Wagering contracts by common law are in general valid. And it is not essential to such a contract that it be in itself contingent. It is sufficient if it is equally contingent to both parties. Com. 371, 2 Sir 612. 3 T.R. 693. See 22 E. 44.

Cesorous representations invalidate contracts. In some cases and in others not.

The rule is that if the circumstance misrepresented is the principal cause or inducement to the contract it is void but if it is not the principal inducement the contract is not void but the person misrepresenting is liable in damages according to the difference in value. 1 Sum. 147, 9. 2 Sum. 176, 201, 1 Mich. 406. 1 Penn. 32, 2 Penn. 165.

But if the erroneous representations are fraudulent it always vitiates the contract.

If certain things are made necessary by the contract than erroneous representations concerning those things will vitiate the contract. 1 Penn. 150.

The fact of offer to a contract may be inferred from circumstances some authorities.

Mr. Powell says if the unsound article is sold for a sound one which it could not have been worth if it was not sound then want of consent may be inferred. 1 Penn. 150, Judge gave this rule is incorrect on Com. 313, Long 63, 1 T.R. 153, 3 T.R. 75, Penn. 645, 123, 1 Penn. 142, 2 Penn. 314.

It has indeed been determined in this state that if a thing is sold for a sound one when it was unsound damage might be recovered but has lately been contradicted by one or two decisions how it is settled I do not know see 2 Root 417, 2 Swift 128, 160.

We now proceed to consider the subject of a contract and of what subjects contracts may be made.

There is a diversity in the laws arising from contracts being executory or executory. By an executed contract is meant one which is finished and nothing further to be done.
An executory contract is one to be performed in the future. By a contract executed a person must transfer any thing in which he has not an actual or potential interest at the time of the contract [Note: 432, 152, Mort. 132, 111, 301].

For one to void a contract to which he has an inchoate title only it is desirable, desirable and in equity assignable. 4 T.R. 48, 1 B. 135, from n. 44, 29; 1 Toml. 141, 3 T.R. 48, 12 H. 3.

When there is an actual agreement to deliver although the property is not delivered it is an executed contract 433, 154-5.

But if a person has a potential interest in a thing he may transfer it and the contract will be binding of potential interest is when he owns the thing from which the thing contracted for is to arise, Mort. 132, Pow. 156-7.

But by a contract executory a person may bind himself to convey what he does not now possess and if he fails to perform damages may be recovered although a court of equity would not decree a specific performance if it was impossible for him to perform it.

1 Pow. 156-7.

But if a contract is completed so that no further act is necessary it is an executed contract and there must have been an actual or potential interest to pass by the contract as it is void. 2 B. Com. 44; 1 Pow. 157, 233.

But if the contract is so framed as to operate if it will bind him not on the ground of contract executed but because he is estopped from saying he had no interest at the time of the contract—by his own covenant of resine. 2 Bl. 295; 1 Root 222, that this rule holds as to leases see Salt 276, 2 T.R. 279, 154, 1880, 3 T.R. 370, Pow. 1 Mort. 295-6 as to mortgages see Pow. Mort. 97, 1 Vern. 111, 760 as to freehold estates, 1 Pow. 160, 3 T.R. 370, Litt 410, 1 Inst. 265, 2 Bl. 295.

Then on these requisites to a good contract—1st. That
it be possible to partake of certain. The first requisite is that it be possible of performance. The right is acquired or lost by a contract that is naturally impossible of performance 1 Poo 156, 174, 11 Poo 420, 11 Rost 206, Perkins se 795. We are treating of impossible stipulations and not of impossible conditions. We must distinguish between things in themselves impossible and those impossible on account of the inability of the person performing. Those of the latter kind are binding 1 2 Rau 110, 2 Poo 161.5.2

There is a plain difference between them. In the first case it was in the knowledge of both the parties contracting that it was impossible at the time and in the other not.

Here are two cases in the books which appear to me to be decided right, though for quite different reasons from those given by the court and indeed I think the decisions are not supported by the reasons given. One case is where a man bought a horse and agreed to give a farthing for the first nail found for the second Dec 2 2 Rau 116, 6 Moth 305, 1 Rau 269, 1 Lev 11, 1 Will 295.

Judge thinks that the express contract was void on the ground of fraud and if so the law raises an implied contract from the necessity to pay the value of the thing received.

The value of the article is the measure of damages see 1 Poo 408, 2 Rau 1010, 2 Rost 211, 2 Basc 217. The measure or remuneration of the performance is not regarded in executory contracts but in executed, it is Poo 163.2

And if one party commits to perform an act not naturally impossible but being foreclosed from performing it by inevitable accident is no excuse and does not avoid the contract 3 Basc 1639, 1 Fond 366, Seng 215, but if impossible in the nature of things the contract avoid
Contracts should be lawful. It is the thing implied to be done must be lawful. 1 Sam. 16:4-5.

1. Unlawful Contracts are either made prohibited or rendered in so. Contracts are made in so when they are contrary to the natural or moral law. 1 Thess. 4:3, 1 Tim. 6:15, comp. 39.

Contracts are unlawful when they are contrary to the law of the land and this they may be in several ways 1. When they militate against the public welfare 2. When they are opposed to some rule of the time 3. When they are opposed to some statute. 1 Bow. 146, 2 John 39, 2 M. 31, 31 R. 172, 23, 7 J. R. 52-3, 8 J. R. 37, 130, Bow. 272.

All contracts in restraint of trade are unlawful and void as if one should contract not to follow any trade or not to follow a particular trade.


And the rule in general that all contracts which militate against the public welfare are in general void. 1 W. 201. 382-7, 7 J. R. 543, 4 J. R. 89.

That a Contract not to follow a particular trade is void see 1 Coke 5 2d 7 J. R. 543, 3 Bow. 129,
1 B. N. 181.

But an agreement not to exercise a particular trade in a particular place may be good for it may be for the public benefit. 2 Bow. 126.

Palmer 172. But such an agreement must be on a sufficient consideration and the
ours proceeds as to the consideration falls on the person claiming under the contract.

2 Bow. 172, 1 F. N. 191, 192, 10. N. Sw. 74, 2 V. 65, 102.

It is immaterial where a person agrees generally not to pursue a trade whether he is of that particular trade himself or not.

B. N. 172, 1 Bow. 167.

On the same principle of its being against the public welfare a bond or contract to support maintenance is void 4 Bow 133.

1 Bow. 174.

On the same principle a contract with an alien enemy is void 8 B. N. 175, 1 J. R. 85, 100 B. N. 158.
In an insurance on the property of an enemy, it is void because of the interest which the insurer has to protect the enemy's commerce. 3 T.R. 47; 6 T.R. 35; 16 B.R. 345; 1 B. & C. 177; Dug. 2, 3b.<br><br>But this rule is not universal. Thus, a ransom contract with an enemy is good. This is a contract to pay a sum of money for the release of a captured ship. But this contract must be enforced in the admiralty court and cannot, therefore, be enforced until the conclusion of the peace. North 1, 443, 608, 67, 73; H. 1734, 101, 6, 563, Dug. 619, 6 T.R. 23. A hostage is generally given as security, but if he dies the contract remains Dug. 619.<br><br>And indeed all contracts in general made with an enemy are void, and arising out of a state of war which tend to mitigate the evils of war are binding on the principle of the treaty of peace and contracts to exchange prisoners are binding Dug. 619.<br><br>But in England by 23 Geo. 3, paras. contracts are prohibited North 1, 5, 3a.<br><br>On the same principle of its being against public welfare, marriage ransomage contracts are void. Shaw, Paul. Co. 96, 1 Tulk. 243; 1 Sir. 174-5, 8 T. Dig. 18, 3 Lio. 411; 1 Bow. 174, 4, 179.<br><br>Again contracts opposed to any principle of the law are void, e.g., a promise to an agent to pay him a sum of money if he would discharge a debt due to the principal is void. 3 Tulk. 97; 1 Bow. 38; 1 Bow. 176.<br><br>So a promise to pay a sheriff a sum of money if he will suffer an escape is void 16 Coke 76, 102; Coke 2, 26b.<br><br>So also a promise by a minister of justice to do an unlawful act is void and it is immaterial whether the action is brought for the nonperformance of the act or to recover the consideration for performing it in neither case can it be sustained. Coke 2, 26b; 1 Bow. 176.<br><br>Where the fact that makes the consideration unlawful is unknown to the promisee the contract may be lawful.
As if a sheriff would arrest a person unlawfully and bring him to an bandleager to keep for a time and the bandleager should keep him not knowing that he was unlawfully arrested he may recover a compensation from the sheriff.

For Jan 752, 121, 1677, 1 P.R. 127, 8.

Again contracts which militate against morality or decency are void. Cown 37, 127, 155, 1 P.R. 182, 233, 2 P.R. 118, 118, 128, 67, 72.

Hence also a wager that I shall not be elected to a certain office is void. Mark 237, Cown 37, 1 P.R. 182, 2 P.R. 118.

So also a wager with a judge concerning the decision of a suit is void 1 P.R. 56, 1 P.R. 184.

So also a wager which is a mere cloak for evading judgment and all this because they are against public policy. H. Vol. 43, 1 P.R. 184.

It is a general rule that a wager against public policy is void but a wager between the plaintiff and defendant in a suit concerning the decision of the suit is good. Cown 37, 1 P.R. 184.

Wagers in general are not void yesterday are good on motions because on them many of our men made a considerable amount by wagers.

March 46, 2 P.R. 118, 3 P.R. 118.

The Rule against wagering or gaming contracts are all void and none money lent knowingly to gain with cannot be recovered back. Mark 356.

Contracts made in fraud of third persons are avoidable and never can be satisfied. Cap 14, long 405, 450, 2 P.R. 165, 176, Thal 156, 1 P.R. 166, 1 C. 224, 66, 2 P.R. 163, 185, 246.

In this principal in marriage settlements a husband or wife other than the owner of goods to be sold at auction who also if the owner of goods to be sold at auction who also if the owner of goods to be sold at auction who also if the owner of goods to be sold at auction who also if the owner of goods to be sold at auction.
So bonds for controlling a felony are void. 
But if the offense amounts only to a misdemeanor, 
it is said, they are not a basis for 643, 7 3R 475, 
1 644.

A wager between two persons that one of them
will or will not do a criminal act is void. 
1 Bow 197-9.

(96) I observed yesterday that contracts contrary to the 
State laws are void. 
Agreed to this rule contracts contrary to 12th Am 
for illegal interest are void. 7 3R 736, 7 3R 499. 
1 Bow 196, 166.

There is a distinction between Bonds, for the 
performance of covenants or conditions which 
are made void by the statute law, and those 
which are contrary to the common law. 
If there are any of those covenants or conditions which 
are void by statute in a Bond, the whole Bond 
is void. The bond is void as to the good. But if the 
covenants or conditions are made void by common 
law then the void covenants or conditions, are 
void and the rest of the Bond good. 1 37, 351, 
1 Boc 37, 1 Bow 199.

If a Bond requires various interest, the whole bond 
and all the conditions that are 
void although there are other conditions that are 
good. But if the high Sheriff should take a Bond 
from the deputy conditioned to save him harmless 
and also conditioned not to render any service 
only to a certain amount, the last condition 
would be void at common law but the other 
would be void at common law but the remainder of the bond would 
be good. 1 Bow 200, 2 Bar 134, 1 37, 351.

351: 
This distinction is generally considered as 
arbitrary. I think however it arises from the 
construction and phraseology of statute law 
which says, the bond shall be void and not 
from any inherent difference between Cont. 
and State law.

But there is illegal contract which is void, which 
can be enforced yet sometimes if they are voided 
the court will not set them at all.
The rule is this, if both the parties to the contract are "parties, criminals" and the criminal act contemplated by the contract is committed the sums paid as a consideration for it cannot be recovered back. Dig. 45, 1, 49, 1 B. & M. 295, 296, 297, 298, 1 B. & M. 295, 296, 297, 298, 299, 292.

But where one illegal contract remains unexecuted as to the criminal act the money paid as a consideration for the illegal act may be recovered back, Dig. 45, 1, B. & M. 295, 296, 297, 298, 299, 292.

Which seems disposed to partition this distinction, and it appears to me to be opposed to principle. 7 T. & T. 365 but the rule is well settled.

If an illegal wager is laid and the money is deposited with a stake holder if the wager is over with the consent of the (sic) or the winner it cannot be recovered back 6 T. & T. 25; 1 B. & M. 186, 190, Dig. 470 note. But if it has not been played over either may recover the part he deposited and this although the stake has been won and the illegal act committed. 8 S. R. 189, 1 B. & M. 262, contr. 1 S. R. 190, 1 B. & M. 263.

But if the stake holder lays the money to the winner without the loser's consent can it be recovered back?


And 1 B. & M. 186, 190, 1 B. & M. 262, 263, 264, 265.

Under our Stat. 361, it may be recovered back.

There is one case in the English Books where the money was recovered back after it had been paid over with the consent of the loser 7 T. & T. 366 see also 1 S. R. 15, 14, 145, 146, 147.

In the same principal money paid to procure an illegal may be recovered back at any time before the stake is procured being 491, 1 B. & M. 262-6.

Again, but if the party who had paid for the illegal contract was not parties criminals he may recover it back although the contract has been executed on the other side and the illegal act performed as in the case of being 7 T. & T. 366, 1 B. & M. 191.

In 1 S. R. 15, 1 B. & M. 262, 1 B. & M. 263, 1 B. & M. 264, 2 S. R. 255, Contr. 1 S. R. 266.
A promise made in consequence of a previous agreement to do an act contrary to positive law which agreement had been executed is good as if it and B agree to smuggle which they do and lose money in the transaction A pays the whole of the loss and takes a security of B to pay his half this security is good for the promise is nothing but to pay a loan of money 4 Barr. 2 P 67, 3 T.R. 415, 2 N. Bl. 377, Watson, partners 100, 6 T. R. 61, 405, 7 T. R. 636, 2 P 372-3 

And it has been held that if one pays with the promise of the other the law will raise a promise so that he may recover 3 T. R. 415 

But now it is not (law 2 N. Bl. 377, 6 T. R. 61, 

405, 7 T. R. 636, 2 P. 372-3, 3 Bl. 361) 

if one pays money so lost without the security and without the other he cannot recover it back 2 N. Bl. 377, 3 Marsh. 413-4, 

If one makes a contract the making of which is illegal he may be bound although he cannot claim under it as if a foreigner should trade and make a bill of exchange he is liable on the Bill although the bill making the Bill was a criminal act. So also a smuggler is liable to the Bankruptcy laws although his trading is criminal.

A smuggler contract is of course void express 

at least 1 Bl. 281-2,

A contract which necessarily affects an interest of a person third persons interested in one which tends to introduce indirect crime in concerning a third person to 34 T. 385, 5 T. R. 699, 1 Bl. 282-3.

The third requisite to a good contract is that it be certain. Hence if A promises to deliver goods to B in a short time the promise is void for uncertainty 1 Bl. 282, 77, 6 Bl. 258, 7 Bl. 185.

Still recover a promise to repay money without naming any time the promise is good and the money repayable immediately 7 T. R. 124, 427, 

But if one promise to do any collateral act in any other than the payment of money and no time is mentioned he has the whole life time to do it in 1 Bl. 282.
But notwithstanding this, it is a maxim that
what is certain cannot be rendered certain
by any known standard. Pop. 142, 1 Dean 180;
Cro. El. 192, 1 Co. 56, 82.

(97) Contracts are of two kinds: executed and executory.

An executed contract is one by which a present interest
is vested in the owner of a property before the
conversion to a future transfer and
waste. 1 Bl. 445; 1 Dean 235.

An executory contract is one whereby no property passes
immediately, but is preparatory to a future transfer and
waste. 1 Bl. 445; 1 Dean 235.

As it is one where one performs immediately and
the other is interested in a future transfer and
waste. 1 Bl. 445; 1 Dean 235.

Mr. Powell has distinguished contracts in two classes: executory
and negociatory; says expected and implied one
in Superintacy 1 Bl. 445, 1 Dean 235.

They are express which he calls constructive, e.g.

A covenant, "whereas..." or any positive
is a constructive covenant that he is
possessed of the thing but it amounts to an express
contract. 1 Bl. 445; 1 Dean 235.

A contract in a deed executed may amount
to a covenant. This Mr. Powell calls a "constructive
contract" but it is an express contract that the other
is not entitled to. 1 Bl. 445; 1 Dean 235.

So also a lease in a lease is an express
contract to pay at the 1 Bl. 445; 1 Dean 235.

A contract in a deed executed may amount
to a covenant. This Mr. Powell calls a "constructive
contract" but it is an express contract that the other
is not entitled to. 1 Bl. 445; 1 Dean 235.

An implied contract on the other hand are those
which are neither expressed in terms nor arise
from the construction of the language used,
but those that arise from the necessities of the
nature of the contract as if a contract to
pay for them 1 Bl. 445 is.

The action of indebtedness as such is founded
on this implied promise or contract. 1 Dean
235, 1 Co. 56, 82; 1 Bl. 36.
Indeed implied contracts are nothing more nor less than contracts not express for they are not capable of being
so a lease holds over there is an implied contract
that he shall hold for another year at the usual
rent 1 Bow 1573 29 B.

A purchaser of lands becoming Bankrupt and only
part of his money paid Equity will imply a
contract that the land shall stand charged to secure
for the remainder 1 Bow 1575 3 6th 17 2 6th 257 3...
but if a security has been taken that will make the contract
valid as to security 1 Bow 1573

Contracts are Absolute or Conditional

Absolute where one lends himself or property uncondition-
ally as if one in consideration of a lease promises to
pay rent

Conditional where the obligation depends entirely
on an event or an uncertain event by which the
contract may be suspended enlarged defeated
as quodlibet 1 Bow 159 2 Oct 158 1 Feb 1581
Instances of conditional contracts 2 Bow 154 3 Bow 159
43 1 April 161 30th 6 17 12 1 5 17 6 17 2 6 17
As to unlawful conditions the effects of them are different
according to the nature of the contract

1° If the contract is executory the condition being
unlawful the whole bond or contract is unlawful
and void 1 Bent 203 3 2nd 2 17 75 172 57
The reason is because the contract is executory and no
one can acquire a right of enforcing it by doing
an unlawful act
The rule is the same if the condition tends to encourage
unlawful acts or omissions Est 17 75 172 57 2 bent
109 2 6th 3 6th 3 6th 4 11
So also if condition be against public policy Est 18 5 17 75 1 2
But on the other hand if an unlawful condition be
annexed to an executed contract the condition
only is void and the conveyance granted or contract
is good and absolute The reason is the law is
not required to enforce such a contract for
It is sufficient also when it is executed. If one make a covenant to marry on condition to an immoral act, and either of the parties perform the condition by being guilty of it, it is an executed contract, and an executory contract is different only from this in the same i.e. to take away all inducement to the commission of crimes or the violation of the law.

But the rule as to executed contracts holds only where both parties are pari delito for if they are not the innocent party shall be aided. e.g. May a bond in consideration of its being given to bar an illegal act be void? 2 Will 1565. 12 M. & B. 519; 3 Will 347; 2 Will 109.

Any contract to induce an immoral act and otherwise of the condition had been executed and the bond given in consideration of its being given. 1 Will 1564; 12 M. & B. 513; 3 Will 347; 2 Will 109.

All conditions totally enjoinder to the nature of the contract are void as a condition in a conveyance that to whom the estate is conveyed shall not alien or take the profits but a distinct bond that he will not alien or take the profits is good because by aliening or taking the profits the estate lost merely the penalty from ordinance.

(91) Impossible Conditions

An impossible condition is incapable not at the time of making but at the time of fulfillment of the condition that is impossible afterwards.

First, if conditions possible at the time become impossible afterwards and it is annexed to an executory contract the contract will not remain good and the party discharged from performing the condition 2 Will 206; 12 M. & B. 1564; 3 Will 347; 2 Will 109; 12 M. & B. 519; 3 Will 347; and by the reason-
the condition as supposed to become impossible by the act of God, for if it is by his own act the contract is void it cannot take advantage of this rule wrong. 4 T. & C. 175, 7 East 210.

reason why contract void in first case is because it is executed and cannot be avoided without the promissor's assent.

So also where condition to executed contract becomes impossible by act or operation of Law 2 P. 113, 13 Barn 92, 14 P. 521, T. & C. 467, 7 East 178, 7 East 31, 7 East 47, 7 East 209, 7 T. & C. 344, 1 T. & C. 635, 2 T. & C. 178, 1 East 209, 4 T. & C. 178, 1 T. & C. 635, 2 T. & C. 178.

reason is in the contract being executory it can be executed only by an act of law and the act being impossible without his assent the law will not relieve him for not doing an impossible act.

But if the promise himself incapable to perform the act he is immediately liable although the time of performance has not arrived. 5 Coke 21, 1 Str. 98, 10 Str. 2, 2 Str. 6, 6 G. & J. 110.

So short, but the above reason, a man owes a small bond conditioned that he will appear at a certain time and place before there the obligation is saved.

So a bond to money, A, B, makes another person obligation recoverable from the posteriors and to 5 T. & C. 479, 6 T. & C. 105, 3 T. & C. 344, 1 East 209, 4 T. & C. 178.

So an obligation conditioned to build a house in a limited time and is executed by obligee the obligation is saved. 2 T. & C. 645, 6 T. & C. 659, 2 T. & C. 645, 3 T. & C. 590, 2 T. & C. 343, 1 East 219, 1 T. & C. 453.

But if the obligation annexed to an executory condition to perform one of two things one of them becoming impossible does not discharge the obligee. 1 T. & C. 645.
It was formerly thought different 1 Rev 3:4, 6 Col 2:1, 10, And 26, 66, 17th

So if an obligation becomes morally improvable the event must be performed. This is the doctrine of the Pres. It as much as many be. 1 Rev 3:4, 6 Col 2:1, 10, 17th 2 Rev 16:5, 6 7 Col 2:1, 17th 8 Col 2:1, 17th 9 Ex 25:4, 2 Tren 31, 17th

Remark. The obligee is not bound to accept such as performance (same note)

So a bond contains a clause making the party bound a judge of performance the clause is void and the jury must be the judges. But Tren Act 4:28, 17th.

If the condition be improvable at the time of making the contract its operation depends on it being precedent or subsequent

A precedent condition is one which must be performed before the right or estate can vest.

Subsequent is one by which it may be defeated 2 Rev 15:6, 7 10 Tren 206, 17th.

If a precedent condition be improvable at the time of making the contract, the whole contract is void whether it is

in 2 Col 1:15, 9 1 Tren 43, 10 Col 66, 17th.

The effect I should think would be the same if the precedent condition was improvable at the time but become improvable before performance but then subject to

If condition be unlawful the rule is the same 2 Col 15, 17th.

But if a subsequent condition is improvable at the time the condition is void and if no effect but the contract is good and absolute because the law supposes the parties never intended that an improvable or unlawful thing should be performed 2 Rev 15:6, 10 Tren 206, 10 Col 66, 17th.

And if a contract is executory and the improbable condition subsequent the effect is the same and the reason is the contract is executory in both cases before the subsequent condition can affect it and a void condition cannot defeat. 2 Col 15, 17th.

But if the improvable stipulation is in an executory contract is in the body of the contract, the contract is void in the whole because the condition must be in effect precedent 1 Col 172, 10 Col 26, 17th.
There was a distinction at common law between simple and special contracts. But the statute of Charles II. has introduced a further distinction, unknown to the common law, viz., between parole or written contracts not sealed. For the statute 11 & 12 Car. 2, c. 35, 11 & 12 Car. 2, c. 35, 11 & 12 Car. 2, c. 35. The operation of the statute is that there are some notes or memorandum in writing made at the time and signed by the party or his agent.

The English statute affects six classes of contracts:

1. Any contract by executor or administrator to answer out of his estate for any debt or duty of the testator.
2. Any promise by one to answer for the debt duty or default of another.
3. Any contract in consideration of marriage.
4. Any contract for the sale of lands or any interest in them.
5. Any contract not to be performed in one year from the making of it.
6. In the English statute but not in our's any contract for the sale of goods of the value of ten pounds or upwards shall be utterly void unless some note or be made at the time or within the last three months from the time of the writing of the contract. (Roberts on Fraud, 1st Ed., p. 148.)

As to the 4th clause, for the sale of lands in any contract, parole contract concerning them for not exceeding three years, shall operate as a lease at will and by late decision, a lease at will is construed a lease for a year so that no parole lease for less than three years would be construed a lease for a year & for 3 years, The object of the statute is to prevent fraud and perjury in making such contracts.
As to the first clause of the statute,

It has been said that if the executor be, has assets of his own, and in his hands he is bound to pay a debt of testator out of his own estate, but not his assets, for if he has assets execution goes by his own; testator's; 5 T.R. 1, 2 B. 6, 5 T.R. 2 C. 25, 8.

The existence of a consideration will not make a personal promise in such a case binding a fortieth part of assets will not, 5 T.R. 6, 7 T.R. 35, 41. Cent. Cons. 2 B. 8, but not law.

Submitting to arbitration, it was once thought took a personal promise out of statute, but not law; 6, 7 T.R. 6, 7 T.R. 48, 3. But if on a submission

The arbitrator enforces the execution, he must pay a certain sum. This precludes the want of assets.

5 T.R. 4, 5.

Once determined that the payment of interest was such a promise as threat the asses pro

bound, whether assets or not upon executor's.

5 T.R. 5.

But if the acceptance of a bill of exchange by the executor be admitted, assets to that amount that 3 B. 3, 11 B. 11, 11th Ab. 6, 12, 3 T.R. 1, 2 Stain 12, 60,

So also a transfer of a bill by the holder, executor, is an admission of assets to that amount, that 11 B. 3 T.R. 1, 2 Stain 12, 60,

The executor's requiring such contracts to be reduced to writing does not imply that if the promise, 3 or in writing they are binding of course for if

the contract is guaranteed, the want of a consideration will not detract it 7 T.R. 35, 45.

A written promise under the statute will not bind unless the executor be would have been bound by


To make the executor liable on his written promise it must have been an existing debt due from

his Testator 4 T.R. 2, 2. 1 Stain 13, 11 B. 112, 6. 47.

And the consideration upon which the executor's promise is made must appear in the writing

or he will not be bound 5 East 10, 307, 11 B. 112, 6, 47.
And he must have been, administratrix at the time of making the promise or he cannot take advantage of the contract not being in writing. For if the promise to pay a debt if he is appointed administrator of the estate is not reduced to writing. Am. 333, Col. 297.

In an action against an executor or on his written promise to pay a debt of testator you need not prove affection. Rob 236.

As to the second clause, any contract to answer for the debt thereof is an answer to it. Where the general distinction must be between whether the promise is original or collateral. If it is original it is not within the statute, but if it is collateral it is within it and will not bind beyond in writing.

An original promise is one where the party promising means to make himself the original debtor.

Collateral where he means to make himself a security only.

1st. May 1817, Con. 227, 13 Bro. 206, 3 Barn. 1888, 8 Barn. 1112.

This is the universal criterion to which there is no exception.

1. A promise is original when the third person is not liable at all to the promisee, such a promise is not within the statute. That is, Dick 20, 212, 3 Barn. 1921, Rob. 207, 216, Paul 101, 281.

2. A promise thus made is original when the third person's liability ceases on the promisee's being made:

3. A promise is original where there is a consideration arising to the promisee at of a new and distinct contract or transaction. 3 Barn. 1876, Rob. 252, 3 Barn. 86.

A promise not given in writing is not within either of the three above rules. It is not within the statute and of course binding.

But when such promise is merely in aid of a third person extending liability as to procure further credits or where the promise is a mere guarantee it is within the statute and void unless in writing.

1st. 223, 311, 217, 1 Rob. 506, 1 Rob. 158, 2 Barn. 455.

To illustrate the three above distinctions:

1. Deliver goods to A and charge them to me, this
promissory or original and need not be in writing 1 T.R. 2d 7 T.R. 2d 3d, 1 Le Roy, 1881, 3 Rob. 217, 218.

On the other hand, if the goods be bad or injured, and if the debt be not paid, the promise is collateral and must be in writing.

Accordingly, my mother in law took back goods and I agreed, supplying me with those goods and payment will be made thereon, the promise is prima facie collateral. 2 T.R. 2d 3d, 1 Le Roy, 221, 1 Bar. 2d 158, 2d Manfield's rule 2d, 2d T.R. 2d 1, 1 Le Roy, 219, 220, 2d Manfield's rule 2d, 2d T.R. 2d 1, 1 Le Roy, 219, 220.

And now, this is that in a promise in this form, i.e. you will pay the court consider all the circumstances of the vessel at the time 1 T.R. 2d 137, 1 Le Roy, 219, 220.

What circumstances? I answer, many. I says to B, furnish such a vessel with necessary for a voyage to Canton and at the end of three months I will see you paid. Here is the circumstance of the probable duration of the voyage at the end of three months, i.e.

I recommend to you, worthy of credit, the trader says. I don't know. I says, you know me, I will see you paid. Here the promise is collateral and within the statute.


I promise if you will let your house to B, he shall deliver him back. Collateral. 1 Le Roy, 219, 220, 1 Le Roy, 219, 220.

A promise made that a promise by one that a third person shall be an act within a contract, what is collateral and void by the statute.

1 Le Roy, 219, 220, 1 Le Roy, 219, 220.

But if I promise to do an act for a third person for not doing which he is not liable, my promise is original and binding 1 Le Roy, 219, 220.

If in agent buys goods for principal without

or vendee, 1 Le Roy, 219, 220, 1 Le Roy, 219, 220.

If a promise is made by one of several persons already able to pay the whole debt the promise is original. 1 Le Roy, 219, 220.

1, 2d T.R. 2d 1, 3d, 2d 158, 2d 158, 2d 158.

If a promise is made by one of several persons already able to pay the whole debt the promise is original. 1 Le Roy, 219, 220.

If a general creditor or to contracts of the second

class, that when the promise is original, the proper

action is rendered defunct. But when collateral

and in writing Special 1, Prominent 1, 2d 37, 3

as to the second distinction. When the liability of the third person is extinguished by making the promise, the promise is said (and I think correctly) to be original. 3 Buck 188; 4 New Chit 130-1. It is however doubted by Roberts, Rob. 212.

A promise to purchase a debt against another is clearly original. So I think a promise to pay if the will electrify or discharge the bond is also original and binding notwithstanding the Statute.

Rob. 212, 1 Sir. Rep. 180, 2 Bart. 325.

3. as to the third distinction. Where there is a consideration arising to the promise out of a new and distinct contract the promise is original. The leading case on this subject is that of Wills vs. Leaper 3 Buck 1886, see also Clark St. L. 213. 2 Bart. 32; 3 Ersk. 66, Sal. 25, 27, 2d May 76-7,

When a person is under a prior moral obligation to do an act for another a subsequent promise to pay a person for having done it is original and not within the Statute. Paul I.P. 231, Peak 211.

101. Some general cases and the second clause of contract.

A promise to pay to a certain sum if he will withdraw an action of assault & battery which he then pending against B. The promise is original for it is not the debt of another until judgment. 1 Dods 355, 2 Day 257, 7 T.R. 26. Rob 213, 217. Peak 211. And it is a general rule that to make a promise collateral there must be a debt or affection, or capable of being ascertained at the time of the promise it must be made (same cases)

A promise to stay B if he will stay a suit for an executory debt against B in collateral 2 Web 92, 3 Rob 1887, 4 T.R. 201, 5 Ch. 873. It was if the will withdraw an action of slander. For that the right was made to & 55, 15, 17, 18, 19, 20, 6 J.R. 525, 7 T.R. 421, it is said that when there is a new consideration a novel because it answers for the right 55 or 425, 6th 22, 1883, but not when it occurs merely because would be good.
But invalidation of a verbal promise as it excludes the necessity of proof will take a verbal promise out of the statute for new no danger of perjury and besides the statute was not made to prevent what was a safe proceeding himself by swearing against his own interest. And it is a general remark applicable to the whole statute that the verbal promise is not void by it but merely the proving it by verbal testimonies if it would be proved. If the promise is good, 

Rule of pleading, see Title Pleading. I will merely state the general rule here. If a collateral promise is made in writing the Court in declaring on it need not say that it is in writing. Ray 459, Boult 102, 279.


And where the collateral promise is proof, and not avoid to be in writing a subsequent declaration will constitute it to be in writing. 7 T. & E. 35. Note 2 about 77-78.

A verbal promise in one entire transaction to pay the debt of another and also to do some other act not collateral promise is void. Because the promise is entire and a person cannot receive on a part of an entire contract. 2 Bent 224, 7 T. & E. 207, 504.


2. It is not mere clause of the statute, Promise in consideration of marriage.

This does not construct a promise to marry. The statute relates only to contracts made in consideration of marriage. 2 Bent 288, 1 Fould. 173, to Ray 386, Bent 34.

1 Fould. 173, 1 Fould. 173, Note 618, Case 40, 526, Such an agreement must be in writing.

An agreement that the prior agreement shall be reduced to writing does not take the prior agreement out of the statute. 2 Bent 277, 284, Case 40, 412, 1st B. 572. 2nd 573. Out of two additional agreements made and preserved from being executed by the fraud of the other party.
Equity will enforce the agreement on the ground of fraud.

1. Byr. 40, 28, 195, 180-7; Th. 12, 612, 15; Mel. 618.

No suit can be maintained at law not because the written promise is void for equity will enforce that on the ground of fraud. 236, 2, 146, 1, 96, 176, 197.

Statute says, Some note or memorandum in writing made at the time signed by the party bound be

Vince any memorandum be, although it is not a

binding agreement itself if it shows the terms of the

agreement is sufficient to take it out of the Stat. ex.

a letter written by one party to the other containing

the substance of an agreement 1 Fomb. 179, 2 C. 3,

2, 179, 3, 117, 3, 320, 1, 2, 4, 179, 1, 321, 3, 4, 313,

But where the writing is in the form of a letter it

must appear the other party accepted of the terms

contained in it and consummated the marriage or

did the act on that ground 1 Fomb. 179, 2 C. 313,

9, 173, 10, 277, 290.

Hence where the letter had not been seen when

the marriage took effect it was held not a binding

agreement or rather no agreement at all 1 Fomb. 179.

A letter to one's own agent stating an agreement

is sufficient memorandum 3, 28, 518, 2, 121.

But such a memorandum must furnish the terms

of the agreement or it will be defective for

uncertainty. 1 Fomb. 179, 1, 560, 1, 1, 26, 1,

12, 2, 293, 290.

A' is the proper clause of the Statute for the rule of law on the

under the Act lands which includes things annexed
to the land yet if they are sold for the purposes
of being served the contract is not within the

statute and need not be written e.g., as contracts for

trees, corn, groves, etc. but for real estate in the ground

it is said it must be written. 6, 28, 6, 62, 6, 62, 62,
11, 2, 320, 2, 318, 3, 47, 1, 59, 4, 59, 3, 45, 7, 16.

Book 1, 179, 2, 179, 42.

Vince it has been determined in this state that a

valid sale of a mining year of a mill or situate it

was to be served 3, 28, 173.
A valid contract between the owner and occupier of lands that each shall have a share of the profits is good. 

A personal promise to pay money for the conveyance of land is good. 1 Pet 1:7, 2:7, 4:79.

It was formerly held in Court that the action of Sodek-a-trumpet would lie to recover the value of land sold on the quantum realbat, but this is now overruled.

But notwithstanding the statute there are cases where a verbal agreement in such cases will be binding, as if a verbal agent is proved consistent with the statute i.e. without formal evidence.

First where there is no danger of fraud by perjury or where an act in forming the contract, the defendant in his answer confesses the contract. Here it shall be enforced for there is no danger of fraud or perjury, and not much danger that he will refuse himself by swearing against his own interest. 1 Kees 211, 244, 2 S. 85, 374, 4, 2d. 102, 155, 3 B. 3, 1 1 B. 601, 2 B. 68, 68, 2d 56, 58, 58.

Swain says the statute is complied with because the promise is now reduced to writing. Why is it not so? Is there any note or memorandum made at the time and signed by parties? I think not.

It has been determined that if the defendant confesses a contract in his answer but in his plea insists on the statute, he is not bound by contract. Rob 15:5, 161, 2 B. 2a 506, 4 B. 25, 2d 216.

On the other hand it has been determined that if insists on the statute in his plea after a confession of the contract it will avail him nothing, and he is bound by the contract after it is proved. 3 C. Chan 374, 2d 216, Rob 159-0, 1 S. 16, 3, 2 B. 68, 155, 2 B. 68, 504, 1 B. 68, 59, Contro 26, 1 B. 68, 2 B. 23, 2 B. 563-4.
In 2 Bro Ch 5. 49 there is a case which is frequently
misunderstood. The agreement in this case was not
denied nor was it acknowledged but the 2d chandler
explicitly says that is not the ground on which
he decides but it is on the ground that the
agreement was unenforceable if it was
nuisible.

Question. Whether on a Bill in Chancery for the
specific performance of a verbal contract for
the sale of land the deft after confessing the
contract in his answer can avail himself
of the statute by insisting on it in his plea.

While most Roberts decided he could not be held on argument of
this question is doubtful the following which I think depends upon it is also doubtful also.

Whether the Deft is bound in his answer either to confess or deny the verbal agreement 1 Swin. 168, 170; 2 Bro Ch 566, Mitf Ch 211-2, Rob 156-7, 160, 2 Atk 155, 2 Ves Jr 24, 271 El 68, &c. Good.

(161) On the principal that if the verbal contr. can be proved
without change of proving it will be enforced it has been determined that a verbal sale of land is
by a statute in chancery under an order of the
court is good 1 Ves 218, 220, 171 Ch 291, 1 Rob 354, Rob 115, because the master is a confidential officer of the court. (3 Bro 283.)

According to some very respectable opinions if a
verbal contract is inferable from any notorious
fact it is good. Thus an absolute deed may be
proved a Mortgage. As of one receiving the deed
Agreeably his note for the sum contained in the
Agreement or whether it is not, remains in the
res judicata. A may interest on nott. remain in the
profession of land, hay, taxes &c, a court may infer
and the party has a right to prove by proof
and the party has a right to prove by proof

...
There are other exceptions founded on the principle
that a stake made to prevent fraud ought not to
be so construed as to make it fraudulently fraud.
That would be the case if by not performing his part,
agreed to, he would practice a greater fraud than the
Stake was made to prevent.
On this principle it is held that good performance
of a mutual contract for the sale of land, is at the
request or with consent of the other will take the
promise out of the stake; for otherwise there would
be an additional fraud.
As if A makes a good lease to B and B erects in
pursuance of it and builds buildings and makes
other improvements, this is such a good performance
as will take the contract out of the stake. 1 Term. 175;
1 King. 29, 30, 1 B. & C. 111, 103, 237, 3 Waters 100.
3 King. 341, 3 do 278, 4 Cit. 130-8, 3 Wm. 133-5,
3 Burke 171, 4 B. & C. 397.
Delivering possession of lands is by vendor in pursuance
of a mutual agreement is sufficient performance on
his part to take the contract out of the stake. 1 Term.
199, 360, 2 B. & C. 363, 457, 2 B. & C. 144, 3 B. & C.
218, 4 King. 409, 5 Term. 91, 4 do 747.
On the other hand payment of part of the purchase
money in pursuance of a mutual contract for the sale of
lands is sufficient part performance for the vendor
to entitle him to a conveyance. 1 B. & C. 304-5, 2 B. & C.
153-5, 3 B. & C. 12, 3 Water 45, 4 Term. 175, 4 King.
192, 131, 3 do 140, 3 Com. 128, 3 S. & C. 711, 2
218, 4 B. & C. 254, 3 do 92.
Payment of earnest is not a sufficient part performance
it is not a set down after the agreement, and in pursuance
of the terms of it, but merely an additional solemnity
to the agreement. 2 B. & C. 560, 4 Term. 175.
Such indeed absence that damages for the non performance
are not recoverable, than in earnest paid but I dont
see an adequate ground unless he means that the money
shall be prohibit by written evidence for there is no need
of proving part performance. 1 B. & C. 304, 2 B. & C.
183-4,
But to take a verbal agreement out of the statute by which performance the act done must have been one by which if the agent is not enjoined he will be prejudiced. Hence part performance by one of the parties will not make the verbal agent good as to the others. 7 Caves 361, Rob 134, 6 Brev. 69, 65.

Again, the act done must have been done with a view to part performance.

Thus, a lessee, agreed with his lessee to give him a new lease for the third after the first should expire. The lease held over. This was adjudged no part performance because it did not appear to have been done with that view. 9 Ves 90 377, 11 Ves 307, 2 Brev 356, 1 Rob 201, 1 Tord 195, 3 Ath 4.

But giving directions for the performance of a good contract concerning land is having it proved, surveying it going with the vendor to view it, he is not a part performance. 1 Tord 175, Rob 139, 162; 1 Brev 26, 1 Rob 64, 3 Ves 93, 171, 379, 6 Coo 14.

But on a verbal term in consideration of marriage the act of marriage is not of itself part performance for that would imply that clause of the statute. 1 Brev 347, 1 Brev 174, 1 Rob 961, 1 Ves 358, 12 Ves 11.

It seems however that a verbal contract made by a third person would be taken out of the statute by the marriage itself if the marriage took effect by his consent. 1 Ves 394, 1 Ves 309, 1 Per 64.

The cutting down timber trees on land has been held in for the manner of cutting it, to be of sufficient part performance. By but who did it or contracted to do it. 2 Brev 97, 1 Ves 304.

On the ground of preventing fraud, a written contract may itself be contradicted by verbal evidence. 7 Ath 379, 1 Tord 148, 10 Wes 20, 2 Ath 203, 1 Brev 20, 1 Ves 294.

Again, a verbal agreement of any kind may be proved where it is only the inducement to the action of fraud.

If there is a written agreement for the sale of a chattel and the vendor warrants it sound by part how the verbal agreement may be proved in contradiction to the written. In Day 521, for example, in power of attorney.
An action of bindle, *promised with the use and occupation of land under 11 Geo. 2d* and a novel loan may be proved not for enforcing an agreement but grounded on a recovery for the use in 13 B. C. 165, 122; P. 378, 2 Bl. A. 1349; 12 Bli. 312, 7th. 1335, that *promised* would not lie at common law as 6th 284, Chit. P. 99, 15th 157, Beck Eq. 241. 

In Cont. we have no such fact as 11 Geo. 2d. But our courts have adopted the rule and principle of 6th Bag. 223, 

5th to the 1st clause of the Statute, *Cont. not to be performed in one year from the making.*

This claim does not extend to agree to concerning lands for such agreement the statute had already provided. 12th 276, 1st 157, 5th 327, 2d where the performance of a contract is to take place on the happening of a contingent event, which may or may not happen within a year, it is not within the statute as a contract to pay when a certain ship shall return from the East Indies 13th 108, 1st 284, 2d 50, 3d 125, 3d 125, 5th 14, 3d 14, So a promise to pay a sum of money on the marriage of another 2d 156, 1st 187, so short promise to leave a sum to a person in his will on death 2d 125.

And in no case where the novel loan may be performed within a year is it within the statute even though it was not as performed. 2d 156, 3d 156, 2d 156, 2d 156.

This clause extends only to such contracts as are not by the terms of them to be performed in a year. In Cont. it has been determined that where the contract is made on a continuing and accruing consideration it is good if it is to be performed within one year after the consideration has ceased to accrue as where a father contract with another by novel to Board his son five years. This was held good if to be performed within six years from the making 1 Root 19.

I find no such distinction in the English book.
The construction put upon this statute is the same in Law and Equity. 3 Bl. & Bl.

"Same note or memorandum of the contract must be in writing, the form of the writing is not material."
1 Tind. 179, 1 Tind. 237, 2 Bl. & Bl. 328.

But the writing must show the terms of the contract with certainty or refer to something by which they may be made certain. 3 Bl. & Bl. 318, 1 Bl. & Bl. 336, 2 Bl. & Bl. 236, 2 Bl. & Bl. 115, as if the writing states that the consideration is for the same price that A gave for it, the writing is sufficiently certain.

But if the thing referred to will not make the terms of agent sufficiently certain it is void and the terms cannot be explained by parol evidence to make them more certain. 1 Deo. 93, 2 Deo. 109, note.

An advertisement is a sufficient note. 131 252.

2 Deo. 171.

The consideration as well as the promise must be in writing except under the statute of frauds of the English statute where the word bargain is used which is held not to extend to or include the consideration of 5 Will. 10, 3 Bl. & Bl. 237, to exact them see 5 Will. 357.

The material in what form the writing is, that is to say, the method in which it may be construed as an executory, to convey or none is considered as evidence of such agent. But this only in Equity. 2 Co. 242, 2 How.

The agent must be signed. What is a sufficient signing?

If the name of the party is written in the body of the instrument by himself or authorized agent it is sufficient to be done with the intent to give the instrument effect. If it is a sufficient signing 3 How. 1, 8 Bl. 9, 2 Bl. & Bl. 247.

1 Bov. 193, 1 Bov. 260, 1 Bov. 359, 11 Bov. 179, 1 Bov. 176.

But if it does not appear to have been done with that intent to give the instrument effect it is not a sufficient signing. 1 Tind. 166, 10 M. & W. 774, 7 M. & W. 1125.

Formerly thought that the marking an allocation in an instrument was a sufficient signing but was overruled 1 Bov. 193, 1 Tind. 166, 6 M. & W. 774, 6 M. & W. 184.

But such signature as a witness where the party knows the contents of the writing, or any stipulations in it or has read it is bound 1 Bov. 260, 1 Bov. 359, 1 Bov. 176.

It is a rule that if the party against whom a
It is brought to the notice of the court that in the case of the third party it is not a case of partial fraud, 1 Bro 1364, 9 Term 732, 2 Term 373, 1 Ky 67, 20. 2 Sar 32, 1 Term 625, 7 Term 625.

It is urged in the present case that the proceeding of the party to sign is a sufficient signing on his part of the Bill of Sale. I cannot see the reason of the decision.

The bringing a Bill for performance or a sufficient acknowledgement of a contract although the Bill is withdrawn 1 Bro 32, 1 Rob 124, 18.


A valuable or valid consideration is something of pecuniary value as money, goods. Marriage & 3 Coke Ns, 2 Bl. 297.

Contracts are divided into two kinds—special and simple. These are at common law no intermediate class. 33 R. 351.

Special is one that is evidenced by deed or contract sealed.

Simple is one by hand or received to writing but not sealed. 2 Bl. 445, 475, 7 T.R. 51, note: Rob. 5, b. 99.

In Cont. any written instrument containing an express stipulation is in general treated as a specially.

All simple cont. i.e. (cont. by hand or written and not under seal) which are exceeding one with no consideration, 1 Prow 330, 335, 2 Bl. 445, 1 T.R. 122, 5 T.R. 142, 1 Term. 326, 333.

A cont. it is said when reduced to writing is good without consideration, 3 Bus. 1670, 2 Bl. 445.

But this is not Law. 1 Prow 333, to 242, 2 Bl. 445. But negotiable instruments which have been transferred on good without considerate but there are governed by mercantile law Ch. B. 9, 31-2.

7 T.R. 351 note.

In stringency a consideration is necessary to sealed in- struments but the Deed is not bound to prove consideration nor is the Deed permitted to change it, for cannot show the want of proof evidence that whether necessary or not the deed is good. 1 Prow 314, 3 Bus. 1637, 1 Prow 323, 1 Term. 334, 1st April 1279, 1550, 2 Bl. 275.

The Deed is binding unless the want of a consideration of equal authority. Rob. 5, b. 95, 7.

(105) The rule requiring a consideration to every contract applies only in its full extent to every contract

for if executed it is good without considerate as between the parties. 1 Prow 253, long 264, 9 Th. 335, 3 Short 577.

A consid. it is said can arise only in two ways.

First, from something advantageous to the party to the party contracting.

2nd is disadvantageous to the party in whose favor the contract is made. 1 Prow 342, 1 Term. 336. But this

rule is too extensive as is well by and by shown.

First a consid. may arise from something advantageous to the party contracting but.
by the way the quantum of the consider is wholly
innominateal Provided it have any value 2 Vorn.
273, 2 Rov. 182, 1 W. Il. 230, 2 Dec 5 17.
In the inconsiderable consider is not considered as
a consider in law 1 Vorn. 5 44, 2 Bell 23, 3 Vorn. 3 200.
But any act however trifling done by that party in
whose favor the promise is made is a sufficient
consideration 1 Vorn. 2 43, 2 Vorn. 2 27, 189, 2 Vorn. 12 8,
And the mere relation of landlord and tenant as
a sufficient considerans 5 TCR 2 27.
It should be a consideration may arise from something
disadvantageous to the promisee or if it is of no
advantage to the promissor but the act taken by
itself must be disadvantageous 1 Vorn. 4 55, 2 Vorn.
8 2, 3 Vorn. 74 55, 147, 147, 3 Vorn. 215, 2 Vorn.
12 8.
As a consequence of the first general rule it follows that
a consid. will not arise from any thing already
past and executed for nothing of advantage can
arise in consequence of such a promise which
is already past 2 Vorn. 3 18, 3 Vorn. 1 18, 8 5
4 2, 3 Vorn. 95, 8 7, 2 Bell 15, in part
but through a past consideration is executed yet
if must be subsisting at the time and not just
the promise is binding 1 Bell 7 5, 5 Vorn. 9 4,
3 Bell 9 1, 5 Vorn. 4 8.
The general rule that a consid. must arise in one
or the other of the above ways is not narrow and is
now somewhat relaxed 3 Vorn. 167 1 2, 5 Vorn.
183 7.
Thus a consid. on a consid. already past
is good if there was a previous legal debt or duty
incumbent on the promissor as a promissor by a
consideration that he had incurred his child here the
being the child owed a previous duty of 4 1 Vorn. 3 350,
5 Vorn. 260, 3 Vorn. 12 8, 3 Vorn. 167 3 2.
Again if there was a minor moral obligation on
the promissor the promise is good. as a promise
To pay a debt barred by the statute of limitations
1 Vorn. 3 2 6, 5 Vorn. 2 5 7, 2 Bell 4 3 5, 2 Vorn. 2 7 0 4, 5 Vorn. 1 3 3 5,
Bu. 8 2 14, 6 3 7, Clark 6 2 1 3.
As a promissory to pay for the future nursing of a natur
not child is good 1 Vorn. 5 6.
Again a consid. part will support a con.
 sideration arose at the request of the promisor to the
promisor makes it with the part cons acc. 2 Pet. 3. 8, 2
Sal. 110, 11 Pet. 2. 8 in 10., 2 Tim. 2. 22, 2 Tim. 2. 11,
1 Thess. 2. 13, 1 Thess. 3. 6.

It has been held that a promise to a stranger for a
meritorious act done by another will not support an
action in the stranger's own name for he is a stranger to
the consideration. Thus I am unqualified an 112 and in con-
sideation that it will discharge him of it says I will
pay. I may not now sue the promise it is said it is not binding
as 2 Cor. 3. 14, 3. 15, 4. Tim. 3. 88, 60. 2 Tim. 4. 17, 1 Pet. 6.
1 Cor. 3. 18, 3. 19, 4. Tim. 3. 88, 60. 2 Tim. 4. 17, 1 Pet. 6.

This rule is now confined to deeds. That it does not hold
in simple contracts see 2 Pet. 3. 8, 129, 60. 1 Pet. 5. 10, 11. 1.
John 15. 2, Joel 117, Zech. 4. 44, 5 Ber. 2. 630, 1 Tim. 6. 5, 9.
But it does not hold as to deeds see 2 Pet. 3. 8, 129, 60. 1 Pet. 5.
Ber. 2. 7, Leo 2. 727, 1 Leu. 2. 55.

It was always held that a consid. moving from one
person would support a promise to a third if the was
nearly related 1 Sam. 34. 32, 2 Leu. 2. 10 Tey. 3. 02.
1 Pet. 3. 53, but was extended to all simple contracts
whether nearly related or not.

Where the promise is in consid. of the forbearance of a
duit two requisites must be observed.

First: it must be to forbear the suit perpetually or
for a certain fixed period. Second: it must be
of an action to which he is liable, meaning a
considerable liability on his part. Both these requisites
must concur 10 Cor. 3. 57, 7, Gen. 3. 12, 206, Gen. 3. 9. 9.

As to first requisite, forbearance for a reasonable time
is a period sufficiently certain, Gen. 3. 12, 19, 35. 7,
1 Cor. 3. 57, 4, 5, 1 Cor. 9. 7, Matt. 10.

As to second requisite, if one is arrested on a void
as to second requisite, if one is arrested on a void
considering the promise in consid. of a release from
bonds and promises in consid. of a release from
bonds or arrest to pay a certain sum the promise
from arrest is void 10 Cor. 3. 57, 3 Salo 16, 2 Med. 5. 7, 8, Ex. 3. 8.
1 Pet.

But the promise is good if there is no considerable
liability to a suit, Salo 16, 10 Cor. 3. 57

But if from the terms there is no liability the
promise is void 10 Cor. 3. 57

The mere act of trusting property with another
is a sufficient consid. for a promise to same
act concerning it 1 Leu. 3. 09, 0, 9, 17, 0, Gen. 2. 6, 3. 10, 11.
5, 3. 37, 7, 3 Pet. 3. 6, 3. 20, 37.
The preservation of the honor and peace of a family is in keeping a sufficient consist for a promise. 1 Kings 5:8, 1 Par. 36:2,

If a consideration of a doubtful right is a sufficient consist. 1 Sam. 13:2, 1 Par. 35:3, 1 Par. 4, 2 Par. 27:4.

It is not necessary that the consideration should be expressly stated to be such. 1 Par. 65:2, 1 Par. 36:2;

I must look at their intentions.

1. The thing stipulated to be done on one side is in consist of performance on the other; the performance is a condition precedent. Thus, I agree to pay the consideration for building a house here building a condition precedent to payment. 1 Par. 13:6, 1 Par. 17:7, 2 Par. 14.


3. But what is equivalent to performance will answer the same purpose as performance. Thus if one of the parties delivers performance, the is equivalent.

1 Par. 63:8, 6:45, 2 Par. 6:86, 2 Par. 12:7, 1 Par. 12:6.

If the was at the appointed place and was not prevented from performing by the absence of the other party, whose presence was necessary or indeed if he was prevented from performing in any way by the other party, he has said that which is equivalent to performance. 1 Par. 2:0:3, 2:8, 6:19, 1 Par. 450, 7:2:125, 7:2:125, 6:24, 2 Par. 3:8.

If the promises in lieu consideration or consent, as if I promise to deliver the head of wheat in such a day, for such a price, then the act must be done or not. Shall rain 3:9, 2 Par. 14:5, 1 Par. 203, 1 Par. 5:9, 2 Par. 125:8, 4:90, 1 Par. 6:19, 1 Par. 5:9, 2 Par. 125:8, 4:90, 1 Par. 6:19, 1 Par. 5:9, 2 Par. 125:8, 4:90, 1 Par. 6:19.

If one promises to do an act in consist of something to be performed, the performance is a condition precedent but if it consist to be paid on a day certain, then performance is not a condition precedent for the consideration. I must look at the day whether there has been a performance or not. 1 Par. 3:8, 1 Par. 3:8, 1 Par. 3:8, 1 Par. 3:8, 1 Par. 3:8.
out if the time of payment is after the act is to be performed. Performance of the act is a condition precedent and must be performed and sued for in an action for the money. 1 Poo. 35, 355, 360, Doug. 660, 1 Bent. 177, 214.

3. Where the promise on one side is in consideration of the promise on the other, then the promise is independent and an action may be brought on either side without awaiting any performance. Doug. 359, 360, Doug. 660, 1 Bent. 177, 214.

But a court of equity will not enforce such a contract on either side unless the party applying has performed or is ready to perform his first promise. In that event equity must do equity. 1 Tom. 385.

7 Bro. Cond. 1st. 1846.

A promise in this form: "I promise to pay $100 to you, transferring stock to me on such a day." I think that is independent—see 2 B. & E. 392, 393.

But in consideration of the performance Doug. 660, 1 Tenn. 382, 383.

That it is independent—see 2 B. & E. 392, 393.

I also consider the promise is independent. In the same time without awaiting the promise Doug. 660, 1 Tenn. 382, 383.

645, 646, 670, 664, 705, 130, 805, 373, 374, 375, 376, 377, 1 Bent. 640.

Demarked that if the promise is independent, it is not dependent on the same time without awaiting the performance Doug. 660, 1 Tenn. 382, Comp. Sec. 3, 6, 7, 1st, 12, 1st.

But to English Courts of Law have been late learned against the case of a promise independent 4 Tenn. 761, 371, 372, 373, 374, 1 Bent. 617.

Thus mutual promises cannot be binding on either of them, but in consideration of the fact, independent in fact, generally they must be binding in fact and generally. In the case of a promise, if the contract is void on the reason of the lapse of time, there is no action for the sum. In the case of a sound contract, as in the case of a sound and good, an unsecured promise, for a sound one and 60 years for the value
here the fraud is in the concise of the bond, and does not extend it. But if the bond was falsely made the fraud is in the bond itself which makes it void.

But a Court of Equity will relieve against a fraud in the concise of a bond as other wise.

2 P. W. 272, 3 to 290, 4, Fow 148.

And the rule was the same at law in relation to all acts executed or it was with relation to deeds or specialties and that the party must haye and take the remedy for the fraud in another action.

But now the rule holds only as to deeds or specialties.

Os. & P. 233, 1 Comm. 39, 190-4, 4 Bliss 95, 4 Fow 453.

So further on this subject Title Lection on the bare 3579.

Our Courts hold that where the fraud is in the concise of a bond by specially and total it, the concise of no value that the instrument is void.

at law, 1 P. & R. 38, 395.

Integration of Contract

Is to effectuate the intention of the parties. To it, that some, according to the contract, may be. It cannot be carried to proof. That intent from Sec. 1741, every bond is to be construed to the fullest extent consistent of the language would admit. 1 Fow 372.

The language is to be understood according to its ordinary signification unless there are special reasons to the contrary. Why? Because so they are generally small and so they are supposed to use them.

2 Fow 312, 3 Fow 36, 4 Fow 374.

Words of quantity are construed according to their meaning at the place where used.

Sec. 172.

1 Fow 376. 3 Fow 378. 5 Fow 380.

Where the language is ambiguous its meaning may be collected 1st from the subject matter 2nd from the effect of the contract 3rd from the circumstances attending the transaction.

1st. subject matter as a covenant of warranty shall be construed to extend only against the party. 2d. Fow 425. 6 Fow 272, 3 Fow 473, 377, 388.

2d. From necessity, that it may have some effect.
may be construed to be a totally different instrument from what it purport to be as if a joint tenant makes
a deed of assignment to his co-tenant as this cannot operate as a gift, it shall be construed to be a release
of $100 a year, payable immediately, 3 Lev 21, 10a 322.

Second. If construing according to the ordinary meaning
would defeat the whole, courts may insert the meaning as it gives. As a receipt for $100 and contains it by saying
which 1 promise never to pay," this shall be construed
as a receipt for $100, payable immediately, 3 Lev 21, 10a 322.

On the same principal, which words of condition may
be construed as a limitation, 1 2 Esco 19, 1 Bent 292, 10a
9 295, 1 2 Esco 382.

Third. The circumstances attending may serve to explain
that which by the terms is doubtful. 1 2 Esco 9 295.
If one having goods in his own right and other good
as executor of another grants all his goods the grant
shall be construed to extend only to the goods in
his own right—3 Mod 278, 1 2 Esco 382, Litte nec. 535-67;
10a 62 9 295.

(105) There is a rule for construing releases or discharges
peculiar to this instrument, viz. When in a release
there is a recital of a particular claim possessed by
the grantor, the latter general words applying to all claims, the former as if it having
a judgment of $100 and a legacy of $5 due from A,
should make a release to B meeting the legacy
and recite, "in full of all demands it shall be
construed to be a release of the legacy only, 10a
74 2 Mod 277, 1st Ray 663, 1 2 Esco 391-2, 1 2 Esco 400, 173.
8 1 2 Esco 293, 1 2 Esco 493, 1st Ray 447, 1st Ray 447.

But on the other hand, where the release uses the
words, "In full of all demands without exception any
particular demand it is a discharge of debt or debts
whatsoever," 3 Mod 277, 1st Ray 119, 1st Ray 154-5,
1st Ray 204.

If the contract subject to the preceding rules is still
obscure, the words shall be construed most
strongly against the grantor or person using
them. 9 2 Esco 44 2 Mod 160, 161, 171, 287, 1 2 Esco 395.

But there is an exception to this rule in the
construction of a verbal bond. 5 2 Esco 283, 295.

Here one bound in a penal bond to pay at will
a sum if there are two feasts by that name.
A contract is payable at 1. Row 347, 8.

Another exception is when the application of the laws would occasion an injury to a third person, as of a tenant in tail leases for life without mentioning for whose life it shall be for the life of the lessor for if for the life of any other person it might be an injury to the issue in tail.

Subject to these rules the language is to be construed according to its general acceptation.

Moreover, when legal language is used it is to be generally understood according to its legal signification 2 Rob 253, 1 Row 402, Hob 217.

In equity, to pay what shall be proved to be due is construed to mean what shall be judicially so proved Hob 217, 1 Row 405.

Contracts shall be construed according to their general intent though it is opposed to some particular intent, or when land is given in trust to raise a portion for minor children from the rents and profits and it is found it cannot be done without selling it, it may be sold. And this rule is applicable to all kinds of instruments. Cho 262, 43, 613, 1 Row 408.

Where one has stipulated for the delivery of an article to another which is not delivered at the time, the value of the article when it should have been delivered is the rule of damages in action for non-delivery. To this rule there is the exception. If there is an agreement that the price of the article has since the time when it should have been delivered the value of damages should have been delivered the rule of damages should have been delivered 1 Row 217, 1 By 2.

For if several deeds are made at the same time between the same parties concerning the same thing all of them shall be considered as parts of the same contract, for instance — A mortgage with a separate agreement 2 Row 518, 1 Row 416.

Concerning settling, discharging or waiving Contracts.

And here I would remark that a contract with
accepted on both sides, either party may retract his offer but when once accepted it becomes a complete contract and either may compel performance or recover damages for non-performance. 3 T.R. 653, 1 Bow 337, 2 Bl. 41, 1 N. 41, e.g. A meets B in the street and offers him 3½ for his watch, while B is deliberating to withdraw his offer B says I will take it. Before withdrawing the offer says I will take it and offers to perform the contract is good and binding. 2 Bl. 447, 2 Bow 241, 1 N. 41, 2 Bow 65-4.

If upon such an offer accepted earnest is paid as a future time for performance is appointed the contract is good and if the property before the time for performance is sold to a third person who knows of the contract it is null. But if no part payment is made so earnest given no delivery had no time appointed for performance and the hatter estimates after making and accepting the offer the contract is at an end and not binding. 2 Bl. 447, 1 N. 41, 2 Bow 316.

(Oct. 25.)

Again if I agree to sell goods to B provided the should wish to take them on the morrow morning and B in the morning should give notice that he would take them still there would be no contract for contracts must be mutual both must be bound or neither since in this case only one is bound. 3 T.R. 653, see contract Bow 661. But agree before this case was determined. I now think this case good law.

Though once I doubted.

But when a contract is actually completed before a right of action accrues on a simple contract the parties may annul it by expressing their mutual consent to do it for then there is no conviction right to discharge. Con. 3 Bl. 64, 1 Bow. 147. 1 N. 41. 2 Bow 5-9, 12 Bow 5-3, 2 Bl. 383, 1 D. 41, 2 Bow. 144. 1 N. 41. 2 Bow 5-9, 12 Bow 5-3.

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But after a right of action has accrued even.
But though a ban agt. will not discharge a vested right still a long omission to claim under it will in some instances. But this is on the ground of presumed abandonment. 2 By, 2 377, 9 Mod., 2 3, 2 Case. 66, 4 116, 2 1 4 5 2 2 4 4, 4 1 4 9.

And an agt. of consummation and executed may be rescinded by one of the parties only when there is a provision to that effect in the contract itself. 1 T. R. 1 5, 46 9 1, Doug., 2 9 2, 2 3 9 1, 2 9 2, 3 2, 3 2, 9 2, 1 The R. 4 3 5, 2 2 2 4 5, 2 7 R. 2 0 1.

No Powell says if a contract with B for such a price as a third person shall name they cannot rescind the contract. 1 Doug., 4 1 5, 6, This is contrary to principal and I presume not law.

An express release is one by deed or instrument under seal. Such as is one which is implied from delivering the instrument or to be canceled. 1 Doug., 2 2 5, 1 Doug., 1 4 5.

If one proceeds to other form performing the duty prevented is discharged. 1 Doug., says the contract is canceled or destroyed. But I think the party prevented is still liable to perform his part of the agreement. 1 Doug., 9 1 2, 1 Doug., 2 0 6, 2 4 8, 8 3 7 5 4, 2 1 4 5, 4 1 6.

And the party prevented is in the same condition as regards his rights under the contract as if he had performed his part. 1 Doug., 2 2 5, 1 Doug., 2 4 7, 2 0 9.

A contract by deed or specially cannot be annulled or discharged by verbal agreement. every instrument must be discharged by one of the ways mentioned. 1 Doug., 4 5, 4 4 4, 2 5 4, 4 1 2, 1 Doug., 5 4 9, note 2, 4 6, 3 7 6.

It is said even payment of a bond or record is satisfied is no discharge but payment of the money due on a bond discharges it. But this is merely a distinction in meaning. 2 Doug., 2 5 4, 4 1 2, 4 1 4 6, 2 4 5, 2 5 4, 4 5 6, 4 5 4, 4 5 6.

When the right and obligation coalesce or meet in the same person the cove. is discharged.
A contract may be annulled by a new act of a higher nature for the same thing. The simple contract is said to be merged in the specialty, and so a specialty may be merged in a judgment. 6 Coke 45; 3 B. & C. 134; 21 Ed. 1; 3 8 Ed. 25; 7

The true reason for this rule is that it is presumed to be the intention of the parties. However, if A should give his bond to B for a debt against C, by simple contract C’s right is not merged by A’s bond for that is merely a collateral security. 10 P. 3, 32; 3 B. & C. 134; 2 Ed. 1; 3 8 Ed. 25; 7

A contract of any given degree cannot be extinguished by a new one of equal degree. As if A should give B a note for $100 and the next day should give him another note for the same sum for the same thing, the first is not discharged. 1 Bouc. 9; 2 P. 3, 32; 3 B. & C. 134; 2 Ed. 1; 3 8 Ed. 25; 7
If given in way of satisfaction it will discharge the first. But it can be proved that the second was given in satisfaction of the first. But the second note must be preceded by some of accord & satisfaction. 1 D. & 136, 5 & 1
17, 20 & 136, 5 & 28, 3 & 5 28, 25 1, 1 11 28, 3 & 28, 5 & 28, 3 & 52, 5 & 28, 3 & 28, 5 & 28, 3 & 28, 5 & 28, 3 & 28, 5 & 28, 3 & 28, 5 & 28, 3 & 28, 5 & 28, 3 & 28, 5 & 28, 3 & 28, 5 &
And where a court of a lower nature is acted in one of a higher nature merely to corroborate the former. The contract of the lower nature is not discharged or merged and the deed may be given in evidence to prove the simple contract. reason. The deed was not intended to merge the simple courts. 1 Bone 17, 1 Roll 118, 3 & 118 44, 1 Bone 41 28, 2 18, 2 18,
The End Of Contracts.

Litchfield Oct. 25th 1793 &

Econis Bates