn in favour of a firm sole who afterwards marries: an indorsement made by the husband is effectual and it cannot be endorsed by the wife.
To the assignees of a Bankrupt may indorse a bill drawn in fav' of the bankrupt.

To again an Ex. or later may indorse a bill in fav' of the dec. for which they are personally liable and if it be indorsed to them they may declare as such. ag. the acceptor.

A bill payable to one or order for the use of another the payee may indorse and assign it to another by the custom of Merchants.

It was formerly a practice to indorse a bill for part of the sum expressed in the bill but it is now settled that a bill must be indorsed exactly for the whole or none for otherwise the Drawee would be subject to two actions in one contract and also the Drawee would be subjected to the same inconvenience which the Law will not allow.

Of the engagement of the parties to a bill and of the Drawee.

The Drawee when he gives a Bill he is Bloodly contravent with the Payee. That the
Drawee is a person capable of binding himself by an acceptance. 2. That he is to be found as described. 3. That he will accept the Bill. If he will pay it on failure of any one of these engagements, the drawee is liable to the payee or any indorsee for the contents of the Bill and as the case may be for damages and costs.

A Bill may be made good when the Drawee only writes his name blanks with an authority to fill it up as a Bill and Courts will let in proof testimony to prove that the Drawee gave this power to the payee to fill it up and the indorsee may recover as the Drawee the sum contained in the Bill.

If a Bill be drawn payable at a future time and presented for acceptance before the day of payment and the Drawee refuses to accept it, the Drawee immediately becomes liable for what he has understood has not been performed. The drawee not having given him credit which was the ground of the contract and the case in strange proves the
Drawn to be indemnified to Drawee before the
time of payment.

Engagements of the indorser

Every endorsement is in nature of a new bill
and when endorsed nothing but payment
of the money will operate as a discharge.The
endorser therefore is as a drawer and the indor
see as a payee and the indorsee enters into
the same engagements that the drawer does.

He therefore engages to pay to the indorsee
or any subsequent indorsee - if it be a blank
endorsement he engages to pay to the holder of
bearer - if the holder sue the drawer and
obtains judgment against him yet he may sue
any one indorsee and the prior judgment will be
no obstacle - the case in Mod. was ag. this doc
true but afterwards reversed.

Election was the ground upon which this case
was determined - that when a person has two
remedies if he elects one he shall not avail of the
other
But this rule as generally laid down in the books, is not true. It is confined to this - if a man has two separate and distinct remedies upon one contract and he elects one he shall not resort to the other if in the first he fails.

So this general rule however there is an exception viz: in the case of a mortgage the mortgagee may pursue all his remedies at once - he may eject, file his Bill of

But in the case of a Bill of Ex the holder may sue all the endorsers successively till he gets the satisfaction and having taken one on discharge 12.35 then he may release him and resort to another, hence bust a grom: Sam a release of one is a release of both

Of the engagements of the holder, payee.

To entitle the holder of the Bill to come back upon the endorsers or he must first present the bill to the drawee for except
Tance as to this no rule has been fixed, but it must be done at least at the time of payment. When any time is limited, if it be payable at sight it must be done on a convenient time. If after a presentment the drawee refuses to accept the holder must give notice to all persons concerned if he means to lay a foundation for a recovery against them. If he does not and any loss is sustained by the failure of any person concerned it falls up on the holder unless he cannot find the drawee. If he would not be a loser provided he used due diligence to give notice.

So if the bill is accepted and refused to be paid notice of this must also be given to the drawee that he may have an opportunity of securing himself and if this notice is not given and the drawee becomes a bankrupt the drawer is discharged and the holder becomes the loser. It may be that notice is not
necessary to be given to the drawer of the note.  Acceptance & as if it be in proof that the drawer
Don't has no effects of drawers in his hands called the
presumption be that he has effects.

An acceptance may be distinct from the tenors
of the Bill as an acceptance for a life tenant in
such case notice must be given to the pur-
tee in order to come back

3dly. The holder at the day of payment must
present the Bill whether it has been accepted
before or not upon the ground that the drawer
may have since changed his mind.

So if the drawer has become insolvent
or disagreed notice must be given and it is
not enough to change the drawer that he had
a judgment in some other way than by the holder
himself but it is necessary that notice be given
by the claimant himself.

Notice must be given in a reasonable time
which in a foreign Bill must be by the first
Post but as it respects inland-bills on idle can
be laid down – it must be in fact be reasonable and in a question of Law which Dairy. The Court may determine after a finding by a jury – see a Case in Burr. What the indorser supposed himself liable to the indorsee and promised to pay the Bill when no notice had been given and action was lost when the engagement and the Court rejected it for said. They the indorsee had lost the bill before the engagement – here again cognizant begin execrable. As to notice upon the nonacceptance of an inland Bill of Exchange independent of a certain English Stat. no rule has obtained but the effect that notice has upon such bill is no other than to recover the contents of the Bill. In case of the non-acceptance of a foreign bill of Exchange a method is pointed out by which notice is to be given and notice being given according to such method will entitle the holder of the Bill to the contents thereof and to his damages and costs
The statute as to inland bills has pointed out a similar method by which notice may begin and notice given as the law directs will secure to the holder his damages yet this statute does not take away the Common Law method of giving notice it points out only to the holder a way to secure his damages. He provided he will pursue this method. But as it respects this statute the law may be materially different between an inland bill and a foreign one and indeed our Orders are governed by the same principle that an inland bill of exchange is governed by at Common Law. Only it is expected that in case of an order that the person in whose favour it is drawn will first pursue his remedy at the Drawer. Provided he will not pay it yet if it be apparent that a suit at him would be ineffectual on account of bankrupts &c. he is not obliged to pursue his remedy at the Drawer but may
come directly agt. the Drawer for in case he should institute an Action agt. the Dravee and accu-
mulate a bill of Cost the Drawer is liable for it and therefore it is a favour to the Dravee that
he be sued in the first instance — It has been
made a question however whether any other evi-
dence of bankruptcy could be admitted except
a non est inventus but the Courts have deter-
mined that other evidence may be admitted
to prove his bankruptcy.

As to foreign bills of Exchange notice of non
acceptance must be given by a protest and it has been questioned whether any
other notice than by a protest could be given.
The old authorities seem to allow of other notice
in which case however only the contents of the
bill could be recovered but the later authorities
are decisive that no other notice except a pro-
test will answer — The manner of this notice is
thus — If the holder of the bill presents it for accep-
tance and the Dravee refuses to accept it he
must resort to the Notary Public he again
presents the will for acceptance and if it be re
jured a second time the Notary Public sets
down the time of presenting it the non acceptance
then draws up a declaration which is called a protest
declaring that he presents the bill at such a time
which was refused - he then states in the bill that
the holder intends to recover his damages or from the
drawer or as the case may be from an indorser

When the protest is made out it must be
sent to the drawer by the holder the next just
after the protest the bill however is retained
by the holder that he may again present it at
the time of payment and when this arrives the
same ceremony of protesting it for non-

payment must be gone over again
as in case of non acceptance - in this case the
bill itself is sent to the drawer with the protest

Lex and in case the drawer be afterwards sued by
460 The holder the doings of the Notary P. furnish com-
plete evidence of a demand
So if the drawee is not to be found a protest must be made out as above. So again if it be accepted variant from the tenour of the Bill the same ceremony must be repeated and all this is done in order to lay a foundation for a recovery at the drawer &

Of a protest for better security

A protest for better security is when the drawee before the day of payment is about to abscond or become a bankrupt in which case the holder may present the bill for better security and give notice of it to the drawer by application to the Notary. P. or 74.

Of the effect of a protest

The effect of a protest is to subject the drawer or indorser for the contents of the Bill together with damages and costs. As to the quantum of damages no general rule has obtained the recovery of damage
however does not go on the ground that the holder has been prevented carrying on his merchandize and in this manner sustained injury; but the rule as understood in this country has been to go £20 on £100.

The cost in this case is a separate independent charge from that of damages and does not mean cost of suit but barely the expenses which the holder has paid out it.

It is a principle in the Law Merchant which extends to all contracts – that interest of the money shall be recovered up to the time of signing the judgment and not barely to the signing of the 1006.

Yet if there be a separate distinct security for the interest not dependent on the instrument upon which the contract is founded no more interest shall be recovered than to the date of the Writ Of a supra Protest.

This is where the drawer desires the bill to be
accepted on account of a third person in such case the drawer must have notice of the third person's application. If the drawer will not accept the bill as desired he may assign the bill to another person and accept it for the honour of the drawer and in case the bill has been indorsed over before it comes to the drawer he may accept it for the honour of the indorser in which case the drawer is made liable with the indorsor to the drawer but if he accepts for the honour of the drawer it is a discharge of indorser. If there be a refusal to accept by supra protest notice must be given. So if the drawer accepts for the honour of an indorser notice must be given of such acceptance. So if it be accepted by another person for the honour of the drawer or indorser notice is necessary to be given. If a bill be accepted for the honour of the drawer the acceptor becomes liable to all indorsers. But if it be accepted for the honour of an indorser he only becomes liable to the subsequent indorsers and the indorser in such
case and all prior indorsers including the drawe
or are rendered liable to the acceptor (vide for
much of this doctrine in 1 Meaw. 1:57 on
Where a bill is accepted it furnishes prima faci
evidence that the Drawee has the Drawers effects in
his hands but this is not always the case. If how
ever he has effects in his hands and will not dis
Will: change the bill he becomes liable to the Drawer for
105: The contents of the Bill. If the Drawee has no ef
fects of the drawers in his hands no action lies against
him for non-payment — On the other hand the Drawee
in all cases where he has not effects in his hands of
Dunix: the Drawers and he discharges the Bill he may
55: come upon the Drawe

It has been questioned whether the holder could
discharge the acceptor from any liability by an
explicit declaration of his that he could as was formerly
the case originated from a principle of the Common Law
that no declaration unless of as high a nature as the
contract could discharge; but it is now settled that the
holder may discharge the acceptor by an express declaration but no particular indulgence of giving a length of time or will amount to a discharge.

If the holder after an acceptance by the drawer receives part of the money of the acceptor, the drawer is discharged from any liability for it in giving suff. credit to the acceptor & land in this case notice may be given without a protest.

But in an action by the indorsee agt. the drawer or tho' the indorser has paid part of the money to the indorsee he may recover the whole sum in the Bill agt. the Drawer — It has been questioned whether the indorser could be charged without first resorting to the Drawer and the old authorities are that he cannot; but it is now settled that he may.

Bun: 669

Of the remedy of the parties

It seems to have been a question whether a common law action of indebt., assump. or debt would
lie ag: Those who had rendered themselves liable to discharge the bill and there are contradictory authorities respecting it; some say the drawer is liable in such an action and not the indorser; vice versa. The common mode however is to bring the action upon the bill according to the custom of Merchants yet if there is a debt existing between the parties and at the same time a privi- cility of contract between them, it is settled that an action of indeb. of a jumps will lie as in the case between the drawer and payee or the acceptor and payee: but as between a subsequent in- dorse and drawer there can be no privi- ci- of contract; formerly it was held his action on the bill set out the custom and there stated the particular facts as that the drawer did accept and refuse to pay it but the Law March. having become the law of the land no such me od obtains. It is now necessary to state the custom & but the genl. allegations is that the defend
became liable according to the custom of merchants and then state the facts as above — Suppose then an action is brought by the payee or, The acceptor it must be stated in the declaration that A for instance drew the bill on B. in favour of C, that A delivered it to C, and that B accepted it. These are the only necessary allegations to be stated — and it is to be remarked that it is not necessary to state that A the drawer subjoined his name to the bill. This is commonly done — It has been a question before the courts whether it was necessary to state in the declaration that the acceptor accepted the bill according to the tenor of it, and it was determined not necessary for it is immaterial to the suit how and in what manner he accepted it.

If the indorsee brings an action it is incumbent on him to state the same statement and more — for after having stated the facts as above he must state in the case put that C endorsed the bill over to him in short he must
Shew himself to be the person pointed out by C's order to receive the money and if there be a number of indorsers the last need not state the whole time of indorsements but it is enough for him to state that he is the indorsee of C. who was the indorsee of D. who was the indorsee of C. &c. And if the bill in the first instance was a blank indorsement by indorsements the last indorsee is at liberty to strike out the special indorsement and declare himself to be the indorsee of C. the blank indorse or he may if he elects state the special indorsement — It has been mentioned that the payee when he brings his action ac't the drawer he must state a delivery from the drawer: but an indorsement not state a delivery from the indorsee for the indorsement is sufficient for him. When the payee brings his action for nonpay he must state notice to the drawer and the manner of that notice (viz. by protest) and if no notice be omitted in the declarations it is not cured by verdict and the rule laid down by D. &c.
in the case cited in the margin respecting a verdict
owing defects in the declaration is as follows - says "
Morningside - "That where the P. has stated his title
or ground of action defectively or inaccurately be-
cause to entitle him to recover all circumstances
necessary in form or substance to complete the title
so imperfectly stated must be proved at the trial"
"it is a fair presumption after a verdict that they
were proved; but that where the P. totally omits
to state his title or cause of action it need not be,
proved at the trial and therefore there is no room
for presumption" - When the drawer has no
interests in the drawer in hands and has paid
the bill he may bring an action of indebito dupli-
acy the drawer and it is not necessary to state
in the declaration that the defend assumed & 538
promised to pay provided all the facts are sta-
ted which if proved will entitle the P. to recover
409
When a bill畫ges by delivery or if it be payable
to bearer or if endorsed blank the holder tho it has
Suppose this a number of hands can bring the
his action against none but the acceptor, drawer and
endorser with a single exception——he may bring
it against the person who last delivered it to him upon
the priority of contract——but this action may
be met by shewing that the holder has
not used due diligence to obtain payment from
the indorser &c.

Where several actions are
brought against persons made liable at the same
time, judgments may be had on all of them
and if one be collected the others are discharged
but as to the costs if one of the defendants will
come in and pay up the debt and the cost
which has arisen upon the other suits before
judgment rendered the court will stay proceeding
upon them. So if several judgments have
been rendered and execution issued and one of
them satisfied together with the cost upon the
other the rest of the defendant will be entitled to
their audita querela to stop the other executions.
In an action ag: the acceptor the handwriting of the Drawer need not be proved but if the

handwriting of the Drawer has never been proved, but if it is afterwards found that the

handwriting of the Drawer must be proved in an action but by Payee for otherwise

should the bill be forged the Payee would take advantage of his own wrong, but in

the other case that the bill be forged it is not necessary to prove the handwriting of the drawer

yet to this there is an exception if the bill be accepted before sight the handwriting of the Drawer must be proved for it is not known to the acceptor but that the bill was forged before it come to his hands.

When an action is brought by an indorsee ag: the acceptor. The acceptors handwriting must be proved and on this ground the handwriting of every endorser must be proved.
This page has been heavily obscured, but it appears to discuss the requirements for endorsing and recovering money in a legal context. The text is difficult to read due to the handwriting and condition of the page. It seems to address the necessity of due diligence and the responsibility of the drawer in handling and endorsing checks or bills of exchange.
had effects of his in his hands for thereby on the part of the Drawee to show by his answer and whereby the presumption is that Drawee has effects of Drawee yet this presumption may be removed by proving the contrary.

If the drawee institute an action ag the Drawee he must prove the handwriting of the drawer, that the accepted the bill and paid it and to recover he must prove that he had no effects of the drawer in his hands for this the law presumes bill the contrary be proved but if the bill was accepted for the honour of the drawer by another person no such presumption arises and the acceptor in not obliged to prove he had no effects of the drawer — yet if the drawer can prove that he had effects it destroys the right of action.

The evidence of the handwriting is derived more commonly from some confession of the party than from any other quarter it may be that
some person saw him draw the bill. So it may be proved by any circumstances of behaviour that can not be accounted for without supposing he drew the Bill.

**Of the defences**

The drawer may set up forgery for a defence but he shall not be admitted to prove the forgery by a similitude of hands, but where the proof comes from a confession it must be by the party then to be charged for the confession of another cannot be admitted for instance inter se an acceptor he must prove the indorsement of payee and the confession of payee is not admissible.

If the defence be for want of a consideration, the illegality of it may always be enquired into as between the immediate parties but when once removed from them and the bill has become negotiable the illegality of the consideration is no defence generally. There are two cases however in
which the illegality may be attached even in the hands of an indorsee as where the bill was given for money won at play or for usurious money. — Gard. § 101. There is a case where a distinction is taken to illegal considerations between the parties that if the transaction be between the parties be malum prohibitum and one of the parties pays the money with the privity and consent of the other the one half may be recovered from the other but if the contract or transaction was malum in se no recovery could be had ag. the other.
A policy of Insurance exists by a custom which obtains in the Mercantile world, wherein a person wishes property on the sea, he may resort to an Insurance office and there procure an insurance of his property. This is done by advancing a premium to the insurer according to the terms agreed on, insurer &c. This being done if the vessel be lost or meet with any accident the insurer must make it up. This contract is reduced to writing and called the policy. This mode of insurance is commonly done by one man. But there may be an insurance by many underwriters. This is done by drawing the policy and procuring persons to underwrite each specifying the sum he is willing to insure and taking his proportion of the premium according. The premium given may exceed all rate of interest and yet is not accounted unjust on the ground of the hazard run.
This contract commonly relates to horses yet it is sometimes applicable to other mat
uter the 'governing by the same laws with some little variation. As for instance may be insured and there is no principle in the common law that opposes this idea for it is no more than a wager and as wager at corn: law are allowable so were such insur-
ances. But by a Stat. of George 3. such insur-
ances are restrained and rendered void un-
less the insured has some interest in the life insured. As this question has never been settled in this country it may be ques-
tioned whether the corn: law of Eng. as it respects such kind of wagering can be ad-
mitted as our law? The Eng: corn: law is in
deed evidence what our law is best. It ought not to become our law until admitted by our Courts or unless they think it the best for the public: weal besides this has grown into common law from precedent and not from principle for it comes within an established rule at common law.
"That all contracts which militate against sound policy are void" and it cannot be denied that a wagering contract is at sound policy and Dun, invoke Judge Muller in a case reported in Diz., said that this doctrine could not be supported upon principle.

Of Insurance ag. Fire

This is not strictly a mercantile transaction nor is it governed entirely by the mercantile law yet it has always been considered that the party must have an interest in the proper sense insured at the time of insurance and at the time of the accident, for if the interest be determined before the accident the policy is at an end as if A insure the house of B. for a certain time and B. soon after sells the house to C. and before the time has elapsed the house burnt C. cannot avail himself of the insurance to B. for the policy ended immediately upon B.'s leaving the house — the nature of such a policy is such that it can never be assigned over to a third person. In these policies there is always a provision that the insurer shall not be liable if burnt by invasion.
of enemies or any worse power whatever; but this has been construed not to extend to a mob—that if a mob should be a house insured the insurer would be liable; it must therefore mean people in arms arising in rebellion and exercising de facto a power. (Facts, Stories, Magazines) cannot be insured as has been determined.

It is said that a policy may be explained by a formal agreement and Salkeld cited in support of it. But there is another authority in Shennan Rept., in which formal proof was rejected it being inadmissible to explain a policy so that it may be considered as an unsettled point to admit it however would oppose the principles of the law.

The terms at and from a place have been construed to extend to the vessel while lying in the port and if she be laden ready to sail but while lying in the harbour she be lost the insurer becomes liable, for his liability commences immediately after the completion of the insurance. Yet it if the voyage was laid
aside and all idea of pursuing it abandoned
the insurer would not be liable but so long as the
voyage is in contemplation the insurer's
liability continues — An insurance of ship's
freight does not include freight that would have
been earned had the ship not been destroyed be
for she sailed, unless the goods were actually on
board for till then the headright to freight does
not commence —

By Stat: all wagening policies are void but if
a person has lent money on a bottomry bond
he may insure, in which case it must be so ex-
pressed in the policy: The condition of this bond
is that if the ship returns he is entitled to his
money if not he loses it —

A vessel that is insured be injured or greatly
aroused in some instances the insured may enter
for a total loss viz he may abandon the vessel
and sue upon the policy while in other instan-
ces he can only enter for a partial loss. If the
vessel be totally lost there can be no question but
insurer is liable for the whole loss, but it may be
That the vessel has been taken and retained stranded or a part of the cargo lost and as a good gens de mle if the salvage in such cases falls short of the freight the insurer may enter for a total loss but in this case the insurer is entitled to the whole of the salvage provided he has made satisfaction to the insurer and stands in his place and is entitled to prize. No instance however can be found in which the insurer are obliged to abandon unles in a total loss but they may declare as for a partial loss. If a ship be taken and retained and condemned to be sold and a moiety paid to the recaptors the insured may recover as for a total loss upon relinquishing the salvage. If a privateer be taken and retained and the owners appear and give bond to pay to the captors 8e and she be sentenced to be delivered to the owners the insured may still enter for a total loss. But if a merchant ship be taken and retained the insured cannot abandon and recover for a total loss unless he do it before the ship arrives at his port of delivery but can only
abandon for a partial loss - so that there appears to be a difference between a Merchant ship and private. It is therefore apprehended that the true rule to be drawn from the cases is this - that when a ship has been taken and at the same time arrived in port and no material damage done to the cargo the insured can only enter for a partial loss but when the damage has been fairly considerable and ransom demanded the insured may enter for a total loss.

FRAUD of any kind vacates a policy not only positive false affirmations but the concealment of a material fact which in good consequence ought to be revealed - as when the ship at the time of insurance was leaky which fact the insured concealed - so when the agreement was with the first underwriter that he should not be bound by the policy in order to obtain other underwriters - this was held fraudulent - but the not disclosing a man's own speculations will not vacate the policy - The terms used in the policy are Lost or not Lost and it seems to be necessary that these be inserted or should they be
But if the policy pertaining to the value the underwriters who subscribed all of the whole value was subscribed by others are not liable and must return the premium for it being in the nature of a double insurance which the law will not admit the last underwriters cannot retain their premium - yet if the insured find the insurers capable of paying it it is a double insurance but the last are held. And the authority in Case goes when the ground that when a vessel has been twice insured the insured cannot sue both insurers and recover his moneys twice yet when he has recovered it of one the same one shall stand in the insured's place and recover a moiety from the other. It is common for a policy to contain these words "Warranted to depart with convoy" and if this is not complied with the policy is discharged and by the construction put upon these words talk by the Courts the vessel must go the whole voyage with convoy although the departure be not with an voy yet it is sufficient if it be taken at the
usual place, as if the Vessell sail from Hull to the Downs &c.

After having departed with Convey, an unnecessary separation, as to fight &c. is a discharge— But if the separation be necessary, as an account of tempest &c. it is no discharge of the policy.

It is also common for the policy to contain these words "till discharge from her voyage" and it has been construed to be a discharge of the Insurer, provided the owner of the goods take them from the Vessel in a Lighter & before they arrive at the shore, are lost— But if the goods were sent in the Lighter boat the Insurer is liable— The case cited in Burrough is a case in which the rule is laid down, with regard to Captors— "that a capture enables
the insured to abandon - but if the
capture was only a small hindrance, as
if there was a sudden escape of an inme-
diate ransom &c, he cannot abandon
only for a partial loss - tho an insurance
with the peril of the sea or thieves &c does
not subject the insurers, when the Vessel
is lost or injured thru the mismanagement
or felony of the Master - yet when the
insurance is agst. the Barratry of the
master, as fraud &c by running away with
the Vessel, squandering the property or
embezelling it, then are the Insurers liable.
or if he deviate from the voyage, from
his own intention and not by order of the
owners, the Insurer is liable - but if S. 1964
this deviation be by contrivance of the 1969
Sailors, it is not Barratry, and the ins-
urers are not liable - so a mere negligence
of the Master is not considered as barratry.

If the insurance be agst. Embargoes and
restraints of Princes, it does not extend to
reason for disobedience of the Law as for running goods &c.

When the risk is not run the prem-iurn must be returned but if the
666 vicuue has once begun to run, there is
no return of the premium —

2°. In some cases the case that a part
12° of the premium must be returned —
this happens where two premiums
are given upon the same contract and
the risk is run upon one but not the other, as when a vessel is
insured to the down, and a premium
given and then another premium
given to insure to the west indies.
The vessel sails to the down and by
some means or other she does not
arrive or her voyage to the Indies
in such case the premium given for
the insurance to the Indies must be
given up.

3rd Oct. 1905

If there be any fraud in the
Insurer as if he were when he knew the vessel has returned he must return the premium but it has never been sold until the vessel is being wrecked by another and does not inform the Insurer.

When a ship that has been insured is lost at sea, the insured may recover. And if years unheard of is sufficient proof of a loss, but if the ship afterwards arrives in port, the Insurer may recover back the money laid.

Of a Charter-party

This is when a vessel is hired to carry merchandise, and the reward is called the freight. A vessel may be hired for so much per month or so much for the whole voyage, or so much for the outward & so much for the inward voyage.
If the Ship perish, the freight is lost, the owner loses his ship & freight and the freighted his goods. But when it is so much for outward and so much for the inward voyage, and the ship is lost, reforms the outward and is lost on the inward voyage, the freight on the outward voyage must be paid—but if by the terms of the contract no freight is to be paid until the return of the ship, and she be lost on her return, the outward as well as the inward freight is lost.

If the Master return without landing goods yet he shall be paid, where it was owing to the Merchant or Factor, that she returned empty. And it is a rule in the mercantile law, that the Master has a lien on the goods for his freight—where the ship is not lost, but the goods are damaged, the owner may abandon the goods & recover their value, but
if he take the goods he must pay the freight, and he cannot separate the undamaged from the damaged, and aban-
don those that are damaged, but if he take any part he must take the whole and if he abandon the goods they become the masters.

If the ship is disabled or taken when part of the voyage is performed, the master shall have freight pro rata and he has power to borrow money & hypothecate the ship and the lender has the security of the ship and the owner & master are reasonably liable for the money.

If the master takes wh money for the victualing or victualing the ship the owner is liable for it, although the ship was leased to the master - the owners are also liable for the misconduct of the master as if he squandered the goods &c - and the master is also liable to the owners - and it is said in some of the books, that the master looses his net wages - but it is
Of merchant & factor

A factor is a person who is employed to transact the business of his merchant or employer for which he is paid according to the nature of the contract. This factor takes a commission in writing and if the commission empowers him to deal with the goods as his own, he may sell them on credit provided the time of credit be not an unreasonable time, that is, beyond the usual time of credit. And if the goods are lost when thus sold, it is the loss of the merchant and not of the factor. If the commission be to sell & dispose of generally, he has no authority to sell on credit— even if the goods are bona

It is the nature of this undertaking by
the Factor, that after he has received his commission &c. he must account for the goods he has received — to effect this an action of account is the only legal remedy for the Merchant — but this action is now dispensed with and an application in Chany substituted as being a matter of more convenience — but if the goods were lost or stolen &c. it is a complete defence to the Factor — he also has a lien on the goods in his hands and may retain them till satisfied for his undertaking — he likewise has his remedy agst. the Merchant and the lien upon the property in his hands is good agst. Creditors &c. — In this respect the Factor is not considered a Surety at all events —

In this state we have not ordinarily applied in Chany to call the Factor to an account, but have avoided it by other actions, which are concurrent with account as indebitatus assumpsit &c.
If a Factor undertakes to run goods & they are seized, he must account for them, and cannot plead the seizure in defence — Should a foreign Factor run goods which are not seized and in this manner avoids paying the duties, he shall be allowed the duties in accounting upon a suit in Equity — but should this be done by a home Factor, he would not be allowed the duties, because this would be curtailing their own revenue —

It is a question whether the Principal shall be liable for the fraud of his Factor, civiliter? The current of authorities are, that he shall be liable for all the damage done by his Factor, and there appears to be but one authority that opposes this idea, and that a very strong one, hardly to be reconciled —

If a Factor sells the goods of his master and vests the money in other goods, and then dies, the goods so purchased are the Merchants and not subject to the duties
of the Factor, for it has been determined, that the vesting the money in other goods does not change the property, it being for the benefit of trade— but if the Factor sold had not vested the money in other goods, & had died, the money would be subjected to the payment of the Factor's debts— on no other ground it is apprehended, than that the money of the merchant cannot be distinguished from that of the Factor.

If a factor sell goods on credit without any authority, yet the sale binds the merchant, for as between the factor & vendee, the transaction is bona fide— and the merchant must look to his factor for reparation— yet if these goods were pledged by the factor to secure his own debt, the pledgee cannot retain the goods in defiance of the merchant.

When the factor vendettesakes to sell goods on credit, the vendee becomes debtor to the merchant, and not the factor— but a payment to the factor is well made, unless...
the Merchant particularly forbade the Vendee to pay the Factor - in such case if the Vendee pays the Factor he pays it in his own wrong.

In some places there is a custom that the Factor when he sells goods shall run all risk of a loss - in such case he may sell on credit - a question arises here, whether the Vendee is Debtor to the Merch.

An or Factor - or whether the Vendee is liable to the Merchant after being forbidden to pay to the Factor. This question appears not yet to be settled. For the case in Strange was only a determination by the Jury contrary to the opinion of the Court. The Verdict of a Jury composed of merchants is at least strong evidence of a custom -

of martines -

If the martines do any damage by embrazing Property & the Master and

Certain rules seem to have obtained with regard to throwing property overboard &c. If part of the property be thrown over to save the rest, the Master, Owners, Freighters & Passengers must all contribute to make up the loss. Passengers are to contribute according to the property they have on board. So if the goods on board are injured in any manner the Vessel &c. an average must be made. If the goods lost however do not save the rest, there can be no average; or if they be not lost but given to Pirates to save the rest, an average is to be made. But if pirates take the goods by force, there shall be no average as where
a ship loaded with oil & silk, was
chased into port and the oil taken &
the silk untouched. It was held the owner
of the ship should not contribute to the
owner of the oil

When a vessel is taken the Master gates
may ransom her in which case he has
the security of the owners for the ransom
or if unable to pay the ransom, he may
pledge himself or any one of the mariners
provided he is willing to be pledged and it
is the duty of the owners to redeem them

Of the right of merchants to stow goods sold
in transitu

The Consignor may stow goods sold in transitu before they get into the hands of consignee.
the Consignee in case the Consignor be insolvent, but if the Consignee assign the
bills of lading to a third person for a valuable consideration, the right of the
Consignor, as against such assignee, is divest
ied. This principle is the law merchant
variant from the Common Law, for by that law
if the goods are once sold, they cannot be taken
Of the Owners

Where there are a number of owners to a ship, she is to be regulated by the major-hart; if the major-hart agree to send the vessel to sea and the minor-hart disagrees thereto, when the major-hart is giving security in the admiralty to secure to the minority their share, the ship may sail, and in this case the minority can have no share of the profits, but if the majority send the vessel without giving this security, the minority are entitled to profits; and if the vessel be lost, the minority lose their shares. If the majority disagrees to the voyage, the minority cannot compel a voyage but may compel a sale of the vessel; so this may be done when half the owners become unable to fit out the ship &c.
If the master of the ship take goods to carry for hire, and he be robbed in short under vault, the dominion of the Cons. Law, he is considered as a Cons. carrier and as such liable at 208 all events, but if on the sea where the mercantile Law prevails, he is not liable.

If a freighted ship be disabled by accident and not by the fault of the Master, he may refit her if he can do it in a convenient time, if not he may freight another and the freight shall be paid him.

A policy must be made agreeable to the label or agreement.

If a ship be insured against neutral property and she be shipwrecked and no neutral property on board, the Insurer is not liable.

Miscellaneous principles.

If the case in Dunford which may serve to elucidate the question, whether an unfair non est inventus by the Officer is conclusive agst. the Bailor.
The case was thus: an officer had seized a sence (sence) upon the principal near the sitting of the Court, that there was not sufficient time to surrender the body and in an action at the Bail, the Court said that was a sufficient defence — Where money has been paid upon an illegal consideration and an action brought to recover it back, the illegality of the consideration cannot always be sufficient evidence to prevent a recovery by the party as when the parties are in pari delictis as in gaming &c

3-

Whoever purchases of a person & gives a full price &c. whom there is a suit, which is known to the Vender, the purchase is fraudulent and void —

4-

Foreign laws must be proved as facts, County 7th. It is a rule where one of two innocent persons must suffer, that the person who is entitled the third person to do the wrong must suffer the case however, of Joan and Harlow and all similar cases, in
manifestly an exception to this rule. This doctrine is limited to the cases of fraud and fraudulent theft.

6. Of witnesses being Credible at the time of attesting an instrument, which appears not yet to be settled—Stir. 1253. &. 1001. 414

7. Our Stat. does not contemplate the buying an execution or money, but see a Doug. case in Doug. Inst., when a motion was made to retain money in the hands of the Officers and the Ct. granted it.

Lectures upon the Statutes of Connecticut, including principles of Com. Law &c.

The first Statute is merely a declaration of the security of the rights of the People, that no man's life shall be taken away, his honour or good name stained, his honor ensnared, restrained &c., his goods &c. taken away from him or damaged under colour of law, &c., unless clearly warranted by the laws of
This state — no man's person shall be restrained by any authority, before the law hath sentenced him therunto, if he will give sufficient bail & for his appearance or until it be, for capital crimes, committed in open Court, or until accused by some express law, which must mean some statute. See — an act relating to abatement & amendment of writ, reversal of judgts, &c.

For abatement, amendments, see Vol. 3, & also Vol. 2. For the purpose of ascertaining in what cases the court may prosecute a suit &c. —

This Stat. in alteration of the Com. law declares, "that where there are two or more Pts. or Defts. and one die rendering the suit, the cause shall not abate, if the cause of action would survive to the surviving Pt. or Deft." the death being suggested.
upon the record the action shall proceed.

If a Deed appeal be set: given on
pleas of abatement and shall not make good
his plea, by the suit of that Ct. to which
he appeals, such Court shall award the costs
of; him, however the case may finally issue.
If therefore a Deed appeal and his plea be
overruled and he afterwards plead full-pay-
ment and recover, still he shall be subject
to the cost that arose upon the appeal.

an act relating to the age, ability
and capacity of persons

All persons of the age of 21 years of right
understanding & memory, whether excommunicated
or others (not otherwise legally incapable) shall
have full power and liberty to make their
Wills &c. the clause "no otherwise legally
incapable" came to be inserted in the Stat.
by reason of the great disturbance made at
the time, the great question was agitated
"whether a Ferme-Court could devise away
her real estate, which is treated of in the 5th
Vol. page this clause however means
nothing more than common law intestacies, which were contemplated by the Legislature at the time of making the Statute.

Persons at 14 years of age may convey away their personal estate, cheat Guardians at 16 in males & 12 in females, and in Eng'd a period seems to be pitched upon when a person is capable of handing over, which period appears not yet to be adopted in this Country.

This Stat., to prevent forfeitures, has declared, that no estate shall be given by Deed or will to any person or person, but such as are in being, or to the immediate issue or descendants of such as are in being at the time of making such Deeds or Wills, and that all estates given in tail shall be and remain an absolute estate in fee simple to the issue of the first borne in tail — so that A may give an estate in tail.
to the issue of the youngest Child of the
Act appears clearly to have been the int-
etion of the Legislature in making this Stat.
to effect by Deed, what in England is effected
by an executory devise, and it seems to have
had the desired effect. And the principles
of an executory devise will be found generally
to apply to our Stat. of entailment.

An act regulating civil actions

This Stat. is a local regulation and the principles
unknown to the common law.

The mode of process under this Stat. are
two — a Summons & an attachment.
A
summons is a writ in which is included the
declaration, signed by an authority and directed
to some officer whose duty it is to give not-
ice to the Def't. That he appear before the
Court named in the writ &c. The officer by
virtue of this writ cannot take either the
goods or body of the Def't. he has only
to give notice which is done either by
reading the Writ to the Person of the Def't.
or by reading a true and attested copy at
his last usual place of abode — —
An attachment differs from a summons
only in this respect — its object is to
secure to the "Sw. his demand — the
officer therefore is to attach the goods or
estate of the Deb. and for want thereof his
body — this mode of attaching property is
unknown to the common-law — yet in
Eng'd it is a custom in particular places
to attach property — but the principle of
the common-law is — that the body only
shall be attached — this Stat. then is
clearly an improvement upon the Comm. law —
The property thus attached is for
the purpose of rendering the judgment
of the Court and serves two very valuable
purposes, the one for the benefit of the
Creditor in securing to him his debt, the
other for the benefit of the Debtor in
securing his body from arrest — and if
the property be attached from motives of ill
will, when the Def. is abundantly able to
discharge the debt, it may be relieved, when
providing security and if unable to give security the
attachment ensures the debt, which otherwise
might have been lost.

The body in this case can never be attached
provided the Def. will turn out property suffi-
cient to answer the demand. This is warrant-
ted from the nature of the process, which is
"to take the goods or estate of the Def. and
for want there of his body" yet the Officer is
not precluded from attaching the body of the
Def. although there be estate sufficient to answer
the demand, provided the Def. will not turn
out such estate, or it is not known by the
Officer to be the property of the Def. But
the officer in such case is warranted to take
the body, if the Officer however will take
the body, when he might have taken property,
when it was well known to him that there
was property sufficient to render the
debt, and the Debtor afterwards becomes a
Bankrupt, the officer will be liable to the creditor for the damage he has sustained in consequence of the officer's misconduct. But if the Debtor be under any suspicious circumstances, as if he be a poor man and it is not known to the officer that the cattle or in the yard of the debtor are not his own cattle, he is not compelled to attach such property at all events, but does perfectly right in taking the body, and in event will not be liable to the creditor.

There is a certain species of property that is exempt from the attachment, which the officer has no power to middle with—such things as are necessary to uphold life, as tools &c. a cow and ten sheep are always exempt—yet if the Debtor will turn it out such property to save his body from arrest, it may be taken by the officers, and when taken may be
When the officer has taken the body of the Debitor, he may release it & take property, but he cannot release property and take the body. Nay the Debitor may commit all the officers to release his body when turning him out property. This point has been determined by the Court of errors yet when the Debitor says to the officers when he is about to attach certain property, "that is not my property", in consequence of which the officer attaches the body and takes it to Goal. But before it is committed the Debitor tells the officer, that such was his property and commands the officers to release him & take the property, which the officer refuses and commits him to Goal. He is not liable to a suit by the Debitor. This has been determined by the said Court in a case which came before them in the County of N. Haven.

The form of the attachment, as to attach...
attach the good or estate - in the
construction of this, the Courts have
determined that the word "estate" does
not mean real-estate but personal only.
and if the Officers cannot find personal
estate he has his election to attach the
Land or the Body of the Debtor -

So when the officer has taken one
kind of personal property, he may release it
and take another - as if he has taken an house,
which he thinks will not satisfy the demand
he may release the house & take other &-

This statute directs the process to the
Sheriff, his Deputy or some Constables
and if such officers cannot be had without
great charge and inconvenience, the Authority
signing the writ may direct it to an indiff-
-erent person, by inserting the name of the
indifferent person and the reason of the
direction - the Courts in this case have
declared, that it is sufficient for the authority
if he to insert the words of the statute-
whereas an officer cannot be had without great charge and inconvenience, and these have lodged in the breast of the justice & the exclusive right of determining what shall be a reason.

If the writ be returnable before the County Court, the Deft. shall have twelve days notice - if before a justice 6 days - and all writs returnable to the County Court shall be returned one day before the sitting of the Court to be entered in the Clerk's Docket.

The Stat. directs that the property be attached - but the courts have determined that although property be not attached yet if the process be not served it is no cause of abatement. For say they it does not lie in the mouth of the debtor to come into Court and say "you TH. have not handled me with a rough and heavy hand - you ought to have attached my property as the law directs" - but as it restrains the TH. the law is materially different. He is at liberty to treat the doings of the
The officer as magatory and may sit down and issue another attachment against the officer as having conducted wrong fully and in this manner secure his debt.

If the Def't lies out of the State or happens to be out when the process is served and does not return before the first day of the Court's sitting, the suit shall be continued to the next session and if notice could not probably be conveyed to him pending the suit, it shall again be continued to the next Court & no longer.

But just rendered & set the Stat.

In actions on joint contracts, service on those within the State is good against all; yet if any one of the Def't or whom the process was not served is agreed by the just he may be relieved by an audita querela.

The just may withdraw his action at any time before just rendered, in which case he is at liberty to institute a new action—but if he be nonsuited, he is excluded from
entering a new suit and shall be subject to
the cost &c. — so that a retravit in this
State operates differently from a retravit in
an Eng. Court— for by the Eng. h. Law a
retravit is a complete bar to another action —
It is to be remarke'd however, that when
the 1st. enters a retravit he must give notice
to the opposite party, that they may enter
for suit —
If a bill be brought in which the title
of land is to be tried, it shall be brought
in the County in which the land lies, and
it is immaterial when the Pl. or Def.
lives. The only enquiry is, in what county
does the land lie? — this may make
an important question before the Circuit —
Court, who are stationary and are to determ-
ine according to the law of each State
It is apprehended however, that the Free
judiciary bill is a virtual repeal of that
clause of the Stat. which introduces this
Court to try causes between an inhabitant
of one State & an inhabitant of another —
A justice of the peace has an exclusive jurisdiction over all actions in which the demand does not exceed £4 and may render judgment on notes or bonds given for the payment of 40 money, or bills of credit only vouched for by two witnesses, when the sum demanded does not exceed £10 provided always that if the sum demanded exceed £10 an appeal may be had to the next County Court, except the action bonmot &

The justice also has a power to render just an a confession for £20 —

He has also jurisdiction over an action of debt or judgment for the recovery of £10 which judgment was rendered by some other assistant or justice or provided the suit be brought within 5 years after the first just.