Judge Gould's Lectures.
Vol 4 & 6
Signed: Cornelius De Bois Jr.
Actions ex decieto
Slander consists in maliciously defaming a person.

1. In words written or spoken which tend to injure him at any point of personal dignity, honor, professional or interest.
   4 B. C. 483. 4 & 14. Bull. 7. 3. 128. 3. 496.

II. Without words, or by figure, picture, or emblem, of the above tendency. 3. 496. 3. 125. 3. 2. 125.

Committee (according to the usual division of ways. 1. By words (spoken). 2. By writing. 3. By figure, picture, etc.)

Slander by words is of two kinds: 1st. By words in themselves actionable; 2nd. Not so, but in themselves not actionable, but becoming so, by reason of some special damage contained in consequence of them. 4 B. C. 483. 494.

The action of slander is an action of trespass on the case, founded upon the equity of the law of 10 Eliz. 2. 14 Edw. 18th.

The rules relating to slander, apply equally to written (4 B. C. 14.) but not universal.

They are to be taken as applying to both kinds, except when the contrary is stated.

I. Of Oral Slander. It renders words slanderous in law, jailing imputation of some personal ill will, or malice.

II. Of Written Slander. It renders words slanderous in law, jailing imputation of some personal ill will, or malice.
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- Evidence, but any wicked or immoral motive, if from ill will, if one should defect a wife, child or parent, the words would be maliciously spoken of A. (The word "malice" here has the same meaning as in homicide or murder.)

General Rule - For words in themselves actionable the party may recover, unless provoking the words, (some exceptions, p. 182.) by need of proving actual damage or malice. For "damage" is implied. - If such words pierce any person's mind, it is malice, but the proof of malice may be rebutted, in some cases, by proving that they were spoken under circumstances which exclude the existence of malice. (See Kent 4 B.C. 403. Bull. 1. 135. 115. 9th. affixed to by A. Man.

False pretenses. - 1st, Where a person might or join the character of his former tenant, this being considered confidential, ( sic. 18.)

Clauses of actionable words. - 1st. Those which bring the person of whom to invite danger of legal punishment. (Finch 115.) 2nd. Tending to exclude from society. 3rd. Injury in his trade or profession. 4th. Tending to injure one in his office. (3. 18. 72.) Finch 115. 6. 4 B.C. 403. 493.

According to the classification, words may be actionable, but if they do not injure one's moral character, they may injure his moral reputation, yet not be actionable.

1. Bringing into danger of punishment if the false words change a fact, which would mean corporal punishment.
Words are clearly actionable. Ex: charging treason, felony, perjury, etc. 4 Co. 15. 4 Bac. 483 ff. C 68, 638. 662. 169.
1 Rolle 65-6. 49. 64. 77. 176. 166. 186. 466. 20. 162. 114.

Words spoken which would subject to transportation are actionable. 4 Bac. 486 ff. 45-46. 1 Rolle 36.

Words charging what were subject to fine or imprisonment are actionable. Imprisonment being corporal punishment. 1 Com. 179. 1 Rolle 46.
C 15. Tal. 674. 2 Vent. 280. 281. 4 Bac. 486 ff. 1 Com. 179. C 138. 1 St. 185 (Tal. 674. 2 Vent. 280. 281. 4 Bac. 486 ff. 1 Com. 179. C 138. 1 St. 185).

Held in Court: that words charging what would subject to a fine, are actionable, or not, as the fact charged is infamous or not. So decided by Lord Atk. 1st Dec. 39. Are any such rules in Eng.? The books are not explicit on this subject. The cases cited below appear to constitute the distinction: 1. To charge with keeping a lewd house is actionable. Being infamous and punishable. 4 Bl. 168. 4 Bac. 487 ff. 52. 53. 68. Charging a punishable offense in positive law. Ex. not performing military duty. Not actionable. Because not scandalous.

Exh 497. That to charge one with any crime which makes the person spoken of little
to prevention & actionable (he cites Finch 2 126. 4 Dee 487. 46 60.) If not the two poor.
Suppose a case of mere trespass, charged (4 Dee 485. pl. 27 5 Ed. 104. 42 & 13. 4 De 483. pl.
55.) Which is indubitable. Is theliss this be action-
able? 
So that any crye case in which words have been held actionable under this head unless the offence charged might be punished corporally?

Worit charging what would subject to punish- 

tment were to be actionable, charge a 

criminal act committed. Charging word in-

tenting not sufficient. 5 Ed. 57. 57 59. 

Com 174. 4 Ed. 496. Dr. he gave &. counsel to kil-

me - to not actionable 4 & 6 15 Ed. (2 Ed. a to this 

e.xample - Is not such counsel a high misuse-
r-means?) Do I expect to sue him indicted for 

slaughter not sufficient. 57 57 59. But, is expe-

tive only of an expectation that he will state 

is. "If, he is in part for stealing a horse & un-

sufficient. 5 Ed. 497. 4 Ed. - For words of 
a similar import are held sufficient after verdict 2 Ed. 380 or 381. Are not these words 

actionable on demurrer? Sent not. The 

true meaning of the words are that he is 
in part on a charge of horse stealing. 

Adjective word under this head are action-
table or not. as the pre-suppose an act 

committed or not. For "Sedition" Sheriffs 

"Treason" do not sufficient. & Required judge-
sufficient 5 Ed. 497. 4 Ed 18 6 19 4.
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added - in a judicial proceeding - or in such a court - 4 Bac. 487 - 4 co. 15. C 89. 689. 3 ter. 114. - Without such addition the words are supposed to impart only the breach of some peace, or of a private extra-judicial oath. 2d qn. - Is this a fair construction?

See 2 Conn. 12 40. - Where a charge of
juryman, in a meeting of church -
was dignified actionable. Judge Scalne on the bench & held center -

to call one a thief after a penit pardon
is actionable. - pardon clear him from apper.
judgment 497. 4 Co. 81. # Bac. 487. pl. 52 - 3 co. 576
1 Rob. 95. - So, if the particular theft had been pardoned - suppose the words to be
"he stole me," would these words subject the
speaker - they are true - & therefore not acti-
able?

To falsely charging one with having commi
muted a crime of which he has been ar-
rested - acquitted - 4 Bac. 487. pl. 52. 1 Conn. 150
there is no danger of punishment in fact.
But it is sufficient that the crime charged,
is one which is of but a nature s, to car-
pose to punishment.

If the words charge a crime which it
appears could not have been committed,
they are not actionable. - "He has killed
... I. S. being still living. But that
supposes - I trust, that I. S. is then known
to be living - 498. 4 co. 156. 468. 5 co.
he killed me - But this matter must
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be pleaded as Esp. 9. cannot be pleas’d in evidence except on mitigation of damages.

But false charges of a crime, a description not corresponding to the crime charged, not to any crime be added, the words are not actionable.

Ex: calling one a thief, because he had committed a certain act—such amount on 10th Oct. 576. 1 R. 375. 8. Id. 1579. 1 Rell 377. 4 Ed. 17. 1597. 2 H. 6. 1491. 3 R. 341. Ex. H. 17. 4 Ed. 3. P. 335. Ex. "The stole my sheep; I say, timber.

But falsely charging a crime for which all prosecution is barred by the statute of limitations at the time of the words spoken is actionable. (Cas 82. 1793. 1264. 2d Ed. 101.) The statute is mere matter of defense to a prosecution—a proof of innocence would be. Besides, it is insufficient that the fact charged is of such a nature as exposes to punishment.

If words in themselves actionable amount to an innocent meaning, it lie on def. to show that they were used in that sense. P. 15. Pick. 4th

When words are claimed to be actionable, as imputing an act, or fact, punishable corporally, it is a rule that—If the punishment of the act be or is in the alternative to corporal or not—according to circumstances, the words are actionable, if the circumstances be such as to require corporal punishment. Otherwise not. Ex: charging one with being the father or mother of a
Stander which has been chargeable. This is actionable - albeit if the child has not been chargeable (at p. 3.) for a putative father is not liable to imprisonment, unless the child has been chargeable - 1 Bac 317. Civil 315. Sal 694. 4 Bac 487. 488. 4 Co 178. 4 Co 179.

II. Tending to exclude one from society or to charge one falsely of having a contagious disease: Ex 5 498. 30 Elc 123. 4 Cr 142. 1 Bac 488. 2 Elc 205. 4 Co 178. 4 Bac 488. 1 Co 184.

But the words to be actionable under this head must charge a present disease. St. 1189 - 2 32 473. Formerly otherwise 3 El 214. 4 El 430.

Under this head adjective words in the present tense are actionable - 12 Me 248. 4 Bac 488. 4 Cr 144. 6 El. "Leprous." 

III. Tending to injure one in his profession or trade: 4 Bac 490. 1 Com 182. Ex 5 498. 6 El. - falsely calling a Lawyer a knave is actionable - 30 Elc 123. Find. 2 186. 1 Bac 52. 2 35. 53 1 185. 32 - 56. 1 Com 182. 2 74. 28. For want of integrity is a disqualification for his profession -

To "he has accused his client secretly" (Bol 5 50. 1 Com 182. To "he is no Lawyer" no more a Lawyer than the Devil" - Bol 54. 370. 659. same reason."

"
To an action taken charging a lawyer with

unconsciousness in his profession — 4 H. 582, 297

To 489. Cite 267. Not 54. 291, 491, 1 10m. 182

Reason imprima

In this case the lawyer must state in the declar-

ation, that at the time of the words spoken by

him, he was a practicing lawyer; unless no injury is

assumed. Note 231. 4 H. 491, 1 237. 912 297

To 489. 336. "False imprisonment 9 15."

Proof of plaintiff's acting as a lawyer is prima

facie sufficient. 4 H. 381. 2 10m. 487, without

 heed of his admission.

So, false calling a trader a bankrupt, is ac-

crivable. (For, "he is a bankrupt," etc.) To he

will be a bankrupt in 2 days. 4 H. 193. 2 115, 92

To 499. 1 10m. 183. 4 H. 493. Not 299. 1 330

Not 11. For these latter words, tho' in the future

there tend to injure his credit, it therefore his

profession or trade, credit being deemed essen-

tial to success in trade

So to charge him with cheating his customers

to advise others not to deal with him —

4 H. 493. 2 10m. 293. 1 527, 480. 1 10m. 183

Burr 101, 1838. It tends to injure him in his call-

ing. For his occupation consists in "buying

and selling.

In action by tradesmen in these cases, it

must appear by laying a common law, or other-

wise that the words were published with

reference to his trade — 4 H. 492. Tal. 194

To 99. 109. 5 10m. 398. 1 237, 1 61, 109. 2 237

For, "Deb. a cheat." Here a colo.
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...lognium concerning his trade (i.e. an allu-
sion that a certain discourse concerning
Rabbi's trade, or concerning him as a trader
(511) to necessary to be laid.

But if the words were "he is a bankrupt" (Ex. 511) it would be sufficient I suppose merely to
over that he was a trader to 1 Lev 115, 250
4 Bar 4:12, 1 Lev 62 (foot 12) It implies a
reference to one as a trader - 2 Ki 12:4 - "He is invalid" would not - For any man may be invalid,
but no one except a trader can be in strict-
ness a bankrupt, under the Eng. bankrupt law.
If then the latter word were laid a colloquium
would be necessary - "to put deal with him-
he is a cheat" good without a colloquium.

Talcheth to call a unclean man a liar decided
to be actionable in "our S. 8 81 4" (Brock
y Bishop) Tends to injure him in his pro-
tection in Eng. to charge a unclean man with
principles he is actionable 3 Lev 17, 11om 181.
1806, 38, 296, 11.

To call him a drunkard - 4 Bar 490. 4:12
63, 1 Lev 259. 1 Le 946 to other points of
calling him a rogue to.

To call a Physician a Quack is actionable
able - Note 54. 11om 182. To say "he has
killed a patient" said not to be actionable
(Ex 127 620) unless it be added "knowingly" or
"wilfully" or the like - Clinch just centum
26. As it happens ignorance in his profes-
14 Bar 4:9, 11 Med 321 - were the same
words said of an apothecary were judged ac-
Slander

 actionable (Rule 999, 10, 176)

So, false words tending to injure a mechanic in his trade are actionable 4 Bac 481
St 398. They tend to deprive him of customers.

IV. Tending to injure one in his office.

Words charging one in an office of profit with want of ability an
influence an actionable 4 Bac 488. 522 523 2 28 1296 1 Corn 180
Sal 691. 1 Rob 65. For they tend to impair his livelihood.

But words charging a person in an office of trust or honor (not of profit) with want of
ability are not actionable; as, they do not impair his livelihood or moral character 4 Bac
488. pl 73 - 489 - Sal 691. 140 1050, if they impair his integrity Sal 691. 69 2 10 13
69. 4 Co 18 a 120 140.

To call a man a "Beelthheaded Justice" not actionable (Sal 691) not an office of profit.

Charging a person in office (an extra case) with licentious and principles, which does not
qualify him is actionable, without charging any dequalifying act; if the charge of
the dequalifying act would be actionable (Bull 5) he "he intends to invent the
government."

When the words spoken do not of themselves
imply to have been spoken with reference
t to plff’s official character - a colloquium is not necessary. [2^nd May 1869. St. 618. 4 Bar 489 pl 87.
488. pl. 74. [1st Nov. 280] to show the reference. II
in a certain discourse of concerning the plff’s
office be - it should be previously stated what
his office be is. The office of a colloquium is
to explain the reference of the words to some coll-
ocal fact - to which they do not of themselves
necessarily refer.

So the was the words in themselves import a refer-
cence to plff’s official character. E. g. 557. 125
280. 62. It is a hatredly justice - spoken of
a magistrate - it being alleged that plff was
a justice no colloquium is necessary.

So generally when the words are not actionable
except as the refer to some collateral fact
which the words themselves, do not upon the
face of them refer; a colloquium is neces-
sary to show their reference to the fact. Ex
To say of one who is a trader "he is a cheat" -
5. Mod. 388. 2 Sim. 387. Ex. 527. 2 Pza 1169.

These words will not import an action without
a colloquium laid, to show their reference.
In a certain discourse to touching the plff’s
trade do

Colloquium laid by Ex. 514. to be unnecessary when
trader is called a bankrupt - see - that plff
being a trader & the fact being alleged (the
fact itself happens) the words. I think ac-
egnification import a reference to his trade, as
one cannot a trader can be a bankrupt.
no authority cited by Ex. 10 see Lev 280.1 when
the word was "he is a perfidious justice" - &c.

Logiamus, helden unnessecary. 4 Bac 515 p 55

Do (1) Bell 54. C 270. 296 calling a play

Thee is no scholere. 4 Bac 515 pl 55. 12

62. Layings of a tradenome "do not deal

with him he is a cheat or colleagueum no

nesseary. 2 0 lay 14. 60. - Thee is a known con-

vein to holden not necessary 4 Bac 513

pl 36. 515. 0 2 240. 842. 372. 4 6 all these

case, however the plys trade or office must

be alged.

If the words themselves do not show their own

application by designating a particular

subject matter or the person to which

they are applied - innomenda are necessary.

Ex. We (meaning the plys to) 4 Co 17

The office of an innomenda is to explain the

application of the words to person, or subject

matter.

Rule "Nothing of no words which would other-

wise remain uncertain (ie to hearer)

can be reduced to certainty by an innomenda"

4 Bac 516. 4 Co 17 b. More correctly! Any

thing which taken in connexion with all

that passed between the parties, to the conve-

rsation remaining uncertain to the hearer

cannot be made certain by an innomenda

do. It can make certain only by re-

dereference to something said or happening

before, which is certain. 4 Co 176. 1 Bet 73

coa 684. 82. It certain person (meaning

the plys) "killed his neighbour" (meaning 83)

This being no other words spoken to identify,
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the person meant, *innuendo bad.*

Also, if in a discourse concerning the Deft the Deft has said "He killed his neighbor," then the *innuendo" meaning the plaintiff" would be good.

In *innuendo* case therefore never extend the meaning of the words beyond their proper import.  For "If I burn my barn" (meaning a barn full of corn) *innuendo" good; if no other fact or circumstance appear to make it so.  But if it had been proved that Deft had a barn full of corn, that in a discourse about that barn, the Deft spoke the above words; *innuendo good* Com 684. 275. 68 Re 511. 4 Co 120 a. Or E 834.

So he stole half an acre of my corn.  *Innuendo* the corn which grew on half an acre after it was reaped) *innuendo is bad.* 92 E 428. 92 Dec 52 p 1.  Court 684.  For it is inconsistent with the words.

When an *innuendo* is unnecessary, a bad one is blasphemy.  68 "He was justified (innuendo) in a certain bill exhibited in court, the *innuendo* is bad, but the declaration is good without it + Dec 516. 14 Bo 13. 120 E 609.  So "He has forfeited himself" *innuendo" is bad. *Innuendo* improper.  The words spoken can not bear such a meaning.

So if the person is uncertain from all the words spoken, an *innuendo* cannot make it certain "One of the servant of Deft is a thief."
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innuendo "the puff" - innuendo is not good 
Ex 511. 4 Co 176 1 Vit 52. Cor E 497 - 4 Co 245. 
so "one of you is unjust" - innuendo "the 
Puff" - is not good - 4 Bar 54 - pl 28. 1 Rolle 
51

It has been held, that when action is 
brought for words tending to injure in trade 
professions, office to it must appear in the 
decree by express averment, or in an 
court, that the puff was in the time of 
the words spoken of such a trade to 
Ex 515. 1 Vit 159. that puff has been a mis 
chant, tender to for "many years past" as 
current - Cor E 794. and he judge? 4 Co 205 
city. core - 4 Bar 513. Cor E 273 - Vit 107 
Ex 52 - Cor C 282. 1 Vit 225. it is that he 
shall be presumed from his averment to have 
been a trader at the time.

The weight of authority seems to be on the 
side of the question. But the words do not 
import that strict certainty usually required 
in the language of pleading.

So in case of a trader that he joined his 
living by "buying & selling" - necessary Ex 515. 1 Vit 29. But the principle can not 
require, that he should have joined his liv 
ing, exclusively by "buying & selling."

Words of heat & passion said to be not ac 
unreasonable Ex 520. 4 Bar 522. 1 Vit 49. 386 
185. Ex 29. 29. 

Rule - When they import no definite charge
as "rogue" "rascal" "villain" to - for these are words of mere vituperation & charge no specific offence (Is, perhaps, when wantonly provoked by others) seems if dealt in a paroxysm of uncontrolled anger, utter actionable words - 2 N 355. (Note 19) -

**Construction of words.**

Action of slander anciently rare, words thus taken in question denoted - afterwards frequent construed in devisor sense -

Note of actionable words in question denoted to new expound - they are to be taken in that sense in which they would naturally be understood by the hearer - Ex 5. 435. 4 Bar 497. 1 Co 6. 99. 275. 43 Bar 575. 4 Bar 4 (Note 198) Tit 12. 12 Bar 4. 41. 12 Bar 85. 3 Tre 401. 5 Lec 483. 3 (This volume not considered very good authority - many mistakes)

When words, in themselves actionable, admit of an innocent meaning, it lies on the deft to show that they were used in that sense - Peak Co 4. 2 N 355. 1 Vin 507. 10th 279. 3 do 180. Hence in such case enquired of, how he understood them - Semb - suppose the charge is criminal & so understood - vide also 2 Camp 374. 6 N 371 -

**Slanderous words in a foreign language.** actionable - if understood by any of the hearers - Lev 26. 43. 4 Bar 498. 10th 74. 3 Co 885. 7 N 126 -

All the sentences or language used at the time by deft in immediate connection
with the words complained of is to be taken together (Ex. 511). For the subsequent words may explain the former so as to fall short of slander. As in case of a description added—(ib 6) 4 Co 19 a Bully 2 M & D 159—"Itsein a scandal"—not in a company, and none at all stated in the deed.

First, will not the evidence to language to find an innocent meaning Ex. 512 6a "Your husband died of a wound upon face him." Sufficient though the wound might have been given by accident—Ex. 2 243—But 4—

To, a forced construction not join to make words actionable, which been joined face an innocent meaning Ex. 512 "He is a common maintainer of suits" of a lawyer. Lot 17. For it is his professional business to conduct suits.

General Rule Words must to be actionable import a direct charge of a slanderous nature not by inference—Ex. 512 6a 9 5. 1. got his manner by swearing &perswearing not actionable 4 Co 15 4 1. For general 2 They do not import any charge upon 11 I might have been by testimony of others 11 I could not swear in my own case—

Yet where the intent to charge a crime or any thing else of which the charge is actionable is clear the words are actionable—albeit, the somewhat indirect—Ex. 512
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But. 4. 1 Cor. 185. "I will make you an example for a perjured person." Note 49 & 45. Gede 160.

To. I will prove that he perjured. 1 Cor. 185. Note 52. C. 3. 9. 6 Cor. S. 30. 16 Cor. 276.

To. When will you believe the charge you have uttered? 1 Cor. 184. 1 Note 48. 2 Cor. 112. 12 to 134.

The generally actionable words prompt price imply quality; the presumption upon the circumstances, the parties, the time of the confidences, and communications, which exclude the probability of malice. The character of a servant and a person is liable, on a reasonable inquiry (p 2) the false (is not part due) malicious must be proved. 4 Ben. 2422 171 110. 2 Ben. 7, 91. 4 709. 66 702. 9 5 7 110 7. 5 5 5 587.

Informations on such points is useful & important ought not to be restrained. In such cases the facts communicated are presumed to be of a private nature & probably confined to Deff's knowledge. So that it would be difficult to justify if they were true.

So, where one confidentially by way of warning to another, laid of a trader, he will be a bankrupt soon, the words were held not actionable. This special damages were stated. 66 709. 4. 70 12 501.

The retailing slander fabricated. Gander 49.
generally actionable: 5th. Sect. 37. 6th. Sect. 2, 17. Case of the true name being altered at the time. 12 B. 182
- 5th. Sect. 47. 3d. Sect. 225. 752. 17. 2 East. 228.
6th. Sect. 4, 535. 4, 313. 24. 7 9th. Sect. 533, 125.
5th. Sect. 2, 92. Last report held ext. 4, 313. 395.

But circumstances are carefully to be regarded in each case, as to the intent, 4 P. 38.
5th. Sect. 2, 92. What is the intent of the person. 
I have heard that 5th. Sect. 2, 92, 4 P. 38. 4, 92. 10.
5th. Sect. 2, 92. 4, 92. 10.

Deeper suspicion & knowledge are justifiable, 5th. Sect. 2, 92. 4 P. 38. But it may appear in all

acting the presumed suicide. I could think

as much repeating the words of another should

be liable: whether he believed them or not. He

might truly give his information who might be

a bystander. Words uttered to prevent or

questioning by others himself, but ac-

petent. 5th. Sect. 2, 92. 4 P. 38. 5th. Sect. 2, 92.

"What you say I am surprised" Ans. "Yes, if you

will have it." (p. 14).

Jurisdiction.

The truth of the words is always a complete

justification. 4 P. 38. 10th. Sect. 47. (Sect. 8. 9

cited earlier) For words to be slanderous

must be false.

So, the deft may sometimes justify the words

in themselves actionable of false,
or rather false of an actionable kind.

So where false words are published in a

course of justice, viz. in declaration or cont...
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4 Dec 499 - 518. 1 Cl. 194 - 626 879 - 4 to 14 -
Cm 6 2 39 - 5 28. Test 132 - Halt 113 - 14 Note 43 -
3 Law 138. 113 - lb 285. On an action of the peace
otherwise it would be dangerous to prefer com-
plaint to suit of justice (to see 826 32 for
laws used in giving charge of another to an
officer, or a complaint for a crime - (the
for malicious, proved may lie)
But it has been held that if a charge sworn
not complainable by the jurisdiction to which
the action lies to have - under jurisdiction 826 503
460 14. LC 6 2 39 - 5 28. Test 132 - 14 Note
34. 1 Cl. 194 - 626 879 - 1 224 A 35 1. 6 32
8 5. 1 Sane 32 n. 1 - 224 879 - 5 28 - 129. 19
12- Longer the suit comes not to be Law (see Mar-
ting - Prosecutions) P 23 - P 3. F. thinks con-
spiring prosecution is the proper remedy

By the person charged in articles of sworn
plaint (no, the suit, exhibited under oath)
may justify charging the complainant has
acted falsely. For this is in his defence as
a suit of justice - 4 Dec 499 - 5 18. Note 87
2 132 n. 89 -

6. a party to a suit may say that a witness
is prejudiced by way of objection to his ad-
mission - 1 Cl. 194 - 132 n. 1 - 3 Law 138. 113 -
132 n. 1 - 2 132 n. 87 - If his
objection is false not liable -

122 used in a complaint to a second ju-
stice, or proper magistrate or in an act
of writ not actionable - 4 Dec 499
2 132 n. 47 - 3 Law 138. 4 14 82 - 82 - 5 28. 32 - Law,
no one could safely complain of an offence
So, if words used in petition to legislature for redress of grievances delivered to the members shall 2 Ser. 131. 2 Buse 810-11. 5 Buse 110 n.
This is to preserve the great legislative privilege of petitioning -

So of words used by way of defence, by a person accused before a Church presbytery - 5 Buse 110 n. - 1 Busey 178.

So of words used in pronouncing the sentence of a Court Martial - Ex that the charge were false, malicious, & groundless, not liable 2 Ada 341.

"So, if one falsely, maliciously & without provable cause - Exhibits a complaint to - an action for malicious prosecution is lie 14 Buse 500 "Malicious Prosecution" but not an action of slander -

So in general in the above cases of complaint or prosecution, if the cause of justice is made a mere cloak for malice - action for malicious prosecution lies - Sent. 4 Buse 809. 3 Buse 126. Finick L 305. & Mc 116. (not as in Grand Jury) 17 Buse 838.

So slanderous words spoken by witness in Court are regularly not actionable - 4 Buse 499. 518. 2 Ex 236. 2 Bulk 269. Kent 11. Seeing if he goes beyond the issue of slander to slander a 3rd person - 5 Buse 504. 4 Co 14.
Suppose he do slander a party - is this as remedy? The books are silent on this point - I see no
reason why he should not be liable as well
as when he slandered a 3° person —

To suggest a witness whenever he can not
verify his testimony by other witnesses, would
be both unjust & injudicious — no one would
dare to testify to a criminal charge —

So, if one witness, in testifying against, another
with having testified falsely, no action lies —

Ech. 585. 518. 1 Tann. 131. 4Ave 578. 1Cor. 194
Buss 187. 2 Bible 269. Kett. 11. Cor. 5 230
5Ech. 140. 2

It is only supporting his own testimony, or a
word by supporting it to be true —

So, that the words charged were spoken by

defendant, counsel in a cause, is in some

cases a good defence, or justification — in

cases not so: 4 Ave 498. 518. Bull. 10. 62 94

5Ech 140. 2

Rule. When the words (the false

true) are pertinent to the cause (it suggested

by the client) he is not liable — Ech. 577. 1Cor.

194. 4 Ave 469. 518. 2 Cor. 90. 3Bll 29. 1346. 1861.

So the client's suggestion as all important?


But if the words are unimportant (not suggested

by the client) action lies — 3Bll 29. 62 90-1

So as being implied in 3Bll 29. If the words

were pertinent are slanderous, it not suggested

by the client? Can it be right? —

Most of the lawyers however make no differ-
ence between those being suggested or not

suggested Bull 10. 62 577. 9ote 87. 2 25.
1 Cor 13:4. 1 Pet 3:3. 3:20.

Doe that circumstance affect the reason of the case, where by the Suspension, they are impudent - How can counsel be justified in impudent accusations by any one so foolish or directing?

It has been decided that for the purpose of mitigating damages, in favor of a client an advocate may use slanderous words not pertinent to - 4 B. & A. 498. Tel. 328. 1 Pet 27. c.10. In.

In a subsequent case (Stnp. 462. 4 B. & A. 498) holding that an advocate is never liable for slanderous words in defending his client's cause: It is his duty - presumed that he was influenced by client (later written does not maintain the last two cases) in. Is the rule founded upon any principle?

In deciding it is usual to state "falsely, maliciously, etc." "maliciously" it is said is not necessary. 1 Hen. 1 191. 1 And. 242. 1 35. 512. 25. 251. 273. 523 (Cases) if the words are in themselves actionable, for malice in prima facie implied (is such word if false prove or imply malice in prima facie at least the fact of malice; But should not the fact itself be alleged? (as in murder) for the words do not necessarily imply it as a justification does. living to! They are not 392. 392. 392. 392. 392. It is the concern to consider the rule as law.
Slander

Heard up.

1. The plaintiff said the defendant had made false accusations that the words “rude, mischievous, and wicked,” were published. The plaintiff claimed that the words were published “maliciously” and were false. The defendant claimed that the words were not false, and the fact that they were published was sufficient to prove slander.

The declaration usually states that the plaintiff is of good name, standing, and reputation. The law presumes that the words are true until the contrary is shown.

The defendant claimed that the words were spoken “openly and in the hearing of others,” but not “in the presence of every person.” The court ruled that the words were sufficient to prove slander.

When there are two counts, one charging actionable words the other words not actionable, the court must determine which count is applicable. In this case, the court determined that the words were actionable.

The plaintiff claimed that the words were false and actionable. The defendant claimed that the words were true. The court determined that the words were actionable and false.

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In an action for slander that in itself is actionable, the fact that the plaintiff is maliciously false does not affect the case. In an action for slander that in itself is not actionable, the plaintiff must prove malice.
Placings.

Ex. Laying of a felony that he is, 

innocent - or a knows of the depriving him of a beneficial contract.

So where the words are actionable - the Plf

may state he prove special damage - but in

this case he can prove no other special dam-

age than that which is stated especially.

Bull 7. Exh. 520. 8 V. 133. 1 Pet 58.

What amounts to an allegation of special
damage 166. Bull 7. 365. 290. 372. 103

1 Dec 58. Exh. 396. 17 Dec 4 - Co. 499.

But where the words are not in themselves ac-

tionable held that special damage might

be proved under a general averment of damage

In 66. 1 Dec 195. Exh. 109. 439. 7 Bull 290

Eph. 525. not Law. Subs. The true rule ap-

pears to be that no special damage can be

proven, in any case unless specially laid.

Immaterial what the false words were - if

they are malicious & occasion special dam-

age - calling a single woman incontinent

by which he loses a match. 4 Dec 496 -

1467. Saying of a servant that he is dis-

honest - unfaithful - incompetent - or that

a Lawyer is insolvent to

In case of blundering a title (a, it is called)

by calling an heir apparent a bastard - it

is sufficient to show damages or probable dam-

age. 6 Leg. 521. Or. 213. 4 Ch. 17. 4 Dec 494 -

Pet 36. Exh. 525. Father or ancestors had

required a design to disinherit. Sufficient
General Rule: is Not Guilty.

The general issue is a denial either that deft. utspoke the words – or that they are not actionable for want of malice. As in the case of confidential communication before 1st 18. 17 & 19 Geo. 1st. 52-53 - Lev 62 12e. either or both these facts may be denied under the general issue.

In short: the general issue includes all defense (even that the words were true or otherwise justifiable) except such as arise from some act of the deft. amounting to a discharge but by rule of 2d. notice of justification must be given - Same Rule in NY but in my opinion that his defense is that the words were true or)

The general character as to the species of crime (not as to any other species of crime) charged by the words may be proved in mitigation of damages. - 1 Nott 354, 450. In such general notice till lately at least in Eng’d cases - 10th 140, 6 Nott 2, 518. 1 John 46. But it being of late that the cont. rule is adopted in Eng.” - 1 Mead & Selw 284. 2 Camp 257. Peck 636 537. 92 Am. 92. Acc. Parker & Swan 284. 6 C 55 U.S. 1820. Presuming charged - plff’s general character in point of probity & sincerity impeached.
The action of slander is proved, but other particular acts of the same kind, cannot be proved—when the charge is of particular act, \textit{Murder vs Murder} 2 Ch. R. 407; \textit{Bull.} 296. Real 5 Ch. 275. The actual use of the words charged are of Allen's peculiar character for if called a thief any particular theft might prove—

In Eng. a special justification can not even be given in evidence under the \textit{Full Henry} 3 Ch. st. always by the \textit{Act of Reading} 1 Eliz. 2, that the words were true 4 Eliz. 125. For 1260—

\textit{Don.} 373—Inconsistent with the plea—

In Eng. the truth of the words cannot be given in evidence under the \textit{Full Henry} even in mitigation of damage. \textit{Bull.} 1260—\textit{Ex.} 518. \textit{Bull.} 9, de B. case cited contra. Sue. Is it not admissible as a principle? See analogy of \textit{Assault & Battery} 15—

One recovery of damages is a bar to another action for the same words, whether the words are actionable per se, or not—\textit{Ex.} 519. \textit{Bull.} 9. No but a

\textit{Legent} action with lie even for subsequent actions.

Formerly necessary to prove the words precisely as laid—now sufficient to prove substance.

\textit{Bull.} 5. 2 \textit{Bull.} 47–6ch 520. 4 Eliz. 217. 8 Eliz. 150—

The persons of pronouns must not be confined to \textit{he} for \textit{you}—

In action of slander in part, \textit{Allen} after proving the words stated, may give evidence of other words of a similar kind, spoken at another time even after the action brought.
Slander

Said to be in aggravation of damages, 621, 518. Bull 12. Case cited. It may have that effect under the case.

But damages cannot usually be recovered for false words if I, words not actionable may be thus proved. II. Words actionable, while also may be thus proved. are a foundation for a distinct action. 5 154. 5. 36. 12, 74. 13. 2. 73. This declaration formerly taken big that the words not actionable might be thus proved—actionable words would red. is now exploded. 6 154. 5. 13. 49. 7. cases.

III. Words spoken after action brought may be thus proved; the wrong done by these words did not exist when the right of action accrued.

This same rule holds as to proving other likely to these words. 6 154. 3. 49. 18. 2 73. 2. 3. The real object there must be not to recover damages for the words not laid in the declaration, but to show malicious actual malice in theft. 6 154. 5. 528. Th. by. Th. they may, thus consequent, have the effect of aggravating damages for the words laid.

But when words spoken at another time are given in evidence under this rule, they may prove them true—to rebut the existence of malice 6 518. Bull 10.

But words not stated, if spoken at a different time must to be admissible, be similar to those charged. 528. (Laid) "the same words only".
SLANDER.

Some Place.

Bill 13. 6th 518. of which affect off 's char
acter in the same point, or in the same
aspect as the words, i.e. by both impeaching
his integrity - or his conduct in office -

English statute of limitations, as to slander, to
two years from the time of uttering it. But
extends on construction only, to actionable words
(6th 579. 13th 95) for in case of words not
actionable the special damage might not accu-
-rose till after that time, yet the words of the
statute are: "Within two years after the words have
been spoken." (Here within 3 years.)

(29.)

Generally, a joint act of slander by or to
two will not lie - 2 Barn 984-6th 574. 5th
5. 19. 195. 29. 4. 5th 811.- Yelb. 120. 1 -
Not a tort which supports an act: of course
no joint wrong. (5th 30. 39. 117. with 128.)
By a lie, not by two. And the right viola-
tion cannot be joint. By a of his not by two
(19. 17. 10. 31. 7. 60. 8. 8. 3.)
(T) (19. 17. 10. 31. 7. 60. 8. 8. 3.)

But two parties in trade may be jointly
for words spoken of them, as such, when
special damage is less tainted by the joint
3 8th 159. 2. Yelb. 1162. 2 Samw. 117. a x. Yelb
129. w. Here a joint right or interest or vic
lation - joint

Suppose the words actionable in themselves, it
no special damage alleged - go. (6.)
William: Scayant thinks the action would lie.
2 Samw. 117. a. w. - A why, not? actual da-
mage would be joint "damage implies or pres.
II.  Slander by writing or libel —

As to the nature of slander by writing or libel. Whatever words would be actionable if spoken are clearly so when written. Esp. 304, 536, 126.

But written slander is a more aggravated injury, as being a more extended circulation, being more permanent and being always deliberate, committed. 3 Bac. 490. 536, 126 made a matter of record in popular language.

Hence the rule does not hold always concerning (front) the 536, 504, save it refers from slander by words to this only; that it is actionable in writing or print. See also 536, 126.

But this is incorrect, words written are in many cases actionable when if spoken they would not be.

Definition of a Libel —

Any malicious defamation of a person (living or dead) made public by writing or tending to excite resentment in the object of it, or to cause him to punishment, odium, contempt or ridicule — 412, 123. 1740, 193, 352, 46, 158, 536. 4 Bac. 490. Definition seeming to have been formed with reference chiefly to libels considered as public offences. 536, 126 person existing as interest — (At 357)

For libels in general 2 reasons; by indictment or criminal prosecution or by civil action.
apparently the fault & & E. 100. Sect. 495. & 125 
2 Mc 1 345. For is the bad reputation of the par-
tion absolute a justification 2 Mc N 89. 7 524 
For its tendency to a breach of the peace is what 
renders it a crime. The object of the prosecution 
is not necessarily for a civil injury but punish-
ment for endangering the public peace. When 
the attack is upon private character y or the 
rule reasonable the on whom upon a public 
character) Truth of the words is a justification 
under our statute 12 Mc 357 and 12 N Y—

It is essential to the constitution of a libel that it be published. The modes of publication 
are various. 2 Mc 413. Writing it originally 
does not suffice the & dictated by a 3? person. 3 Mc 510. Earth 405. 5 Mc 123 2 Mc N 412
This being the essential part of the making of 

But much transmitting it without showing it 
to any one, is not a publication. 3 Mc 570. 9 to 570. 
but it is evidence of a publication if the Libel 
be made public. 9 to 419.

But comparing it, procuring it to be copied, 
reading it to others after one knows the contents, 
delivering or showing it to others after one knows to 
reading it in a letter to a 3? person, giving it 
in a public place, amount to a publication in 

For to be wilfully or purposely, instrumental 
act in making it public, y to mean the 
public of actual publication. 3 Mc 370. 9 to 530. 
9 to 3 Co 125 6 3 Dec 497. 1 Harw 145 2 Mc 370.
SLAUNDER

133 - 2 583, p. 1541, 1116, 2 ALB 1838.
312, 167, 483 - So that many may be respec:
y only liable for one single libel.

The sale of a libel in the shop of a book-
lender, or other is prima facie evidence
of wilful publication by him - ORR, on the
booklender, 2, sec 1644, Bunn 381, 3 5 116, 497 -
12, 14, 129, 182, 580, 5 Conn 1187 - So of a
sale by booklender to tenant - 2, sec 1642 - 5 -
It is prima facie evidence of publication by
master.

So of printing by tenant is prima facie evi-
dence as above - 2, sec 1643 - 2 ALB 11838. A
journeyman is a servant for this purpose.

But this presumption may in all cases be
rebutted, so that the sale or printing was in
master's order, or clandestinely, without his
knowledge, that he was disturbing or sick or
unable to attend to his business, that he was
absent - 2, sec 1648 - 2 5 1116, 131 - Imprison-
ment by priam face & sufficient excuse
for the master - 2, sec 1648. Servant also liable
- command of the master can not excuse a
tenant bound to obey only lawful commands -
2, sec 1647 - 8. Ignorance of the contents how
far an excuse see 2, sec 1649.

To sending it to the press for publication is a
publication in law - if the person sending
is guilty of publishing when it is printed
1st 201 - 6 511. For if it is published by his
consent or instrumentality, it 'giveth
per ilium, point per ilio'.
F. B. C.


But repeating part of it in manuscript without malice has been held as publication. Ex. 510. No. 127. 8. 1 Han. 197. 2. Mich. 140. But the absence of malice ought to be very clear.

Writing it to the person who is the object of it is sufficient publication for a public prosecution, as it tends to a breach of the peace. Ex. 510. 4. El. 147. 1. Han. 197. 3. Dac. 497. 2. Mich. 139.

Not so for a civil action. 2. Kt. 82. 215. 12. 33. 1. Mich. 50. As this tending it is not a communication of it to others.

And of course no injury to the reputation of the person to whom it relates.

If the letter was a friendly missive, or such to a person having a right to expect it, is it sufficient for a public prosecution? Ex. 510. Clear, not actionable. 2. L. 2. Brev. 151. 4. I should think not indictable.

Are all letters which support a public prosecution actionable? 3. El. 125. 3. Dac. 492. 2. Mich. 50. It is one of the few cases which I can find from some opinions; but it can not be universal.

It is in such written only to the person to whom the words apply.

Slanders.

Not only the classes of actionable words, already enumerated (p. 12) are libellous when written or published. But writing or publishing one thing falsely, which makes a mean odious, or ridiculous, is actionable. 3 Dace 492. 2 Wils 403. 30 Mass. 331. So (2 Wils 404) Lord Justice "Rogers' or "Rascal" is sufficient. 16 Geo. 3 and if it tends to vitiate only.

Is, disturbing domestic peace (said by Esp. 505) Law to maintain a civil action?

Writing or printing of one that he is a witch is actionable. 1 Dace 748. See, if System 2 74 3d 531.

The offence or injury of a libel are considered as repeated, or rather continued in every stage of its circulation. Therefore venue is charged in Engl. 13 R 570. 647. 1 Wils 178. If the action brought in any county, where it has circulated.

It is not indispensable to the constitution of a libel that the libellous words should be so direct & explicit that any or what will understand its application different if understood by any body.

The writing only expresses the initial, or one or two letters of the name of the person to whom it is intended, or professed name. It is a libel if the manner is such as clearly to identify the person. 3 Dace 493. 1 May 194. 6 Esp. 536. 2 Atk. 470.
Slander.

Action or indictment for libel will lie if several joint defts. - for the publication is an act, in which two or more may join. Rule 520, 2C. 984.

But for words spoken they can not.

If one writes a letter - another puts it printed.

The one that prints are read it - another.

Each one - each of these are guilty of publication - & liable to an action for publication - the essential part of a libel. (See last of page 32)

An indictment for libel, if the jury, "find the fact of publication & the innuendo," they are bound according to the law. Law rule to find deft. guilty. They have nothing to do with the question of actual malice, or whether the matter is libelous. There are facts of law appearing upon the face of the record. Whether libelous, or not apparent, from the final verdict, for if the libelous matter appears specially libelous, & the libel must be stated in the very words in which it was written, upon the record, a general verdict of guilty in case of libel is equivalent to a special one in any other.

As a special verdict on an indictment for slander. And if the matter is libelous matter is implied. 3 T. 2428, part 474. 5 C. 2082. 2 L. 451.

Suppose there is the deft. actually published, but that he had insufficient evidence as insanity. In such cases, the jury should not find the publication - so the court would direct. For the act is not criminal.
Slander.

In this country a different rule prevails - the jury are at liberty to judge of the law, as well as the facts, under the direction of the court - as in all other criminal cases. So now in Eng. by Stat. 32 Geo. 3. c. 117 N. 151.

III. Slander without words or libel without writing. Slander of this kind consists in emblematical representations as pictures, signs, effigies, etc. raising a falling before one's door, hanging him in effigy. Estp. 511. 5 Co. 125 b.

Creating a lamp before another's house and lighting it in the day time (it means a Lull's house) 11 B. & C. 26.

So, I conclude, painting a deck upon a physician's door.

Representing one's pernicious by painting on a tree. 491. Ex. painting one's likeness with

If so can - or in the act of perpetrating a crime, or in any scandalous or scandalous act or situation - in each case the application must be made out by inculpation.

In declaring for this species of slander it is said special damage must always be shown not actionable in itself. Estp. 511.

301 125 b. Otherwise it is said the important application of it are not made sufficient - be certain - said one. For the declaring of the spotters and evidence of the identity of the party labelled. 1 C. 14 (1615).
Slander.

By our Statute, common slander is pun- 
-ishable as a public offence (1st Conn. 220) 
sum not exceeding $34 - to county treasur- 
tor more inflicted -

Judge Gridley has no doubt: slander by writ- 
would be actionable - the Declaration should 
state this mode (i.e. the act) by which they 
convey their ideas -
The action of trover originally lay only in cases where one person the goods of another refused to deliver on demand but recovered than it his own.

Rense called Trover & Conversion - Inter also

The warrant "by finding" 3 St 152- S Dane 256. It was by the many other cases.

It is now an action on the case (strictly of trespass on the case) bound from Nat. Wilck 21. 3 Sel 1. 33 & 34, 2 & 302. 387. 371.

It now lies within to any one, who certainly take the

form of another. 33 & 34, 2 & 302. 387. 371.

The move to the poor - among "in point of form" otherwise an action on the case would not lie.

And in general in all cases, in which one who is by any means possessed of another's personal property, will, through or wrongfully refuse to deliver the

on demand - 3 St 152. Hall 93. 519. 748. 326. 256. 371

The first instance of this action is in its present form was in the reign of Edw. VI. But actions of a like

similar instance had been brought in the reign of

VIII. 4 Bov. 4, 25 & 32, 387, 371.

The text of finding is more immaterial, as

since the feet. Finding generally stated, but not

always in Edw. or others, not understood.

Dip 377. Hall 93. S Dane 275. 2 Bulst 313. For the

manner of obtaining possession is now but in

all cases. (Dip 377, Hall 93) "Finding out the

veritable facts" as necessary for decision as to

it can not be specially denied by a

wronger, but must be done under the general
since that he ever had possession, of the joint
by "finding" or otherwise.

It lies in all cases in which obtainy be another
many others. But it has almost expired
attain, or the by certainly claimed to de-
scribing the pardon from usage of Law. 32V27.

General definition of possession—"I com-
jure allegiance to the face of the court of another
by of the one and I own." 6 Rob 212. 5 Bac. 257.
8. 2 Bulst. 281. Tit. 2 64. 5 2 64.

therefore it is pardon, it always consider, in a
misfeasance. And a mere non feasance
is never a conversion. Therefore a conversion
does never admit of a justification in pleading
a conversion cannot be unlawful.

The theft is by the form of the action always
supposed to have gained possession lawfully.
But the action lies as well if at before when
the original possession was, trespass 15 Bac. 256.
525. 52 64. 5 2 64. 5 2 64.

The theft being conversion, and the misfeasance
within 1. In an unlawful taking.
II. In an unlawful use.
III. In an unlawful detention.

The evidence of conversion in these cases, is di-
ferent 6th 590. 5 Bac. 288. or 288 269. 6th 657.
bpp 5 Bac. 257. Note 1. These acts are con-
structively a wrong put a missing to the same
the mode of proving conversion varies to cor-
correspond to the three kinds of conversion.

1. A tutoring, taking is itself a conversion
in Law. 6th 590. 5 Bac. 257. Tit. 2 64. 272 365.
II. By unfaithful acts - this applies both to
personal and static acts. 

For this is a wrongful affrming to dispense
5. B. 219.

When the taking is cut short, there must
be some evidence of an actual conversion
as in the following example - Ex. 580.

This being a thing entailed to one's care, found to
by an unfaithful user; it is a conversion 16.22.
6. A case of a box of goods breaks it open
2 Tul. 753. 2 B. 312. 2 112 753 arg. &c. Same with
finder of goods.

To destroying them, a burning paper found
into the water - Ex. 5 219. 301 153.

To by selling them - Rule 181. 1 Ex. 449. 2 724. 144.
1 ex. 311. 6 40 657. It is a wrongful affrming.

But if the volume of goods on destroy them, then - (52)

to pay & casualty with arisen - 1 Ex. 570. 10 136. 2 Rule 855. 5 Ex. 580. Act 248.

Bailment by extrajudicial by so wanted an act
(in Bailment) according to the it shows
original intent to action therein, & (I conclude) rendering his profession "dilatory" as usual.

[Note]: On things personal & real. In other words it renders his original profession "dilatory" (cont.)

Draining part of a cask of wine & filling it with water, by a conversion of the whole—Ex. 581, 1 Nisi 221, & 571—This is a compounding of coming to

But in the act of custody of a thing it is not an unlawful use—Ex. 581, 1 Nisi 221—It is a misappraisal (supra) T.M. 281, 8 Ed. 14 & 50 Her Conversion. Or, further of cloth under it to be moist, eaten)—So of perishable articles are inferred to be spoiled for want of care.

On 521— Only an action will not lie for rep.: Agent keeping - own) 1 St. Brev. 911, 1 Brev. 48, 5 Ed. 252, & 845, 2 St. Brev. 911, 1 Brev. 281, 244. Tal. 555, 143. Roll 1, B. 55, 5 Brev. 521, 1 Brev. 243, & 5 Brev. 269—Special action on the case lies in case of this kind.

Ex. 570, Tal. 555, 1 Brev. 911, 1 Brev. 252, & 845, 251

If全新 lies the goods from his use—Tal. 655, 143 & 5 Brev 1, & no misappraisal. Where liable for lost by dilatory—unimportant, or act of a stranger in the concern, is by spe.

Special action on the case—Actual being accused.

If tenant being on Brev land, it asked leave to take it—Opposed to was holden not
faulty if a conversion: no illicit meddling: no
mistnance: S 39 S. 29: 2 S. 39 2 S. 39
245: Inc. 5 39 S. 4: 2 39 S. 247 8: (bullet 6)

When I have been in distress, in entering
the land to take the timber without licence?
A where I do shoot falls in 30 land

(With 39, ge. 69 39)

If conversion consists in taking the property of
another: Inter: i: concurrent: Ball 191
49: 2 39 S. 147: 8 39 S. 69 22
2 even the money it costs for: The action
for money had to: If there is an un
lawful taking: i: subsequent date by the
wrong doer: the owner may have the
 após

III. Unlawful detention is a conversion as of the
least value, finds it wrongfully refuses to de-

II. I have on demand: if indeed there has been an
actual conversion, so by using, letting, acting-

ing to: a demand to replace is not needed

also, to a right of action: the: the possession an
lawful - 8 39 S. 90: 1 39 264

for there is then conversion without demand, a
conversion by unlawful use, of course the cause
of action is complete. But when the right has
been faulty, of neither an unlawful taking:

or of unlawful use. There is no right of
action till plaintiff has demanded the property;
if left he wrongfully refuses to redeem it:
For a refusal to deliver on demand is not of itself a conversion or unlawful detainer, for it may be justified. Ex. Suppose a copy of a judgment is to be delivered and a person refuses to deliver it, saying he has lost his copy. Whether the evidence was sufficient?  

Said may have had a lien on the property as an inkeeper, as carrier &c. But 12th. 212 &c. 752, 512. Sum 931. 2211 - 2. So if it may have been destroyed without his fault - or be lost - or stolen.  
Sal 155, 611590. Sum 2827. 270 71 522.  

If demand & refusal therefore are only evidence of conversion, or unlawful detention. 510. 289. 520. 315. 153. 2 714. 7179. 7187. 7187. - &c. per se only prima facie evidence. 2. 10 31 4 5 5. 2. 616 590. 3 1 1224. 216 155-6. 2. Denied per 1. 289. 12. 1 2 to be conversion. 480. See Conn 529.  

And if the refusal is not justified by law, the presumption becomes conclusive evidence to the jury of conversion - for in such case the detainer is of course unlawful.  

(54). A finder of goods has no lien on them at law. for his expenses &c, 274. 256. 281. 117. &c. therefore cannot justify a detainer under such claims. Of course liable in this action, after demand if he detains for this cause.
Out of the jury find only that Plaintiff was owner & driver in pp. & demand & refusal & not finding a conviction.

O cannot join judgment for Plaintiff. For the jury find only prima facie evidence of conviction 18 & 5 6b. 8th 570. 


This would be a special finding but a minor damage would be awarded.
If No. 1 timber float on No. sand, it cannot maintain from &c. even after demand & refusal. 27 No. 257 930 No. 257. 12 Nov. 245. 2 Oct. 240. But I may enter to take the timber.
( Bailment 36). Do not the finder take in the nature of a voluntary conveyance? Can he receive? I think not. No conveyance on that point.

If one having the phrase of another puts them into the hands of a third person in the command of the owner, this is conversion. Ex 581-47N 280. Servant is liable for an
conversion by himself the to the use of his master. 560-1,2,362, 1705, 328. Th 84, 1 Com 221. Bull 17, 2d, 2d 242. For master’s command justifies any other than lawful acts done by the servant.

Who may maintain trover. In general any one who has an interest in goods converted by another may maintain the action. Ex. Any to every bailee.

It is not necessary for Oblig to have absolute ownership of the thing Ex. Bailor may maintain the action by a third person he having the general property.

5 Bar 261-2 Roll 555-158. 438. Latch 217 (Bailment 102-3). (post) - But this rule does not hold unless he had the right of possession at the time of the conversion - (either the possession or the right of present possession previous).

If it is said because he may have title to the thing - as for injury done while the exclusive right of possession, he, the bailee. 1 Ch 12 167. 2 Nall 89 153-4.

3 Lye 289-337-90-6, 432 -11. 395. 2 Th 8. 337 n 13 a special action on the case for injury done to his possession interest, 7, 72, 149. 460.

430 - 8 John 431. "Bailment" 103. "Trust" 52-3 Esco. To bailee having special property may main
...until the action is a stranger - 1800, 6a, 44.
- Sect. 48; 8 D. 148. 1 D. 149. 4 Co 4. 352
- a common carrier; a special carrier, a.
- the former is 8 D. 148 - 1800. 6 Co 345. - 44
- 6 Co 569.
- 1800, 6 Co 345. - 44
- I conceive of every class of carriers: For, against strange, they are the o
- one that - special property is insufficient. - 1800, 6 Co 345.

If goods are sent by A to B not to rest in B,
- but to return a particular person for A
- the purpose fails, A may have these for
- after demand or refusal. - 1800, 6 Co 345.

56. - To a Sheriff who has taken goods in execution,
- may maintain it to any one who has wrong
- falsely taken them away. - 1800, 6 Co 345.
- 1800, 6 Co 345.

So, for, if a house blown down may
- have owner for the timber or a stranger. - 1800, 6 Co 345.
- 1800, 6 Co 345.

If, for, if a house blown down may
- have owner for the timber or a stranger. - 1800, 6 Co 345.
- 1800, 6 Co 345.
- 1800, 6 Co 345.

So, if a lawful possession alone or possession
- acquired under the claim of right, whether
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I 6 B. - A obtaining possession of the goods in a big box, he may have them as a stranger even tho' the real title should appear to be in D. (13)

But the possession must be acquired either legally or under claim of colour of right to entitle one to the action. For if gained without colour of right it gives no special property even as to strangers. 3 Wils. 333. 1 Tames. 47 & note. If one steals goods, he takes them per se, i.e., a new wrong - aver, or without a pretended right. See 2d to things personal 56

So, right of possession is sufficient as when

Deft having goods of J. S. wran obliged to deliver them to Plff. J. S. Creditors - action cal. 695 1Balle 26. 1Com 227. 11B. P. 242. 15 TA 446. 1 Balle 596. J. 12 9. The plff never had possession 2 Tames. 47 & note. For a right of property implies an interest

But a property of some kind is necessary, for when plff. had paid an order for goods to be delivered to his servant, action had accrued in the host in favor of the purchaser. Some property vested in him for want of delivery Bull. 35 B. 200 16. 30 186. 1B. 976. He had therefore within the possession in fact, for such a property as deems after it a possessor in law or right of possession. See 2d if they had been delivered to servant of plff. Balle 26 for a servant's possession is that of his master.

Fundamental distinction between d'possession - The former founded on property - the latter on possession - Bull 35. 695 576
But as to this wrong done, where original possession is taken, the distinction does not practically apply. Since either trespass or trover will lie. So in legal theory the action of trespass is founded upon
possession of trover upon his property.
In the ab. I conclude in point of fact only, where defendant's original possession was lawful—p. in case of bailee, for him to be who revert the goods both be. In the latter case there lie to bailee to pour bailer or owner on the ground of property only.

The actual legal possession at the time of conversion—being in bailee to. But trespass lie not in the case of bailee to be reason of his actual and lawful possession. As trespass is founded on any injury to possession. But as to a stranger, taking the goods from bailee to, trespass is concurrent with trover, for bailee (vide Depr. 82) in point of from possession (ie in declaring) self is always supposed out of possession at the conversion.

Uncertificated Bankrupt may maintain it. by a stranger. 1 Ex. 44. 4 Exch. 140. 6 Rep. 34. 2 Ab. 57. 9 Eliz. 3. 2 Eliz. 106. 3 Eliz. 8.

In every Executor could not maintain the action for oppression in testator's lifetime. now he may by the equity of the Stat. 2 Edw. III. de bonis non prolati; 2 10. 43. 6 Ex. 578. 1 Com. 219. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 2 37. 2 108. 
"Actio personalis moritur cum persona."

Said to have been held that an action of conversion in intestate’s lifetime, is supported by proof of taking in his lifetime or conversion afterwards. For the time of using lay is the knowledge of the law. 16 Com. 221. Esq 519. 1760. 169. But the Court considered the conversion complete in intestate’s lifetime. The taking was tortious 6 Eq. 584. 1761. 266. 29.

Bailor’s right to this action is said to be founded on his own liability to bailor. 2d (or least all) 312. I conceive, on the possibility of his being liable or by being accountable, and this always exists. 16 Dec. 209. 5 164. 212. 13 189. 89. 89 26. 80. 184. 4. 32. But this special property is the foundation of his right. (See Bailor’s Right.)

Doubtless, in the case of depositary. 5 Dec. 165. 162. 22. Is not the special property sufficient, which he has? 163. 112. Case of finder Lupa. Jessup alone is sufficient. Besides, he may be liable as bailor liable in all events. (See Bailor’s Right.)

If the deliver to the goods of J.S. the bailor by delivering them return to the bailor. Whatever may be his claim from J.S. claims — if such a claim is sufficient to bar an action by J.S. even if the delivery back is found the action 16 Dec. 257. 342 (2d 166. 7. 11 156. 15) in Bailor’s 169.

If suppose the deponent knowing the property to be J.S. he refused to deliver to him. To rest this evidence of unlawful detainer. The rule is not accompanied by any such qualification.

Accord by bailor, on 140. 310. 311. 312. 89.
for the full value being due... 1828 by 5 Dec 1828
263. 2 Roll 569. Date 1. III 12.

So bailee by doing the wrong done first, and, the bailee of his action (less) commenced, the action attaches a right of recovery.

So, if bailee has first, bailee is outside of his action of whom for the full value. But he may have an action for his special damage. "Bailment" 112. Analoging as appeal of debtor by master or servant, he who begins first on the same 559. Late 227 (p. 119) case, and escape to Shiff to "Bailment" 110.

Bailee by doing wrong done, discharged bailee, he owes his remedy. (less) If bailee does first, he makes himself liable to bailee "Bailment" 113-14.

Since (13 to 6) that he who has the "special" property shall have trespass, or the action to him who has the general property. See 756 112. See: The bailee may, doubtless, have special action in the case, to recover special damages. 5 Dec 185 5-12.6. Why, trespass, or trespass to the bailee? The action is not for the loss of the property, but for the use of it—of the special interest. The value of the property is not even prima facie the value of the damage.

Generally retaining the funds (after convocation) to pluff the court, not his right of recovery motto—suits; damage only. 627 531. 5 Dec 360. 5 Nov 242
Cg. 46. 1 Coal 221. 1 Roll 5E 40. 2010 29.7.5.696.
But when the conversion consists in a certain taking or delivery in demand - there can be no recovery in this action - that is, the only conversion complained of; if, of course, there being no damage for this taking - there can be none at all. Indeed, if any such instances were brought - vid 10th 31.

 recovery in turn, unless the property converted in debt - except when it has been returned - 5th 392. 1st 14. 2 the 10th 31. 5th 237. Otherwise the plaintiff would be entitled both to his property and also the value of it in damages. Indeed he might by repeating his demand maintain any number of successive actions - satisfaction of judgment or commutation.

 For a recovery by a stranger is a prohibition to the action - 6th 392. 4th 71. 5th 31. The can be but one recovery - 6th 392. 2 the 10th 31. That is, supposed to include the plaintiff to his right - 6th 1st 237. Suppose conversion by A to B. If recovery be an action - by A alone. The loss, his remedy by D to the rule holds, the judge judgment. B by A has not been satisfied. But this contraven the case of Evandro for W. 5th 31. 4th 71. B. & Bro. & 3d 181, 4th 30. 5th 237. 1st 14. 2 the 10th 31. 6th 392. And 2d 24. What is the rule to be applied? Whether the debt is not correct on principle or by the policy of the case? 4th 71. 30. 5th 237. The damage which enures to the maintenance of the recovery of judgment converted into a debt of record, so a recovery in Evandro (a) (the 2d 24. being been held) is a bar to recovery for the same cause - 5th 237. 4th 120. 17. When the debt is the cause in both actions, a recovery without satisfaction unquestionably bars a second action. Since a recovery in Evandro, when concurrent with wrong had the same effect (16) for a
Suppose A gives the goods to B, but they are claimed by C - that C does A for them to recover, does this recover for B's right or A? I think clear that it does. Note the analogy to the case of payment to a wrongdoer. 125. 2 Dec 11 126. 126. 129. 128. 122. 124. *Treadnott* 37.

Against whom Treadnott may be maintained.

So, as the wrongfull holder, taker, finder.

General rule: 

The owner of goods may maintain Treadnott, not only as the first wrongfull taker, but any subsequent holder, even a bona fide purchaser. *The* 525. 127. Treadnott, or finder, tells the goods. 120. 128. 129. 123. 124. 2 Dec 125. 126. 129. 128. 123. 124. - Provided the sale was not in market court. To of sale in market court was, in arising between seller & purchaser. *The* 525. 120. 127. Treadnott. - The receiver under the general rule is 'Clarendon Complex.'

- He who is prior in right is prior in law.

(12) - Exceptions to the general rule (as far as relates to other than first takers) in case of money, Bank notes, Bills of exchange - transferable by delivery. Treadnott for these can be brought only by first taker by reason of their currency. When they have been placed over to a third person, in a bona fide consideration, $5. by new holder - Reason of policy. 120. 121. 122. 123. 124. 2 Dec 125. 126. 127. 128. 129. 128. 123. 124. - Case of a bank note being for valuable consideration. 539. 539. 539.
Trower


When goods are pawned, pawner may maintain their
in possession after tender of the money on the day of
payment. 5 Den. 260. Co. 9 224. 6 El. 300. Dall. 72. 34 Ch. 351.
27 Ch. 214. Co. 9 244. 4 Term. 231. 1 El. 522. 10 Term. 220.
"Bailment." 29.

If pawned on a running contract pawner cannot
maintain liens, but he has, toward the money
advanced, a (debt) the lawful interest - 17 El. 133.
The action being not to enforce, but to be relieved
on the contract - a time being an equitable action
(Bailment 30). His claim to recover the pledge de-
ferred by himself, is considered a, standing upon the
same footing, as would a claim to recover both
a payment voluntarily made, as a donation, con-
tract - He must do Equity - "Vener," 23.

A parcel gift of goods, without some act of delivery
does not transfer the property. The donee of course
cannot maintain liens, & the action will lie
in such case as donee if be takes possession
(without delivery) El. 577. 11 Term. 239. 2 Term. 30-1-
Inc. Without demand as the case may be? Would
not the gift by parcel be a licence, under many
circumstances?

But delivering the key of the room, where the
goods are kept, to donee is sufficient - 17 El. 105.
Sec. 20. 192. This is virtually giving possession
called a symbolical delivery, or is not strictly
symbolical delivery. Vide ejectment must, cause
et. C.E. 15. (Add.)
One tenant or joint tenant, if a chattel man not maintain the action in his company's
advantage taken of him not guilty. (Est. 531. Ex. 290. 515. 1352 1312. Ex. 420. 577. 1372 1325. 13. 3841)
Profit of one being the profit of both or for both. Power of
be injured or one of them. This done, the interest in
case a tenant act by one, cannot be deemed
to have been done for or on behalf of the other nor
of course the act of both. Est. 551. 6 Litt 205.;
least 372. 373. 374. 375. 376.; 377. If brought by one only
by a stranger, plea to abatement & necessity)
Est. 205. This 125. 6 L5 344. Est. 411. Litt 323. July
520. Comp. 430.

For what does Steven lie?

Personal chattel in general.

This action lies for
those in actions of any kind. The only evidence
of property. The date need not be alleged. For
instrument being some paper is unable to recollect
the date - Est. 575. Ex. 190. 329. 312. 1. 150 371.
29. 397. 51. 5 28. 50. 125. 117. 625.
343. 552. 213. 654. 278. 708. (Est 6. 708. that it
lies, not.)

So for title, & if died Est. 542. 278. 708.
(Alphonse 19) It now lies.

It lies not in general for an animal per se
value, unless contains a valuable of not an
found no one has property in them. Only if
value, the loss of them would be of no damage
(13 Est. 255). This for each valuable animal
of any value it does. Ex. 219. 31.
19. 115. 4 Est. 255. 5. 650 115. 3 38. 548.
When wild there can be no property in them. 

A wild bird or beast upon my land.

It lies for tame animals in horses, oxen, dogs etc. (63) 

Hob 283. Is in some cases for animals not land or confined. Big being merchandise or valuable.

De monarch. C. 262. 5. Dae 264. Nov. 219

It does not lie for a negro slave in Eng. or Conn. 

5. Dae 263. L. 12, 144. L. 3d. 89. L. 12, 12, 4. 3 to 336. 2. Dae 201. (Cont. 3 to 265) Not a subject of property in his person. This time may be a property in his service. The action for taking away or entering upon one's slave is a special action on the case; laying a prejudgment arrest.

It lies not for conversion of a Record: because it is not private property. This is a public office. It does lie for copy of Records. (63, 542. 5. Dae 264. Hard 111.) Being private property.

It has been held that it lies not for money, unless in a bag to. That it might be identified, in distinct. C. 6 to 638. 581. 5. C. This is not now considered in law. For in latter case, it is held, that as the object is not to recover the property in specie but damages only. It does lie for money not the circumstances. 5. Dae 264. 1. D. 214. Note 5. C. 15. 10. C. 89. C. 6818. 8417 not necessary that the specific money be covered with the execution but only the same amount of money.
Truce.


(5) - The action lies for the conversion of paternal chattels, not: becoming a time gone another 1 year - note it from a conversion for which there will be (5 Dec. 25) is taking a clear from the place and carrying it away. 5 Dec. 25. In any fixture, or 1st being put to prove a fence - [But] of the conversion of possession as of his own parts - a proper reverence will be preserved after verdict. 5 Dec. 25. It is the action or a law.

To, of cutting and carrying away, to one another - and act a tree, or point crossing upon it - proving heritage - a standing (5 Dec. 25) The rule in all cases, suppose the levying - carrying away to be one confirmed act - or to be done in continuing.

But for tortiously taking a thing already known that it was before a fixture) there lies.

5 Dec. 25. Sect. 25. Be - taking away a clear or written alienage removed from its place - your proof being upon the ground or previously for - stand in the same. For in this case the proper - quy of strictly a paternal chattel at the time of the taking.

40. If I have another & point on one day I carry it away the next day (5 Dec. 24) I defy any law for the reverence - and force for the carrying away.
ship is no conversion - 5 Dec. 358. 2 Dalb. 283.
the murder is a justification (for each a case
that is a contribution to the mass of law
e in "insurence & Bailment") if the property
of one ars have changed (to save the ship) all
interest in the ship or cargo must contribute
pro rata "Law merchant."

Pleading

Declaration must state a place of conversion
or if saved to be ill us substance - 6th 581.
2 24. 78. Eco. - or instance at this time (2762)
it cannot be law (see "Pleading") some 8th but
for the former being transferred the same need
not be truly laid.

Declaration is wrong ought to show property
in 179, but stating fact 1/2 of his one part
by different - For that implies a property
5th 191. Mark 11. 1 Cor. 222. 5 Dec. 27
ed see 1 Samuel 719. 36 1323. demand 11 good
not even necessary to be stated - mere evidence.
But it really is "evidence because originally we
ought

Time of conversion must be avowed - formerly
for the convenience of the judge I was arrested
6th 548. 1 Cent. 227. 62 423, 1 Cent. 224, 6th 547.
Altem now - When the time of conversion was
laid before the time - the "afterwards amounted-
hold to sufficient to the deficient word.

But this would have been ill in special de-
conversion. It cannot therefore be wanted of fit -
Said that there are only two good plea, in things general issue & release, &c. 8th. 793, 1st. 385, 156. 6th. 276. But many have been allowed. See 6th. 198. 9th. 14, 6, 9, 99. 10th. 674. And so the 6th. &c. Indeed that justification is not pleasurable, for a commission is alleged in the declaration, is not justifiable being of or to term or to thing. Thus 6th. 9th. 3d. 5th. 146. Thus justification amounts to a plea of plea. For that however thing similar in effect to a release may be pleaded. Especially the accused and satisfaction. Some seeking to -

But a satisfaction (or rather a defense which furth to the plea's taking when a defense may be taken in evidence under the first plea - 6th. 593. Null. 48. For such a de-
the latter implying a wrong, to the act under
an Stat.: saying that a Convenance may be
justified, would be a legal doctrine.

Holding that the Stat. of Limitation in late
does not run on Groves - even when concarn.
riot with trespass: & when trespass if it
had been brought would have been barred;
also they must whether Groves if not barred,
in such cases —
Assault & Battery.

Assault is an attempt or offer to do a corporal hurt to another by force, but without touching — by slapping a weapon or fist in a threatening manner. (1250) 12 Eliz. 154 — 36 Eliz. 120 — Bar. 32. 3465

It is presenting a gun, drawing a sword, painting a pitch-fork at one within the reach of it — 22 Bk. 545. (Cen. 25b) 1 Nayl 133 — 4 the unlawful setting upon the person to be an offer to be beat. (Winch. Law 220) This is an inchoate violence, or amounts to an invasion. 36 Eliz. 120. (Bacot. 76). Eng. 185. the no actual personal hurt is sustained.

But a posture otherwise amounting to an assault — may be explained by words, to be as to fall short of an assault — 12 Eliz. 154 — 62. 3 days he had on his 'hands & legs' 51 days. If it were not a stage time & for the intention must co-operate with the act — to cause to constitute an assault. 12 Eliz. 312 — 10 Will. 137 — 2 Kilb. 545. (new 26 of battery)

Words alone then, cannot amount to an assault. 12 Eliz. 154 — 1 Nayl 133. 4 2 Kilb. 545. 1 Cen. 590.

Battery consists in the actual commission of the 12
= force upon the person of another (Cen. 312)
The least degree of it done in an angry, spiteful
intention, or under menace * i, battery — 1 Bae. 154
Ald. 149. 17. 1 Cen. 589 — 174 and 134. 16 — be putting
in the face — brandishing on the eye — (Where the
violence is only nominal the menace is required
above if there is actual seeing hurt inflicted
be post 3)

"The unlawful beating of another. (36 Eliz. 120) Can.
Is a battery of course unlawful? For it may be
judged (3 Ed. 120, 3044) - that it is often justified as a mediate means incidental.

Even Battery includes an assault; proof of battery, therefore, with support of a charge of battery, etc., as 1 Dec. 134, 1 Wash. 134 - 3 Ed. 184.

Menace of bodily hurt that is not amounting to an assault, for words alone can not constitute an assault, are in some cases actionable injuries. When they occasion damage or inconvenience they are actionable. Ordinary act - 3 Ed. 120.


The act of trespass or intimidation. (3 Ed. 120, 2 Wash. 545)

For it is indecent violence - Special damage by the act (here) should not be the form of trespass in the case according to principle. To entitle one to recover in trespass for a battery the injury must be immediate; i.e., the immediate effect or consequences of the force employed. But not to recover to battery that the injury should be the instantaneous effect of the direct act of the wrongdoer; sufficient is produced by a connected train of effects.

In general any wanton act by which one cause a battery & supports the action (2 La. Mount 295) - West threw a tangle into the market place which after discharge of a smaller quantity of hot, it implied event - put out Off 1 st 2 Col. 403. 2 Wash. 592, 1754. So if an elastic ball striking a person after it had bounded 10 lines, or 100.

For the particular distinction between trespass and
case the "Injuries in the Case."

To give another account amounting to conclusively, the letter from my friend in the third, the action lies, in the first.

Ex. 10, 11.

If a horse, taking sudden fright, runs on a person, the rider is not liable unless he was in some fault: - not his act - but if a third person unlawfully struck the horse, he would be liable for all consequent mischief. Ex. 313. 4, and 405, 168, 24, 108, 589, 108, 137. But (11) says that he is liable in an action upon the case. Ex. 108, 137 after 589, in case 2, 5. It not the wrong done liable in trespass, for a battery, the horse being considered only as an instrument employed by him - supposed that instead of an animal he had put in motion an inanimate body, as a machine, a rock rolled down a descent, would not trespass clearly lie? Nisbet 24, 316, 163, 384, 175, 523. It's like turning out a wild bull or tiger.

When a person receives bodily hurt from an act to which he consented, he may sometimes (11, 24) have an action, in other cases - Ex. 313. Rule 17, the act consensual to every legal he has, no case or remedy.Volenti non fit injuria is - Next by playing at cards, lawful. If hurt by breach which he consents - he has action (for breaching is unlawful) Dale 16, 170, 171, 174. - I consent could not make it lawful, it volenti non fit, not ap

This rule holds under strictly upon an indictment for battery, but how can the party beater recover in a civil action? For this the language is a lack.
Advent \\

and yet does it not make him participate crimine? or the party delicto potius est condiens ou 

sedenans? that the parties are both liable to an indictment that is no doubt.

So consenting to be purposely beaten does not justify the beating. Bdl. 717. Const. 718. Dall. 77. 2d. In the 

civil action? would not the above objection depend?

But that the injury accidentally happened in an 

amicable contact, or wrestling is a good excuse - 

against good. Law, Head 117.

If one in doing a lawful act as in defending 

himself accidentally hurts another, behind him, 

he is liable to the action. 1 Bk. 2 Sgr. 824 465

(k). Making intent is clearly not necessary in penal 

to subject to the action of trespass, or damage. Hence 

a maniac is liable to it civilly not criminally.

§ 136. If an infant of any age (supposed child) 


Ab. 301. a general rule that in case arising an 

delicto innocence of intention occurs. Law 54.

not universal (ibid 324. 620. 89) for the object 

of the civil suit is not punishment but re- 

paration for damage sustained? she who caused it hence innocent or just to bear the loss rather 

than another. If intent however is of importance 

in the assessment of damages.

But how far accident will excuse an involuntary 

trespass, has been a question of some difficulty.
According to Fontblanche it is sufficient to make one liable, that he has been the physical cause of the damage to another. (19th Sect. 81) This is too broad a rule. For it would not admit even inevitable accident, as an excuse. Ex. A man's falling on another. 11th Sect. 134.

It is said that inevitable accident or "inevitable necessity" only should excuse a battery, in any involuntary. 11th Sect. 134. 1 Com. 359. 2d Sect. 448. 3d Sect. 377. 2d Sect. 398. 3d Sect. 596. 4d Sect. 410. The 596-11th Sect. 81. In such case the injury done is not the act of the party executed. He is not in any sense the agent.

Meaning of "inevitable" that to which human care or strength can not prevent. But the act should be physically unavoidable. Yet if one defending himself accidentally strike another behind, he is liable. 2d Sect. 398. 3d Sect. 487. So if one shooting at a mark accidentally hit one another. So if his gun should burst injuring and hit another.

Rule (12th Sect. 16) happening that if a horse used to come away with a rider, take a whip. If in running injuring another; then rider would be liable on the ground of neglect. But here the remedy would be care for neglect, not the rider's act. 11th Sect. 285.

Rule is clearly that when injury is inevitable the agent, excused. 11th Sect. 134. 2d Sect. 398. 3d Sect. 377. 4d Sect. one taken, with the appropriate facts, in another.

One distinction I conceive is that if the act.
causing the injury is voluntary. If, if it is - the
injury itself was not intended - i.e. I am
defending myself. I hurt one behind me -
but when one without acting
becomes the involuntary instrument of damage
to another - it is not - i.e. I in walking
- incidentally falls on B.

According to 62 a trespass to be actionable
must be voluntary. 62 383 - cite 4 Burr 2092
For action too broad. In the case of 4 Burr
2092 - neglect said to be negligence - but that
was the case of a deer killed by 419 741
The self could not be considered as the agent
over the act, as, unless the injury was voluntary
on his part - i.e. if it had accidentally killed a deer.

When the act causing the damage is itself un-
lawful - the author is in some way, either in
field - or case - liable at all events for the conse-
quence. 1 De 2893 - 2 De 1574 - 480. 12 Tindall 39
Thur 295. In case of a deposit (ante) I let a
fire to Old building the fire is communicated
to others - I liable for the whole.

The above rule a. to accident to apply to this
- in general.

Defence. Three kinds of defence - Denial or Per-
ception - Excuse - Justification - Bull 77.

Affirmant & Battery are justifiable in many cases
Rom. 589. 3 Dec. 120.
but - The officer having legal power to arrest one
Assault & Battery.

may use violence in case of opposition, &c. to effect the arrest, &c. 19th P.C. 150. to any extent.

But a battery is not justifiable in the case where there is actual resistance - (2 Mylroy 2394) or an attempt to escape - 2 St. 1849. Bell 13. 19 Bev. 34. 3 Lev. 403. 1 Co. 6. 93. 2 Ch. 522. 3 St. 78. 299. Vann 9 296. to an arrest simply will justify an assault only - it is to an action of Assault & Battery the duty justifying both, by a mere authority to arrest (without more) that justifications is all. Seen of resistance is alleged - he may justify the battery also.

But in another manner, viz making the arrest justified the no resistance to 2 St. 1849. 2 Nuttall 546. 1 Burls 156. Bell 19. 5 Com. 335. (This is in strictness no battery) do arrest many plead a mistitne &c. to the justification of the alleged assault - but he must in this case deny the force &c. to the plea of not guilty. Thus is to, the force to not justify &c. to the resisting, mistitne &c. stating the special facts which justify it. 2 Ch. 523. 382. 9 Com. 17. 3 Hen. 3 &c. 1 Wilt. 30 (Part 16)

Thus of "mistitne &c. to" &c. it is laid in justification of the battery, alleged. 1 Clare. 1. Lord 246 in part 9 &c. well as of the assault, 6 Bev. 314. 5 Com. 355. 5 Merlin 3 &c. 1 Co. 6. 93-4. 1 Burls. 193. 1 Co. 3 Lev 524. &c. 314. 2 Ch. 523. Thus the Battery alleged can in this form of pleading be justified by some authority to arrest. To the court, on this, etc. premises, justifying the battery as shewn (Rule out law suits)
As to the battery plead Not Guilty.

But charge if man handle, wounding or killing, be also alleged, where the justificatio is a mere authority to arrest; Buss must be a tree also plead not guilty - as well as to the force & arm - The justificatio incriminates. 1ST: 71 - 299. 1ST: 293 - 297

To comm, opinion are that last must plead not guilty, as to the battery also, justifying only the assault, as a rebuttal. 1ST: 293 - 296. In 1ST: 231 - 2 Cent. 193 - 1ST: 293 - 297.

In 1ST: 407 - It is safest at any rate to try into the battery.

Battery is justifiable on the ground of self defense.

It is in defense of the life & person - be may justifying a battery by a battery. 1ST: 120. As if one strikes me right. I may strike him in defense to an assault. Also by MY by insufficient to justify a battery. By left I as by MY left a weapon to 1ST: 299. 1ST: 297. 1ST: 315. But accord the force.

A man dont always plead not guilty according to Blake 1ST: 1ST. 1ST. 1ST. 1ST. 1ST. 1ST. 1ST. 1ST.

In 1ST: 409 - It is safest at any rate to try into the battery. But he must justify the force se it other a wound.

1ST: 71 - 299. 1ST: 1ST. 1ST. 1ST. 1ST. 1ST. 1ST. 1ST. 297.

But there must be some reasonable proportion the assault or battery by MY. 1ST: 1ST. 1ST. 1ST. 1ST. 1ST. 1ST. 1ST. 1ST. 1ST. 1ST. The proportion is a question of fact, in every case - if lessen blow will not justify.
Assault & Battery.

A weapon. But if Plff strike, kept a single
immediately ending, & Plff is warned, kept if jurr.
- tried. Tal 642. 11. 2046. Est 315. Some of Plff
plea slight blow & kept in return wanting Plff to
a) to may harm.

The plea in the case of self defense is ten assault
denies. ii. That first assault proceeds from
Plff. i. that kept strike is self defense - Blund

But may harm it seems, is not justified by Plff's
agreement. Only the Plff's act ought be -
caused death by life, or murder. LII 177. Est 315:

As to the repetition of the injury to (De ver P'y.
120. 16.) the injury has property absolute like
cause of the 'technical phrase' of the whole plea
of self defense as mine - Vide from 2 Ch. 422
"that kept at the time when oe of his own wrong
without the cause, to have in his hand place
altered or furnished, bat to (concluding to the
country.) See Dunham "Title "Trinity,"

If the Plff was the blamable cause of the battery
(two he did nor strike or threaten to strike),
Plff is justified in some cases. See agreeing to
the statement of the case when Plff tilled the
heat in which kept was biting, to Plff bit off
Plff's finger LII 177. Tal 642. But the may harm
in this case seems to have been justified by Plff's act
in directing to gouge Plff - according to 11 Am 43
Tal 157.

So where kept thwarts his danger to post bite.
A man may justify a battery in defence of his wife. 3 Cal. 272. 4 East 30. 2 Wall 18. 2 Beav 82. Considered a self-defence.

Clearly a servant may justify a battery in defence of his master. 2 Beav 406; 3 Cal. 272. 4 East 30. 5 Fred 474; 1 4 Beav 454. salad 130; 11 Beav 524. 1 5 429

The battery in the case of husband, parent, or master, must have been actually in defence of the wife, or to prevent her from actual injury. It must be alleged in the plea.

So one may justify battery in defence of his property forcibly invaded, e.g. by breaking a door, gate or. But if there is nothing worse
Assault & Battery.

Thus a mere entry on another's close (which implies force in law only) the owner is not justified in a battery without a previous request in the wrong do to depart. Ecc 3:14 - 3:19
Scc 541. - 1 Rank 133.

In case of mere entry on land, also the battery must lie pleading, it is said, be justified, not as a battery but as a restitution to -
Bull 15-19. - Ecc 3:14-15. 2 Bov 82. - Scc 407-5: Tcm 335. (Am Plead 3:11 4:15.) 1 Bov 36-2 Ch 5 224 i. The necessity of violent re-
restoration is not deemed so great as in prior
case of self defence to - 2d Ch 11:87 A 38 entries.

The last two rules contemplate the owner of pro-
property in possession, it is founded upon his
right to defending his possession. But
when he is refereed to or dispossessed, a dif-
ferent rule now prevails, which a trespass
property was not known to Com. Law.

At Com Law one who had a right of possess-
ion or entry on land, was allowed to
plain possession by force from the defennder
Bov 5:55. 3d Ch 77 4 do 148.

But now by several Eng. Stat. (The first of
which is 3 & 4 Vict II.) One may not enter
on the lands of another is in posses-
sion (as by holding over after a time has
expired, or taking a vacant possession)
except in a peaceable manner (if) done
law by St of Ct. (St Ch 209) Entry & holding
by violence is such entry is called "violent
entry & detained" which by Stat is made Penal.
But these statutes contemplate only possession which is in some way the term leased abandoned by owner, as in case of lease, where the original possession is given to lessee. In case of leasing of which the possession is neglective to owner and vacant. A casual temporary absence from one’s property is by merely taking a journey, is not an abandonment so as to exclude the owner, right to use force of title doctrine only.

In case of personal property, owner is not allowed at law, to regain possession by forcemuebling, feloniously, taken.

Properly by base words, mere justify a battery, but may mitigate damages.

A servant cannot justify a battery in defense of his master, good. 

I suppose there to be two his special keeping over the house not justify? or carrying them from one place to another. The rule then to mean only, that the servant cannot justify much, because the goods are his master he not bring in possession.

Assault & Battery at different time cannot be laid with a continuance. Our doubt, duty of victim, and. 622, 341. For an assault is one entire indivisible act. Camp. 823.

In 316, 212, or 156-3. 183. 134, 52. 345. Phil E. 134, 85. (As to continuation, just - )

And each battery is in its nature distinct, but
doubt less Pllf may allege one battery on one day & another on another in the same declaration - thus, in different counts, & suppose battery one victim on several successive days, by the same person or Pllf. He can not allege there is a continued or a connection between, alike in some kinds of baterps -

For battery of wife Husband & wife should join and the injury should be laid as damnatio personam. For Husband is damned if by a fraction cost of living - if the wife is personally injured & the damage would turn to him.

Bp 316. 1526. 387. 722. 728. 2 May 1218.

If claim as damnation of the Husband only; declaration is ill, & judge may be arrested.

Bp 316. 2 May 1218. For he alone has no cause of action for the battery. He is a stranger to the right of action. Except for the relation in which he stands to his wife. Not therefore like the case of one of two joint tenants being alone for a trespass on the joint property.

If Pllf being a, Husband & wife are not both, it must be pleaded in abatement. Bp 321.

The 481.

If battery has been committed to Husband or wife he alone must sue for the injury to himself.


If both join in this case for both baterps at several damages, write abate granted Husband after verdict. Bp 316. 22. 12. 85. If joint dau.
If a city may lay on appropriation of damages it is easy many facts for which he could suit himself be:- Assailing tarrow without laying a fire proof before Sal 142 26th of 37th Dec? It 1 to appropriate damage directly or to show how much theehap was? If so within the circumstances as of course only under which it

At law a justification must be specially pleaded in case of battery or, sentence. It in other cases of trespass 6th 37. 6th 2.82. It can not be proved unless the general injury defense is inconsistent with the injury.

The circumstances which attend this transaction may be proved to mitigate damages where pleaded would have been a justification. See analogy content 6th 37. Ex 2.1.1. Year 6th at the time tending to excuse committing the theft beneath. So I think of any other justificatiation (25) Words 26 last letter.

If any justificatiion he must confess the battery or the plea is ill. Yet 36. Lat. 36 & 5. Then that theft horse ran away with him or he will be for time is no battery by theft - It is in effect the general injury. Meaning of this rule of the law can not plead in a justificatiion what virtually denies the battery. Defendant - See Precedent 2 & 8. 523. 545. (27) Rather the ground of more - time to disallow the plea.

The usual formed petition in a plea of non
Assault & Battery.

Assault re, 3 - the injury has prepared an exemption to the cause. Exch 357. Bac 155. 5 Com 354 -

If损害 plead, then assault re & ff can proffy that assault; he must reply it clearly for he can not give by justification vis evidence under the general replication the injury re Exch 27. Com 288.

+ The evidence would be sufficient to that replication. As such a replication denies that prior assault re, by ff; but a justification of it admits it.

Notice of exence (it is said) may be either pleaded or proved in evidence. Exch 47. Bac 17. Exch 48. As inevitable accident, Exch 20, that the injury was accidental in an amicable contest (Exch 4) with 2 Com 287 (Exx) that matter of exence must be pleaded.

And as it admits thebattery, the cause of trespass, is as in the case to be correct rule -

As the plea of notitia manu, or with or justification, the ff may reply 'de bon to to de manu' - allege take cause (or as the case may be) instead of the allege or specially traversing any one material point or fact in the plea (See the distinctions). Plea 14 exch 6. Bac 155. 1 Com 18 120
(Bac 529) Exch 14. If kept justify under proof of assault, ff may specially traverse the cause; instead of using the general law reversed - 'allege take cause' which includes a denial of the justification for an out-
Assault of Battery.

If, upon evidence in the prony to the time set in the declaration, new proof is not found in the law, the action must be pleaded in the declaration. In Eng. the statute does not require the plaintiff to plead the issue in the declaration, but the evidence in the prony to the time must be pleaded. In a common law suit, all the evidence must be in the prony to the time set in the declaration. See 5 Black 267. 16 Bulleit 138. 2 Litt 22. 2 Litt 228. 2 R.A. 164. 2 Story 31. 229-31. 124. 321, 329. 417. 282. Tal 222. 9 Leit 283. 202. 32. 36. 17. 4 Des. 59. 11. 62. 12. The justification is pleaded on a particular day, and then must generally be a traverse of the time before or after.

Need as to traverse as to prior and subsequent time when he pleads new answer to be pleaded. 17 Bulleit 17. See Art. 447. For jury to plead answer on any day is sufficient to support the plea. And if 5 jury is desired to a question of fact, it must be, at a different time. If the battery complained of was at a different time, is the principle of the general rule derived?

To the assessment and set cadence to 201. 2. 530. 2. 3. 60. 2. 3. 60. 3. 60. 2 (no 3) 85. 249. 134-2 31.
must be an answer in law to the whole
preamble alleged... to the plea (or pleas) must
import to answer the whole (see pleading 80)
6th 18. 62. if plea charge assault, battery,
& wounding, a plea reaching the battery but
the wounding is ill - 62. 628. 60. if assault
to cover the whole preamble 62. 38. For the
words are 'that the plea made an assault on
that... self thus & there defends himself by
any damage or 'had it happened' to that
self.' 447 -

Sec ofmodity of Castle - that this is in law
answer the allegation of wounding or malignant.
It justifying only the assault & battery, according
to the best opinion the assault only, ante 6. 69.
Dowry as a justification of wounding & may
be here. It would be unnecessary to stand-

In justification founded on the relation of
Husband & Wife, answer to the assault or
must be answer to have been made to pre-
vent injury to Wife Husband or party as
caused - that is way of revenge or detri-
ment or retaliation 62. 628. 64. 61. 64. 61.
6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6.

A former recovery of damage for the same
battery as the theft of another is a good plea in
32. 6. 32. 6. 32. 6. 32. 6. 32. 6. 32. 6. 32. 6. 32. 6. 32. 6.
6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6.

for the uncertain damages are reduced in the
judgment to the original damages no
changed into a joint merit debt, or of some
merged in it - 62. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6.
The rule holds even of further damage arising after first recovery. 6th 319. 11th. For the battery is the gist. (Whittemore v. Stockton 5 C.)

So in trespass generically, a former recovery is a bar as to all continued trespasses committed before the date of the first writ. 2 Nett 320.

In the action as in all trespasses, if the injury is done by several the alleged as may be all or any. 6th 317. 5th 651. For in general all cause of action arising ex delicto whether sounding in trespass or case are severable. (5th 651) as well as joint. 5th. If new be presented as joinder denial of the election of the party in case of conspiracy.

Release to one is release to all. 6th 415. 7th 996.

As to lowering damages the authorities are some what contradictory. If two or more jointly by t are found jointly will be back part of all (as this are case by a former judgment by both) then can not cover the damages. 6th 320. 420. 5th 651. 7th 990. 11th. 15. 16. 317. 16th. 21. 318.
Assault & Battery.

For in the injury is joint —

So if joint for or both by defendant the case may not be severed (§ 420, § 422) for same reason. The defendant being an aiding and assisting that they are jointly guilty of the wrong alleged. For the charge by them is joint to the defendant confers joint.

But according to § 420, § 1140. If defendants are in their plea for one pleading the general issue, another a justification may show that the several defendants are supposed to be equally jointly. Ex. § 110 a against. § 370 b. § 420. § 1140. § 9. But the issues not laws. Case, contra. § 12 b. Bull 20 s c. Cre 348. 37 350. Cast. 19. § 1 26 168. Act 66 to 74 b. § 110 Cre 348. 118. Cre 321. Cre 118. Lee 127. S. 207 a 2.

And the damage can not be severed. § 12 b. 2792. How can severance in pleading where the rule? Can it even be proper to prove when it is ascertained by the jury, that the whole injury was the joint act of the defendants the act of all — being in law, then, the act of each.

But it is said that jury may find one defendant guilty to one part, or another to another, and yet damage severally, if the finding will be perfectly consistent, or not fact be 86. — the 17th man takes judgment for both adjudgments. § 420. Cre 348. 114 1 12 15 15. — can't calculate the different parts of the different acts at different times. In that case they are not found jointly guilty, but as in the other they are necessarily so. —
A Saucet et Battery.

act of all in one and the same transaction at the same time, being the act of each, the injury is in law indivisible. The qualification seems on principle correct. But in case to commence a battery alone or afterward join to a civil suit. Case 54, Bull. 20 accord with 11 Cr 519. in this qualification there must be to recover damages held of acting for joint torts generally.

But in case of damages, when the damages ought not to be divided, that may prevent an issuing judgment or recovering it in error, by making on the record an adjustment of taking judgment for one only by both debts. Bull. 20, Case 19, 100. a s or executory may go only by the one or when its amount was ascribed Case 20, Bull 20 15 and 207 a 25 5. 219 - 267. 239 - 243. So if plaintiff will enter a suit first as to the other.

But in all such cases in which the damage ought to be entire, there can be but one case = action 1107 a Case 19, Bull 20. it that is due for any adjustment only, if judgment is entered for both, it is error. 5 Burr 2770 1105. Case 19. Eq 9 118. 620 321 - 420.

If may also arrest judgment in these cases if be to elect, he demand a venire de novo Bull 20, Eq 6 113 - 176 - Case 19. 108 70. So when the law requires that the damages should be entire, he has a right to claim that they should be found so.
Assault & Battery.

First rule is adopted in this state viz. that if 2 or 3 are jointly charged & found jointly guilty - to the extent of the whole, damages can not be levied. - lateral to which 2 St. 22. M. & B. 1793. Term 9. T. True leaves plead generally "not guilty".


In Eng. it has been held, that a suit or non suits as to one of several defendants before judgment to the others discharge the action as to all - that operates as a release to the one. - 1st 170. 8. D. 1736. This is not now considered by law in Eng. 1st 179. 21. 8. D. 5111. 1797. 516. 90. 8. D. 49. 2d 8. D. 597. Case 9. - Bull 21. 8. D. 173

The court will give the party leave to strike the name of one of several defendants out of the declaration & then to proceed to call him as a witness - whenever one defendant wishes for the evidence of co-defendant. Rule. If there is no evidence of co-defendant he may be discharged. If any at all he must be tried before he can testify - but the court may call a verdict as to him in perpetuity - (Bull 285. 2 8. D. 227)

1st 441. 8. D. Evidence 119-20) and if acquitted as to him in perpetuity. He is then not in evidence - directed (See 2 8. D. 601. Stanklin's 8. D. 601. 1st 24. 8. D. 227. last clause of this note given by Mr. Seymour)
Assault & Battery.

The jury of the place may vary from the declaration if found a part. Rule common to acting of trespass in general 2d 421 2d Roll 184 2d 6 3d 34 3c 6 plaintiff of the battery not of the wound. Finding more than 3d cense is idle.

By the English practice it there has been an action, the court may on vix increase the damages found at their discretion; and so the vix may here be expressly laid in the declaration, of the judge Lestipis or report it, that the injury would amount to mayhem might not be known, at the time of bringing the action. But it must be done in banc: a party must be present when the action to increase is made (for it must be decided by this practice) last 3d cense is derived from the rule that in English if mayhem "may have been so" is to be tried by vix, section 6c 322.

2d May 175 1st 223 3bC 332 3s 1st 108 176 15.

It must be proved to be part of the base trespass for which the damages were found by jury. Bull 21 6th 322.

2d) - to damages may be increased at later in case of wounding 6c 322. 2d May 175. So of attracting battery 3bC 333. Manner of wounding must be laid in the declaration. For whether there is a wounding or not must always be known when the action is brought. - damages are more than increased in £.
Assault & Battery.

Damages not increased in this case, if the judge who try'd the cause, declines himself, to fix with the verdict. 6th 322. 1702. 5.

The jury can not join more damages than are taken 6th 420. Ch. 6. 19. But if they do, 12. Smay have joined, on remitting the cause, 4th 169, 10 to 115 b. 4 B. C. 25. 6. While common to other actions (except for the whole adjudgment money.)

Every assault & battery is heard in a public court as well as a private wrong (1 B. A. 156. 1 T. Haw. 124. 3 B. C. 121. 4 B. C. 43.) & punished - able by fine or imprisonment (p. 5.)

But the rule can not apply to an action - limited, battery (4 B. C. 216. 1st of C. 336, 7th 11. Public W. 237.)
False Imprisonment

Every unlawful retentions of one & liberty - or violation of one’s right of locomotion is False Imprisonment 3 Bl 127, 2 Bl 321. 6. Alleged confinement in a private house - strict de 2 Inst 559. 5 Bae 169. Trinkl 2202.

(4. Assault & Battery - False Imprisonment may be put in the same declaration - or even in the same count - 0. Seymour)

Two capacity 1. Detention of the person 2. Unlawful refusal of the detention 3 Bl 127. 2 Bae 529. 5 Bae 169. Trinkl 2202.

The unlawful detains - in the want of lawful authority to detain. Authority may arise from legal process 2 Bae 333. Val 405. 2 Bae 343. Special cause, amounting from the necessity of the case to a justification. 3 Bl 127. As in the case of mailing a felon by a private person 2 Bae 334. 3. He may - for the care of a ship captured 4 Bae 572. Such cases belong to admiralty jurisdiction under the law of nations. "Port. Trinpaiz 49"

But every original & arrest of a person for a civil cause, without legal process, is unlawful detention. 5 Bae 169. 2 Just 372. 2 Bae 372. 2 Just 372. 5 Bae 169. 2 Bae 372. In the detention of the rights of the subject. (The case of theft arresting the principal, felons, etc. within this rule, not an original arrest. So also all arrest to prevent an escape (Ch. 8)).

For the cases which justify arrest, without process in criminal cases see "Tharp & Gardiner"
False Imprisonment.

A private person is, not guilty of false imprisonment by confining a person arrested by a proper officer, at the officer's request. He is even bound to assist the officer, on demand, if necessary. Sal 167, pl 24, ch 11.

But an officer having made an arrest, a final proof can not delegate his authority (or right of entry) in his own absence. Sal 24, 11. "Thos." His rule seems to be founded on the right of the jailor in the execution.

The most common cases of false imprisonment are those of arrest under void process.

How far Judge and other Offices of the Law are liable for their official acts.

General Rule.

I. If any court of Record is guilty of corrupt practice (as, imprisoning through malice) the judge is not liable to an action of his act, judicetely, or within his proper juris - diction. 12 W. 259 135, 821. It is not - transfering his authority he does not go beyond the law. 622 826 - Sal 391. 1391. 172. Malicious prosecution 732 624 835. 172. 573-5 534-5. 628 114. 62.

II. A court having cognizance of a grand offence (as, murder), one to punishment for it without or by evidence, is even from justified malice.

III. A Judge of a court of record of general jurisdiction, if he, in good faith, is not liable to any action, or indictment, for any judicial act whether done through mistake or malice.
False Imprisonment.

If he confining himself to his proper jurisdiction - time 6th 92, 12th 234, 1st 360 2nd 469 - Comp. 472, 17th 583 - 584, 5 - 587 - 8, 583 - 84 - 26th 1141 (with all the above are cited).

No proof in the case is admitted of the "rebutment & verdict presumption" in favor of the judge integrity. He is answerable only to the Congress or government. He may be removed from office in the mode prescribed for by the constitution, or laws of this state. To any ordinary prosecution or his civil or criminal for abusing his authority. It is a decision amount that he acts as a judge (or court) of record.

Reason -

1st. Such an exemption from liability must exist somehow - in every regular government. There must be some rank of office in which the law requires a confidence - than which there can be none higher. There is the same confidence & presumption of integrity in the court or judge complained of, as in any court applied to for relief.

2d. Impeachment of holding such office answerable to individuals.

III. But it being if a court of record or even general jurisdiction has not jurisdiction of the subject matter of the process on which an arrest is made, the judge is liable for how they do not or can not act judicially - 16 Co 366. 12th 16, 59. It is all "common justice." So in English Court of O.D. awards a criminal cai. or an indictment or having to imprisonment upon such a prosecution - or Court of C.O. awards
execution for recovery of land, in a civil suit - in this last case the Judge would be liable as for discharging the pistol in the case - execution. But if they have jurisdiction of the subject to be their proceedings & transgress their authority - they are not liable - sect. 18 to 21 49 1145 - sect. 346 - 62. awarding a capias on a plea in a civil case - inflicting a higher punishment for a crime cognizable by them, than the law warrants.

IV. Judges of courts of limited jurisdiction (the court of record kind) are liable if they transgress their authority - even by mistake - sect. 572 412 - sect. 2 1145 - 62. sect. 454 - sect. 346. sect. 443 sect. 551 - sect. 114 - 62. Offending in a civil action a capias on a plea - inflicting a higher punishment than above - unless if they do not exceed their authority - the they act illegally & unjustly - for the uncontrollable or vehement presumptions of rectitude (court does not exist in favor of all courts. Not necessary except in favor of the highest court - sect. 412 1145. If they wrongly fully decide a question of law, though mistake - or if necessary when the question is properly before them & they have authority to decide.

 Judges of record not liable even for malicious acts if they do not exceed their authority - sect. 526. sect. 346.

By a court exceeding its jurisdiction (as to the subject matter) I mean its deciding on
False Imprisonment.

acting upon a case or question, or upon which it has no legal right, to decide or to act at all
(i.e. by deciding a civil action or by
trying an indictment) - By executing its au-
thority merely, I mean the exercising some
power which the law does not authorize
upon a case, or which is cognizable by it-
less. (i.e. awarding a capias or a fine, in an
action of debt, committing without to which
they have cognizance.)

V. Court not of record (i.e. Justice of the peace
in big) - are little at law. Law not only
for malicious wrongs but for any mistake
in judg. (Stu. 76, 261 394, 158 357
178 537, 6 339, 161. 545) by which a
party is injured. Inc 288 1145. (part 14)
and whether they transgress their authority or
not.

But this power is mitigated by several statutes 338. (4)

The Court of H. D. will not grant an infor-
cation by a justice who appears to have
acted uprightly. 178 635.

In Court of justice of the peace are Courts of Ap-
teed - (i.e. New-York they are not)

Courts which can fine a person are said to
be Courts of record - L. Way 467, Sal 260,
Cobb 491, 389 24, 5, 12, 388, 3 205,
Denies to be universally true - 288 1145.
It power to grant bonds of assent is a power
in imprisonment 389 25."

203
False Imprisonment.

5.

As to arrest of persons not liable to arrest.

Arresting Executor or Administrator for the debt of Testator is unlawful, except on a suggestion of executor or administrator. 

2 Bl. 2 273. False imprisonment begins in these cases by the act of the person as well as the original party (36). In the rule is general that an attorney who is instrumental in causing an illegal arrest is liable as well as his principal — 3 T. 345. 377. 2 B. 2 1152 (36). A defendant subject him personally — 26 in his individual capacity —

Exemptions from arrest are sometimes connected with the character of the individual as 

Exemptions. Sometimes it arises from temporary circumstances or particular privileges 

4 B. C. 473. 4 B. C. 22 2. 2 B. C. 273. 2 B. C. 631 

by attendance on court — a stranger or witness. 

Exemptions from arrest on civil process — in the latter case the arrest is not illegal in the first instance; but a supervision (37) 4 B. C. 22 2. 7 T. 142. 1142. 1113. 4 T. 33. 5 T. 117. 4 B. C. 157. 3 49. 652 after which detention is illegal or incorrect. 

The privilege of a stranger or witness extends to his horse, money necessary — 4 B. C. 22 2. 2 B. C. 273. 2 B. C. 631. 2 B. C. 379. 5 T. 171. 4 B. C. 634. 5 B. C. 236. 

3 B. C. 379. 47 — What is said by Gulliver J. (2 B. C. 631) must relate to an action after the law proceedings or for the prior detention in case of a peer.

(36)
False Imprisonment -

In any suit for protection is commonly obtained in such cases before the time of attendance - this operates as a injunction does in Eng. - seating one therefore this part titled false imprisonment - but not like the protection is known -

The suit in this case however is good, to the suit continuing - 1 Wet 220. 2 Bla 1193 - the only effect of the privilege is that the present (as underwriting be) must be discharged - decision on N.Y accord

Privilege of limited is disallowed in case of collusion - So a to Clff in receiving ac - coting 2 Bla 1193 - 11 Mo 379. 12 Blg. 9. 174 636 - A being discontinuing with the court to allow it or not (So the bringing of several successive ejectments, for the same subject an example of receiving blank ?) So when party attends court as a volunteer upon the instance of answerin process, when there is none - Sal 549 -

Party attending arbitration under rule of court being within the exemptions - 3 East 19. Park 8 193-4 - For the arbitra - tion acts under an order of the court - tio in some measure represent it - Indeed the arbitration is a species of court, recognized by law.

For annexing a jers - or certificated bank - is not - (Where the court has jurisdiction) the officer is not - liable, he is bound to obey the writ - the party may be liable in case -
False Imprisonment.

Dong 646. 150. 100 716. 2. 7. 231. 662. 530.
Malicious prosecution p. 31. [For if the act of arresting by not a trespass, the party can not be liable in this form (it is in trespass) but for making I wrong full use of lawful power?]

So number of any if are privileged in ordinary civil cases in jury - standing re - to members of our state legislature (In none of these cases does the accrue) because this party has the evidence of his privilege with him at this time.) Is on election in jury to be a meeting of the electors appointed by law?

[?] -

Garden detaining prisoner for seven feet otherwise entitled to a discharge. Is not false imprisonment. 5 Dec 177. Pow C 173. Pow 88 2. Nov 53. Alibi as to bond. 4th 13th. As a matter of private contract between the parties prisoners. Garden trust to the personal one - out of the prisoner, if he has no other security. No any rate there is no lien for bond on the person of the prisoner. 1702-23. 1 Dec 173. Pow. 88. 1 Nov 182.

If the order of court is to confine one in a certain prison - confining him in any other false imprisonment. 5 Dec 177. 4th 208. 5 Nov 295. 3 Sal 219. Rob 202. 11 ec. 318. Gt. 16. At confinement without lawful authority. "Stev 12. 74." -

A peace officer is justified in arresting without warrant on a reasonable charge of felony.
False Imprisonment

The no felony is committed. 4824a 345
4 Boc 57. 6 75. 1 80. 42. 4, 1 & 15 be duty to
arrest on reasonable suspicion

Nekq of a private person: But if a felony
has been actually committed, a private per-
son desiring another to be guilty of a cer-
tain crime & without malice, is at liberty
for aiding without warrant: to carry before a
magistrate. 682 334. 5. 641 171. 1 345.
682 66. 66. 4824a. If no felony has been com-
mitted 682 334. 1 345. For he is not like
a peace officer, bound to act:-eyed not justified
in aid to the same extent.

So to prevent a breach of peace or an
escape 1626 15. 2 677. 82. Any person
may arrest for such a purpose without
warrant being after a breach of the peace is
committed

Any original arrest on Sunday in civil
cases being void (by 62 29. 6 29. 29.
482a 370.) is false imprisonment. 682 327.
95. 6 282. 95. 6 282. 95. 6 217. 6 265. 2 61. 2 115. Such an arrest void
arrest. Law. 2 61. 2 115. 2 61a 72

But special bail may take three prisoners
on Sunday (a 54 to bail to the Police)
2 61. 2 115. The right is not denied necessary
3. 6 265. constant custody or original release
not being required) for he is in the nature of
a false

+ taking by bail as retaining on an escape.
Such an arrest in case of an escape is lawful
False Imprisonment.

Sed 626 3 Sod 148. Per 2. P. R. A. 137. (In no case a
warrant can be necessary if the arrest is by the
person who had the previous custody of the escapee).

Arrest in civil cases, by the breaking open door
of defendant house: false imprisonment. 5 C. 93, L. Cas.
Nov. 62. 4 D. 367. Secns of inner doors. 2 Amul. 489.

It has been questioned whether if an arrest has
been made by illegal breaking of the house, the
execution of the process is good: if the only remedy
by action: 5 Co. 93, 8 26. 5 Mab. 183.) or whether
the execution of the process is itself void: it may be
let aside in a summary way, by discharging
the person arrested. Camp. 19. 6th 64, 5. Co. 698.
Thir. 393.

Now decided that the execution of the process
is void: by the officer a trespassers. 2 D. 2 A. 823;
in case of property taken by breaking a door
executions let aside. 2 D. 367. 4 D. 454.
2 Liv. 285. 6. Cont. 5 Co. 93.

In these cases of arrest by breaking the house,
false imprisonment lies. It is the privilege
of the party the arrest is not initial illegal.

It has also been questioned whether if an illegal
arrest has been made, or in consequence of
which another arrest is made which would
otherwise be good: the latter is void. It is
valid unless some collision. 2 D. 2 A. 823.
Ex. 615. Whin if there is collision. Sparse 81.
("Ships", 11. 9. 11.)
False Imprisonment.

Decided in Ca, that an Officer by mistake
warrant may retake his prisoner in another
state 1 Rob 109. Practice 8 4 - (the warrant is
of no use except as convenient evidence of a
right to retake - Process can not run out of
the state where issued 6 to bail pieces from an-
other state 5 East 172 or 7 John 145 -

If an officer by mistake arrest D instead of
A on a process 5 he is liable for false
imprisonment 10 even if D declared himself to
be A 24 2 Denn 55 2 pl 5 6 West 326.
3 Corr 491 493 - Moore 457 - Fear 323-
Damages mitigated 6 West 328. But can the last
rule be law? Is not D the proceeding a faulty
cause of his own arrest? "Battering" 10 see also
2 May 177 - 1 Sel 42 -

Any person has a right to arrest another
who is fighting 2 Dec 171 1 Mar 136 2 Deel 81-
t to restrain him till his passion is over.
If A, arrest the liable in some cases, to be said
with their husbands, cannot in general be held.
- in civil arrest in many cases 2 Ste 1272
11 Il 486 - 10 Il 472 1193 -

But they are liable to arrest in such case
for the purpose of having A bail arrested
or till the husband pays bail for both - They
are then entitled to be discharged 2 Ste 172 134
Dong 418 2 W 40 17 -

Arresting & confining one for a short time
under a panel warrant from a justice, for
examination is not illegal 2 Dec 172 10th
146 - Me 40 8 9 Cor 5 829 -
False Impr.

A private person may without warrant or
force a person arrested in mind it who ap-
pears disposed to mischief 5 Dec 172-

As to liability of officers executing process-
If an officer (under the authority of a court-
of limited jurisdiction) makes an arrest
on a process, from the face of which it ap-
pears that the court issuing it, had not
complete jurisdiction, he is liable according
to some of the authorities (6 Ed 391 - call 12-3
Merid 411) from whatever cause the defect
of jurisdiction arises. It whether the court
of jurisdiction pos to the subject matter or
arises out of some personal privilege of the
defendant to be tried in the court to which
it or from the cause of the actual arising
out of the court limits be 2 May 236-1-
Cen. (But the rule applies (to this extent)
only to courts of limited [jurisdiction] post
17 91 Ed 766. 6 Ed 54 a 3 Ed 345. Matter in two
last cases, if the court is of Record & of general
jurisdiction is 12-

But the rule has been extended much further
this in the Marshall case it was held
liable (without any regard to facts appearing
on the face of the [process], or not-) that in a case where the court had not com-
plete jurisdiction (at issue) the officer was
to liable 10 C 78-7. Ed 314 - Ed 337 - Se-
domin & reasoning in Marshall case
Reasoning contradicted in 2 May 236. 50 Ed 339
509. The supported in 2 Ed 315. S C - Ed 399
349. Ex City Siff executing a City Court proces
False Imprisonment.

When the cause of action did not arise within the city, but the fact not appearing from the process, but this rule appears not to be law.

Decision in the Marshalsea case was nearly that, where the Court viewing the process, has no jurisdiction of the subject matter, every thing done under it is absolutely void: whether it appears or not on the face. 13th 391. Bull 82. 3. 653-4. Cowp 172. 414. 150 710. 2. 658-4. and officers liable.

This seems still to be considered as law.

But (by other opinions) when the Court (the of limited jurisdiction) has jurisdiction of the subject matter or the defect of jurisdiction is from something local or personal, the offense justified unless the defect appears upon the face of the process. This answer to me the correct opinion that applied to the last rule in p 11. 20. 3. 170. 2. Mod 196. 1799. 439. Bull 12. 2. 714. 2. Mod 29. 3. 233. 329-391. 482. 710. (But 54. Bull 83) 13. 746. 6. 354. a. a. A case of Common Pleas 3. 745. 2. 705. 84-4. 3. 213. 9. 354a. Notice if it appear by the city court or other process upon the face of which the cause of action appears to have venue, and if it is the process.

According to M. 238-1. he is not liable to the defect, else appear on the face of the process, and that original shift is sufficiently protected a. a. officer, by pleading the defect.
if he does not he waring it - yet up? Whether
we this is law or so? (Indec. 13)

Officer may justify under proof of the court or
Westminster, that the writ be void. Except where
the court has not jurisdiction of the subject and
Sec 106 126 I 54 a 3 1063 355 (by Administrator
or a remote term (p 14)) Yet in this case it is
void upon the face of it - 1063 liable for false
imprisonment - or other irregularity) the high
authority of these courts - justify it. So if he
issues a writ under a court capiatis from
such a court - or an attorney of another supe-
rior court -

Rule in Cont. an officer is justified by his
process in all cases, unless the process is void
upon the face of it. Text 106 126 2 126 or ting
357 even tho' there is a defect of jurisdic-
tion to, the subject matter -

But then the process justify the officer according
to the proper distinction (the jurisdiction
be not complete as to person or place) it does
not the original 1063 - He is bound to know
the extent of the court jurisdiction & to show
it where the cause of action arose - Leo 934

And the original 1063 (now 1063) is not bound
to having pleaded to the first action 330.
Wild 13 - 126 170 - 17 355 2 East 260 2 162
146-7-

2d Day 230. claimed that the original 1063
is liable in this case Sec 9 37 126 12 236-
the other - Sec. 20 2d Ray approved in
false imprisonment.

This point is Con. by Law Ellsworth 1st 111.

In some cases proof is void, and the party
as, the case may be, the court liable for an ac-
unt under 85, where the jurisdiction of the
court is complete as to the subject matter -
person & place.

I. In cases of limited jurisdiction, when an
authority given by statute is not strictly pursued
such 90, 317. 80 L 114. Tal 438. 155 715. see the
authorities for example. In, when a justice
committed a man for killing game, the he
had sufficient efforts to answer the penalty.
Justice held as liable. The accused his own
authority (ante 3) Affirmance exercised but the lia-
Bility of the warrant was not patented at the
information was complete. 170 315. 806 332
3.

§ 34 against commissioners of bankruptcy for
any commitment not warranting by the Stat-
rutes. 80 331. 2 10c 1335. 1141.

II. In other cases, the processes of any court
Even the Court of Westminster may be void
independently of any question of jurisdiction
for irregularity rendering any process void (112)
t two half in the process. Is liable to the action
§ 62. It remains returnable to the next term
but one to that of the date 6 328. 9. 3Am 491
37. 341. 345. 2 10c 485. 1 707. 1 1801. 315.
Affirm not liable in the case of the process is
from the Court of Westminster, & the the 82-
regularly adhered on the face 3 306. 345.
§ 34. Is liable before proof but aside 82 are infa
False Imprisonment.

But if an officer executes an irregular process of any court after it has been set aside for irregularity, he is liable in trespass. *Cass. 1735* 2 B. & C. 845. 3 East 128. 15 Geo. 3. 174 N. C. 128. 1509. 391. 1794 345. For he then does not act under the authority of the court. *C.P. Jones. 3 inferior court before setting aside.*

So this, the original arrest was lawful, yet for any subsequent oppression in the action by the officer or the magistrate, if he is in fault, he is answerable in conspiracy in a dungeon without air. *C.P. 332* 12 T. R. 536.

General rule: an arrest under an irregular process is void, the jurisdiction being complete. So under process of arrest found on an irregular proceeding, an arrest on an execution issued on a judgment is invalid. *C.P. 329, 391. 3 East 128. 17 Geo. 3. 783. 1794 345. 155. 2 T. R. 493-4.

But the officer executing an irregular process of a suit or I conclude before it is set aside is not liable to be afterwards set aside. *C.P. 406.* If found by an inferior court to be irregular upon the face of it? *C.P. 391. 783.* After it is set aside the plaintiff is in it as well as remand in trespass. *C.P. 406.* *C.P. to the form of action. 1 T. R. 271-2. 1794 345. 155. 2 T. R. 493-4.

But an arrest on an erroneous process (the jurisdiction being complete) is good. *C.P. 406.*
All capitulation of the several distinctions (as to the officer's liability) which appear most reasonable. — Rule seems to be that in Eng., according to all the authorities, 1st. That when the subject matter is out of the court's jurisdiction, the officer is liable — tho' the defect does not appear from the face of the process. — 2nd. When the want of jurisdiction is only to the person or place, then officer not liable in — if it appear upon the face of the process (But as to this the opinions are contradictory), 3rd. Nor then in case of process of corns of erect. 4th. But the second rule the true of eminent process, applies not. It is said to final process evidence by inferior courts. 5th. When arrest is under final process of inferior court, officer, justification must show that the cause arose within the jurisdiction, or at least that it was so laid; not enough that the defect did not appear from the process. Ball 93 — Comp. 20. (Can be vexed.?) Because the record will furnish the means of knowing. Is this a sufficient reason? —

5. If process of a court of limited jurisdiction is complete in all respects; officer liable if the defect is apparent, otherwise
False Imprisonment.

I conceive - Proof of Sub. Or of Writ. - justifying Officer in both cases, & adding to the iff in the process, process merely amounts always justifying all acts done under it, before revealed.

Proof has been holden regular & valid when filled up without proper authority - (It is not clear whether the under Shf left a blank for the atty. to fill up with a name of a bailiff - 6th 329 & 2nd 47. The person who held the process receiving the process. It does not appear that he knew the signature. However the process here was without any legal authority - the same in law is if forged. Hence Officer would be liable, though, whether the defect was apparent or not.)

So where the process 'he is made in solemn form' - Proof out of the Vice Chancellor's Court of Oxford. Custom: original iff making out of his cause of action, & that 'believing' he serves that he 'suspected.' (6th 329, 3rd 993)

Party to court, Officer & master: hold liable all joining in one plea (Strange adds that Officers & Masters might have justified 27th 334: 27th 270, 335) at the whole laid to be taken now judicis. As the court had only conditional jurisdiction of the subject matter; at the contrary, conferring the same, discretion had not happened.

So, where on serious process the word is not un-firmable on a day certain; it is irregular
in this case the irregularity would appear - ex gross. Offence as well as party liable in principle. Sec 160, if please by a court of record. This point is known as part of the Law of the Land (act 12). But the case has been denied as not being held sufficient - C. N. 21-2-2 Mod 51. The rule however is clearly law. For if no day were ap - pointed in any manner the proof would clearly be irregular. C. T. cent. 2 No. 230-1-

But this last rule applies only to mere pro - cess. C. N. 21-3. For the time of returning final proof does not concern the Court.

The proceedings in the suit are at an end. The execution does not - (like mere proof) require the appearance of Def in a court nor any other act of his

Search warrants are illegal. So are general warrants of any kind. A warrant to arrest "the author of a letter" whenever they are. C. N. 19-199. 1 Hale 175. 2 Wils 275. Felix 213-

Requisites to a Search Warrant.

1st. Granted on oath. 2. The premises of such a crime declared. 3. Executed in the day time by a known officer in the presence of the witness. 4th. Directed to a particular place (or to the particular person in whose poss - see -)

When these requisites are observed, the informer (18) is justified, as well by the event - C. N. 199.
False Imprisonment

2 toe 291-2. When not observed by, or cause liable, in any court - the officer, I trust, is not liable in any court, if they are not observed - whether the court may be -

When an officer justifies proof that he acted as an officer, is sufficient, as to the fact of his being one that is prima facie. He is not bound to show his appointment. 10 B. 322. 4 B. 367. 2 Mc. N. 485.

This may be rebutted (as if a lawyer can in slander for words injuring to him in his profession) note the analogy (Vide
Slander &)

When the officer serving process justifies under it, he need show only the writ, or proof itself (4B. 13. 522 333. 337 603 52.
2 563.) that it is returned if return proof 622 337. 52 1184. See Const. 20.

But the necessity of officer showing a return obtaining only in case of return proof. Const. 20. 5 390. 4 67 2 121 87. Nor
is he bound to show any part of the original record.

And an under piff is not bound to show it in any case - not in his power. See in C. here he is a known public office. It makes return in his own name.

But if original piff is sued for an answer in final process; he must show a jury, as well as execution. 622 337. 4. 408.
-9 for jury. may have been served be-
Some rule when the action is by a third person (as an Agent) who procures the service or proof for another: Secs. if he acts in aid of the Agent at his request. 3d Bez. 408-9. In the former case he takes the place of Agent; in the proof; in the latter he is protected by office or authority.

If a person having made an arrest does not return the writ, when he ought to do it, he may be treated as a trespasser on the premises—3d Bez. 581-2. 10th 513. 5d Bez. 409. 1st May 1832. The thing is mere omission. For without the return the writ is not evidence, and the justification cannot appear. 2d Resp. to real property. p. 20. H. does not correct them to apply the doctrine of relation—2d Resp. to real property. p. 20. The result itself cannot appear to have been lawful. A mere omission can not make one a trespasser by relation.

If original P.L.F. & Officer are sued together they may be sued as defendant, if they join in the plea of justification & insufficient for original P.L.F. it is as for Officer. 5th Bez. 336. 3d Bez. 993-4. 5th Bez. 579. So in cases, if plea is not good for Officer it would be for original P.L.F., he has his defence by joining. 5th Bez. 296. 3d Bez. 1184-170th 17. Ex. Officer does not show the return of the process when he ought to do it.
False Imprisonment.

Occurring, commanding, aiding or assisting in a trespass - makes one a trespasser - 226 - a principal Lo Lit 57a. 1 Sal 409, 2 Mask 512. (Servant) Keeping the king of a room knowing that one is imprisoned and unlawfully in it - is guilty of false imprisonment. 13 T 377 - 5 C Chb 679 - Lo Lit 57a.

(20) Occurring even a sovereign prince this year, unlawfully to imprison one is false imprisonment in the presence - 20 El R 983 - 1055.
Maliency Prosecution. 

This action lies to recover damages if one, who has
preferred an indictment of either prosecution
or brought an action by july maliciously, 
with
any ground or probable cause. 1 W. Scott, 525.
527-8. 1 Dan 61. Any wicked or contemptible
motive is malice.

An action to the old action of conspiracy, which
is very much out of use. Conspire lies, only
by two or more, for having gathered together,
prevented the party for reason to believe it 
endangering his life. 1 Salk. 150 151. Salk. 385.
3 Bk 121. 2 Bullitt 271. Exp 530. 1 Com 155. 20.
Ray 374.

Another action, an action, is the action on the case
the nature of conspiracy, if he, whose two or
more conspire to prejudice another, maliciously,
by or without cause, or otherwise conspire to
injure him, in person, none or property.

The properness of the action for malicious
persecution is, whether, in some measure that
of slander. It is not necessarily, or generally,
the personal danger to which the plaintiff has
been exposed, but the creation, or public or
scandal, to which he has been exposed. The
 negroes in the former fraudulent prosecution.
3 Bk 127. 1 Ad in 20. Lat 69. Lat 32-14.

Action of conspiracy lies in, unless the plaintiff
has been actually prosecuted. 6 527-8.
Acquittal 12 to 23. 20 J 8. Ad in 12. For the
use of words of the writ. 1 Salk 114. 116. 280. 10-24.
6 Bk 530. 1 Com 151. Indictment for conspiracy.
Malicious prosecution

In the case in nature of a conspiracy, it substantially is an action for malicious prosecution with this difference: that the latter may be brought as one

in case for malicious prosecution the first

Action on the case in nature of a con-

spiring, is substantially an action for ma-

lizin prosecution with this difference:

22

that the latter may be brought by one

who other being concerned, it is for a wrong

committed by one. The former must be both

by two or more, or by one charging that he

with another, or with others had conspired.
Malicious prosecution.

It is essential to the bringing of the action (for malicious prosecution) that malicious intent or probable cause in the former prosecution should have convinced—falsely alone not sufficient. Dall 14. 6th 529. 40 Am 97-190. 344-5. It is therefore in any one who maliciously promotes a false prosecution and another, knowing the charge to be false or having no reasonable ground to believe them true. But it is always sufficient for lost, to show probable cause whether to act with malice or not. Dall 4. 6th 533. Co 6 G04. Probable cause is a certitude of justification—otherwise every civile or criminal act might be subjected to this action.

In Ct. when the action is for a false one. (30)

Action of conspiracy—on the case in naturae is for malicious prosecution are all well known it is used to the Con. Law—
(3 Reviz. 7. 6. 239-328. 3d 12). The latter five are derived from the 8a. of the Stat of Westn. 2 (15 Edw 1) (2 lev 20) (16 to 20)

Of conspiracy see Con. Ball 14. Earth 416—

So that to found this action the evens and have been committed by two or more Rom 139.

The parties of the two actions are therefore the same Esth 531. 2 Lev 52. Co 6 G04. or 259.
Menc 51. 572 Edw 216. 1 Tamm 230. a Day 176.
New 413. And this two are laid (judg.)—
may be as one only in both cases. (16)
Malicious prosecution.

I. Of criminal prosecution false & malicious.

1. If a man is falsely or maliciously accused that would injure his reputation, he may have the action. 1 Side 15. Gede 4. Sal 14.

2. If the charge exposes him to danger, his life or liberty, Sal 15. 3. So an indictment false & malicious to expose only is sufficient to support the action. 1 Coke 276. 3 Sal 15. 249. 2 Epp 258. 3 Pld 277. 2 St. 128. The Husband being alone for his

2. Incurred in a malicious prosecution is by

the action lie.

Danger to the life or liberty of Off is not necessary to join the action. Thus the

Indictment having been false, so that Off was in danger or conviction, he may suze to

the action of the charge of injuring his reputation or property, et alia. 6 Ebr 521. 7 T. 248. 3 Bk 129.

Sal 15. 1 Moore 61. Scandal alone insufficient.

The vexation & expense are also sufficient sufficient to state a case.

So, if the indictment (in the last case) has been not found or found, yet the action

by vexation & expense to overcome arising from a presentment. 8 Ebr 523. So 490.

Sal 14. 6 E. Where Grand Jury have joined "as a true bill."

To expense alone caused by insufficient

Indictment will support the action. Ex

Indictment false and malicious for exercising a trade without license is the reputation of the party of red injury & his personal security endangered. Sal 15. 6.
Public officials, however, committing prosecution on false information are not liable; but the person giving the false information, knowing it to be false, or without malice or without probable cause, is liable. [Cite 187, Co 6 130, 2 Tn 231, 1 Dec 61.] It is the duty of such officials to prosecute on information apparently credible - the law of course justifies them in such cases -

But a public officer, without information, of his own mere notion, maliciously to prosecute another, he is liable. [Cite 61, 2 Tn 231, 225, Co 6 150, 1 Co 5 157, Co 7 161.] For the law protects him in misjudging it, does not excuse his wilful abuse of official power.

But if the public officer in the last case is the magistrate granting the warrant: the foregoing is that if he was accused under a

affidavit not case 6 the proper remedy. But in this respect the case in Co 6 170 - 6 de

ried 2 Tn 231 - 26th 530 - see long 157 - (false imprisonment b 6) for he is regarded as the immediate or the remote cause of the arrest (as informing are)

The constable or sheriff being but an instrument he is bound to execute the process.

This action lies not till the malicious prosecution is at an end. [Cite 1 56, 2 Tn 281.]
Hence it must always appear from the declaration that the prosecution for which it is in some way at an end - in any case - legitimate modo acquitata, necessary, &c., to be in the action - 9 Co 56 & 57, 18 Mod 209, 27 R 23, 113 Co 267, 17 R 114. That -"their actions, charged from prison, not sufficient -" But the omission to show that the prosecution is at an end, is caused by verdict. Same 228, 8th 532.

2. No civil action lies in respect of record, jury or grand jury, for even malicious acts done in the regular exercise of their judicial power. 1 Penn, 157. 9 Co 635 - 17 R 573 - 573-14 - 574-5 - 537-8. Confin 161 - 172 - 173 Co 191 - 2 Penn Co 62 328. 2 28, 113 12 & 23-4 - 12 Mod 219. Sec Co 6130. "False Imprisonment." 2 - a rule of public policy to guard their independence in jury & to protect them by action.

The legal presumption of their integrity cannot be questioned in a court of justice. It is as strong as that of the integrity of any other tribunal - Ex. A judge of record, unless imprisoned on an insufficient indictment, a jury convict on insufficient evidence, no civil remedy of either -
Malicious Prosecution.

Malice must be generally inferred from the want of probable cause. 51 resembling cases. 138 344 - Desp 529. If no probable cause appear in proof, it must be presumed that the prosecutor had none - or it would have been maliciously. 546 344 - Desp 529 - probable or even actual guilt may be prosecuted from a malicious motive. 138 344 - the law justifies the prosecution in both cases. For where the act is right, the law never inquiries into motives.

ButOff is at liberty to prove actual malice. "Always advantage goes to prove solice till it be in evidence - collateral circumstances - 529 - an advertisement by itself - that the indictment was found. 529 - Malicious declaration - 529 - Desp 535 - 529 - in short all circumstances of malice is any thing which tendency to prove.

Conviction of the Off in the original prosecution, by a competent jurisdiction is not only evidence but conclusive evidence of probable cause. 529 - Desp 529. 138 344 - Desp 529. 529 - Letter part of page 31 + page 34 being omitted by mistake. is inserted after page 40.

Except - When the facts upon which the original prosecution was founded necessarily lie in the knowledge of the Off himself, he must show probable cause; the grandjury found the indictment to Beil 14 - Desp 536 - 529. prosecution for rubbing Beil - Antonio Stack - Beil part 4 - p 914 - 9 529 -

And proof of the evidence given before the grandjury. When the former prosecution was.

A recitation of the original facts, i.e., the existence of the crime charged, is admissible if no other person was present at the time. It is true if no other evidence of the fact. Ex. - supra, of prosecution for setting afire.

This rule is necessary to the protection of persons accused, as how may have been the only witness of the fact which constitute probable cause admitted ex necessitate. - In Re Starks' Supra.

The existence of probable cause in any given case is a mixed question partly fact, partly law. But what amounts to probable cause is a question of law merely. To whether the circumstances alleged to prove probable cause exist, i.e., a question of fact; but whether or not those circumstances amount in law to a probable cause is a question of law.

So that the fact being given, the inference is a conclusion of law. 57 Gr. 545. Bull 14. Sib. 539. 4 Starks' 914.

The defense of probable cause being similar to that with the general issue, must be pled and specially set. From last rule it follows regularly, that these plea should show the circumstances of facts (i.e., the presence or absence) on which he acted. 57 Gr. 534. 6th 533. In "Blevins" division duplicity.

For what amounts to probable cause being matter of law, the particular facts which
constitute it in any given case must appear in the plea (not in how admissible under
pen' c. sect. 2 Phil 6 ν 115 - 12 Sal 1 ν
as proving malice

So it seems necessary for App. to show
that the crime for which he prosecuted was
committed by some one (see, sunk, that
can be no positive cause) 62 ν 534 - 62 ν 216.
2 How ν 120. He kept telling his property to be
stolen when it is not - Clinton v. Hopkins 3d
of 62 - 2 Rep. 25 ν 225 (Ker 35 ν 4 Harri 91
- Clinton bent, old rule not Law)

So what amounts to malice is a question of
Law - 2 2 ν 1493 - 178 ν ν 519. Case estab
12 ν 5 ν 223 ν 6 ν 7 ν 0 ν - what in Law constitutes
malice is a question of Law, but whether malice
exists in any given case is in the first in-
stance a judicial question distinction the
same as above

When the action is for a malicious prosecution
- action for felony - a copy of the original
record granted by the court ν 2 ν in which the
trial was ν necessary to enable the Offi
to recover ν the printing is discretionary
62 ν 534 - 102 ν 3 ν 15. ν 1 ν 6 6. ν 2 ν \nu 2 ν η ν ν 2 ν η ν ν η ν ν 2 ν η
- Where the crime charged is a misdemeanor only, such copy
is not necessary (6 ν) 2 ν ν 2 ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν ν
In the former case, it is usual to deny the copy if it appears to the court in which it is that there was probable cause for the prosecution—Culpep. 421. 302. 121. Sep. 534.

II. When the action lies for a personal civil suit or a meeting, law talk.

In this rule, laid down is that the action does not lie, for bringing a civil suit, even tho' there is no right of action—because it is a claim of right. Off is amenable, pro jure clamar, at Comm. Law, to suit liable for d&f. (Ball 11. 11. 12. Sep. 525. 11. 10. 12. 12. 2 Phil. 4. 11. 4.) Which an accused by original defendant to no damage proceed (been for criminal prosecution.) Like the case of words not in themselves actionable in slander. The rule means only, that in such cases there is a wrong fact as cause of action.

Exception 1st. When there is good cause of action, in favor of one, to another having no authority, one to arrest the party liable— the action lies— 6 Sep. 526. Ball 12. 12. 4. Sep. 526. This third person is a wrong done abusing the process of law, to the (true) Off's injury.

When Off in the original suit having good cause of action, lives in a court not having cognizance, the action lies. But it is necessary, that the Off (the original Off) should have known that the court had no cognizance—6 Sep. 526. 2 Phil. 15. 302.
Malicious prosecution.

With us, malice - for then no costs can be taxed.

But if the wrong consist in arresting the debt in the first action & not in remedy an action of trespass for False Imprisonment. 

The process being void? See False Impr. 11. 12. 13. 15. 

Q. Is the distinction that action for malicious prosecution may be brought if malice can be proved & Trespass, whether it can or not?

3. If a person having no right or claim of right, knowing it to be so, buys another for the purpose of recovery, he is liable 2 Will 335 - 137. 138. 388. 2 do. 129 - 3 East 314. 

In such case, in the old Act. I said that the action lies not in such cases, unless the debt in it is held to bail 2 Phil. 46. n. - Peter 2 207. 

If he is not liable, the debt he recovers are considered it being a sufficient compensation.

Q. Is this applicable to principle? (cite infra 2)

4. If for such purpose he buys & holds to bail for a much greater sum than he 

Saw 228. 6th 525. 6. 1st 424. 

But the action will not lie in this case, unless the 

Defendant is arrested & held to extra fine bail is compelled to procure such bail, or 

imprisoned for the want of it. 6th 328. Bull 12. 

Q. Steel no damage accruing from that cause of the original defendant had a right to sue for 

his demand - holding to reasonable bail is no injury, when there is a cause of action.
Malice Prosecution.

5. When the malice in proceeding complained of is on personal peace, & utterly, formally, or known to be so, by the original p[l]f, the no arrest of the person, but merely process taken, action clearly lies [sic] 527-92 & 529-94 taken out a second fis: for & sold p[pl]f p[pl]f goods under it, after having taken other goods under former fis: for. Action lay for vexation & damage. Rob 205. 216.

The peculiar question, or injury, must in general be stated, when grounded on former civil prosecution, & that it was done "maliciously" with intent to injure & oppress the p[pl]f. 2 V:1 2:105 Sep 532. 1 Tal 17 106 418. 1 Ray 350, 50, with purpose to hold p[pl]f to fail" if that is the injury. Sal 15. Bull 12.

No damage being pretended (ante) hence in all cases in general. Where the original prosecution has ebbe, it is necessary that Special damage be laid & proved. 1 Tal 14. 15.

1 Ray 348. When the original prosecution was criminal (or being malice without probable cause) damage is presumed especial ly, if no costs are recoverable, in such case by the party prosecuting.

Malicious Prosecution.

Two requisites in all cases to support this action for a civil suit - 1st. Some action determined be ended, for it cannot otherwise appear to have been groundless or unjust. G. 205. Pal. 15.

2. Damage (i.e. actual) already incurred or in contemplation 68. 527. 531. 57a. 114. D. T. 13. Therefor if one prose a bond in my name I can have no action till sued upon it. So if Off in a judgment after having obtained his action on a f. p. wrong fully obtains another exentence but has not proceeded with it.

But not necessary that the amount sued should have been decided in favor of the present Off. That it is in any way ended, is sufficient, as regards the first requisite above stated. Ex non est sufficiens in the original action. Yet this his 68. 527. D. T. 13. Any proceeding before action or when ended is on this point sufficient. 68. 527.

Our Stat. gives an action to all who "writ - tingly," & willingly wrong others by prosecuting any suit to wit: intent to trouble or vex. 1 & 2. Tit. 429. It also subject to fine 10 & 27. it for third offence to be proceeded with as a common border. 126.

The mode in which the original prosecution was terminated must also be stated in the declaration - i.e. correctly stated. If wrongly alleged there will be a variance.

In allegation that Off was acquitted on the original prosecution is not taken.
Medicinal Prosecution.

The declaration states all the proceedings in the original prosecution; it may be
accepted in a material part of the in-
dictment it is fatal 6th 532 3 472
590. 68. A variance between the origi-
nal record & declaration at the day
of acquittal is 6th 266. Seen if it is
in an immaterial part 6th 532 280
& 1858.

Two can not join in an action for a
sovereign guilt the injuries being separate
& personal 6th 145. In 6th not
two joint merchants or other parties
who had been sued in a personal &
mediocre action to their joint in-
jury in their trade? (Handbook 29)
40.

But there may be two or more heirs
6th 179 79 2 do 910 6th 537. It is a
positive test implying an act in which
two or more may join.

Whether damages may be joined in this
action 32 general into eacy contradictory
case can they be joined? The answer is
indubitable each guilty of the whole—
(see Reference to Series 18) 6th 537
79 910. Not separable by our practice
Historic 918.

Mere is a most material ingredient
in the damage recoverable in this action 4. Dene 1947 - 6th 397 -

The following rule should have been inserted on page 32. Immediately after the rule - "Conviction of the
defendant in the original prosecution by a competent
jurisdiction is not only evidence but conclusive evi-
dence of probable cause. 6th 529, 17th 192, 20th 326,
12th 252.

It is of course a decisive bar of the action
for to deny probable cause here, would be to
impugn the record of conviction.

Acquittal in no case (but not always) pre-
sumptive, it is never more than presumptive of
the want of probable cause; not conclusive because
it may have been obtained from the absence of
proof, in a case of actual guilt, or from a want
of proof sufficient for a conviction, that there was
sufficient to show probable cause, or from false
testimony or other causes. But being in general
presumptive evidence, it shows the duty of the jury
to prove probable cause in most cases. 6th 529, 17th 192,
9 East p 361, 12 Mod 12 20th 202.

So acquittal on a defect in original proofs is
presumably presumptive evidence of want of proof.
1st Calas 47, p 247, 2d 18, p 5. In: Whether
in proving former false or prima facie evidence of want
of probable cause?

Acquittal not always prima facie evidence of want
of probable cause. 6th If the 6th was found out by a
Malicious Prosecution.

Court of enquiring, or a bill of indictment so haw
was found, by a grand jury, the is prima facie evi-

dence of probable cause, & the only prostandi lies
on plff, the acquittal on the trial. Bull 53. & Bull 14.
Par 15. So if it appear (i.e. if it is irreparable) from
the report of the judge that there was probable cause
Bull 14. 621529 301. & plff is at liberty to rebut
the presumption in their Case. See Each Case.

Exception. When the fact upon which the origi-

nal prosecution was founded, necessarily lie in
the knowledge of the. See page 33.
The word used in law, in its comprehensive sense, denotes any wrong committed with force to the injury of another person or property - 3 Bl. 201.

The word used in law, in its comprehensive sense, denotes any wrong committed with force to the injury of another person or property - 3 Bl. 201.

In this sense I am now about to treat of it.

The class of trespasses now about to be considered, comprise all practicable injuries to the personal property of another - 3 Bl. 201.

The right of personal property in possession are liable to two species of injury -

I. Abuse or damage, while the possession of the owner continues. 2. An action or deprivation of possession - 3 Bl. 145.

1. Of abuse or of personal property, without altering the possession - 62. Poisoning one's cattle, killing his beasts, destroying his bridge or doing any act in general, which takes away from the value of a chattel, falls under this description of injury - 3 Bl. 153.

The remedy in these cases, where the act is accompanied with force, is by the action of trespass, &c. in Quam 3 Bl. 153; 5 Com 582; 3 Salk. 556; C. 17.
I. Trepass to Personal Property.

II. Of Amotio or Reparation of Personal.

The action lies for such immediate injuries. Where a remedy is sought for remote, or consequential damages, occasioned by a breaching act, the proper form of action is

'Praecl. in the Case' - i.e. A cast a rock into the highway in doing it wounds B or his horse. The trespass lies. But if after it is to cast - B drives his horse, or damages one it, or injures the one or the other, Cast Act.

The case is brought when trespass is the proper remedy, the declaration is Radicall, All judgment arrested, & vice versa. 14th 125 or 141 or 146-12 Note 131. Action - the difference of judgment requires at Lim. Law in the case of an injury committed with or without force (Trepass on Case I.

The action of this page vii & amended gives damages by a restitution of the specific. 31st 151. It lies not for wrongfully taking a sheep or goods at prize the the property that been adjudged to be no prize: for the question depends upon the
Intraps to Personal Injury.

Law of Navig. And is triable in admiralty. Comp. 572-578. (See Table Lepine.)

But in some instances, where the original taking is lawful - trespass lies, for subsequent injuries - 8to 141. 8o. If a leak is taken as an estacy afterwards tolerated: trespass for the original taking - as an illegal & forcible act - theft is a trespass at inst. 8to 147. 1712 12. 8to 148. 8to 581-1. 3610 20. In most cases trespass lies not (where the theft original profession is lawful) for a subsequent abuse of the property.

Rule. When the authority to do the original act (as, to take profit of another's goods) is given to, Law a subsequent forcible abuse of the authority makes one a trespasser at init. 8to 145-147. 8to 581-2. 1712 12. 1211-12. 3610 20. 8to 146. a. to. 2 8to 581. 3610 20. 8to 146. 8to 581. 3610 20. 8to 146. 8to 581. 3610 20. 8to 146. 8to 581. 3610 20. So is a landlord enters a tenant afterwards steals, he is a trespasser (by relation) in entering. So is a thief, having seized goods in execution should distrain them, or use them wrongfully, in such cases, the subsequent wrong, quite retroactively renders the original act a trespass.

Principle. The subsequent wrong extinguishes the license of the Law. If the wrongdoer is deemed to have done the original act, not for the purpose for which the law permits it, but for the purpose of committing the subsequent wrong.

But the subsequent abuse of the authority
The first error by law must (to make one a trespasser at relation) be positive - a mento -
feasance - not a mensacance - by all of a trespasser - where lift clear. But
he would not have been a trespasser at
innis (for refusing to pay the tenement for
entertainment) 4th 385. 5 Dec. 181. 186
2 abs. 312. nor for a wrong not granted. The
act which makes one a trespasser by rela-
tion must itself be a trespass.

Hence if one having taken a thing lawfully
refuse to deliver it back, or tender of it, but
albeit, this act does not make him a trespasser
(- the act initio, the wrong being only a non-
feasance.) 5th 381. 4th 155. Hence the
injury is remedied by case. M. 250.

But if a A (by having taken - one's part, or prior
non-trespassful proc. or proc. non-trespassful proc.) does not
make action of the act, when by law he ought to do it
(2 or in case of lease proc. proc.) he is liable
to trespasser. The he does no subsequent non-
trespassful act. 5th 381. 4th 155. 20
5 Dec. 182. (ante 29 for the reason.) The doc-
trine of relation, however does not apply.
As the act cannot appear to have been origi-
nally trespassful. The proc. not returned
and not be given in evidence. So that
the A's right to take cannot be proved
This, therefore is no exception to the general
rule - 25th Aug. 632. 24th 422.

But where the owner of property sets the licence
under which the original act was done, the other
rear never in general be made a trespasser by
Desp. to Things Personal.

Relat. - 5 Geo. 1, 1719-21, 2 Will. 3d, 46 & 47 Geo. 3d.

For this the Law will punish in case of abuse the

very act which was authorized by itself; yet it will

not allow a party to treat that as unlawful, which

he himself made originally lawful. 5 Geo. 1, 1721-2

2d. Unlawful detention for abuse by bailee &

Sloane 581. ent. (Rule in C. denied 15 Geo. 1, 1721-2)

If indeed the bailee destroys the thing baileed, &

prep. lies! For he extinguishes the bailment -

But is the prep. at all liable? 5 Geo. 1, 1721-2 prep.

s to 136. 1st prep. 1 C. 245. 5 Geo. 1, 1721-2, 1st prep. for

the original taking! or only for the act of the

extinction? If this be the according to the theory of the rule, that the original contract

of bailment is extinguished, or the original

possession reverts to the original

made a prep. by relitigation. From 52.

Who can have the action? To maintain

the action Off must have prep. at the time

of the injury done - property alone is not

difficient. 5 Geo. 1, 1721-2 prep. on prep.

s Geo. 1, 1721-2 prep. 4 Geo. 487. 1st prep. 488. 7th prep.

The 'Abies' & 'Sloth.'

Abugio, if Bailer convert, the goods, baile, the prep. will not regularly lie.

But constructive possession a, to a stranger

is sufficient. 5 Geo. 1, 1721-2 prep. 5 Geo. 1, 1721-2 prep.

s Geo. 1, 1721-2 prep. 10 Geo. 489. 7th prep. 10 Geo. 489. 7th prep. of

possession of one's servant, or deputy, or agent,

who wrongfully takes or destroys by a thief.

To finally any prep. having the general prep.
Forfeiture to Things Personal.

In case of present prof. as a stranger, maintenance burglary. For it draws to itself of prof. ex law, as to stranger (indis-

cessible). 3 Rec. 164. 5 Term 578. Lat. 1174 & Bal. 286. 474. 38. Note 579 & is a construction-

prof. which consists in a right of present-

prof. "From 55" "Bailor".

The general property contemplated by this rule must be accompanied with a right of present prof. as in case of bailor. To keep fidelity to "But it is held that case-

lie, for Bailor. The exclusive right of prof. is in Bailor, at the time of the

inj. 2 Ch. 3. 161. 3 Ch. 219. 359. 2 Phil.

62. 453-4. 1 Term 432. 11 do 385. 472. 489.

1 do 480. 7 do. 66. Ch. 318. "From 55".

Inj. prof. is made to be founded on CTR prof. (at the time of the wrong done) and from that prof. or interest in

1729. 1736. Bell 35. But the distinction holds in point of fact only, where theft original prof. is lawful, as between bailed or bailed

owner & finder re 1722. 487. 1 do 454. 7 do.

vid. explanation 438. 579. "Alterio whose theft original prof. is unlawful. There

owner may have prof. or prof. from prof. or person. (See 2)

in point of fact 473 & "From 52" is entailed out of prof. at the time of inj. "Alterio


539. To the who has special property in goods with the actual prof. may bring trespass

as stranger. 3 Rec. 164. 3 Ch. 87. 92. 1 do.
Trip to Personal Property.

19. 4 to 84. 2 Wall 557. 569 Scott 19 (Same
generally a in Force) Bailor or Bailee
may either maintain the action 21

If Bailee delivers the goods to a stranger
the bailor cannot maintain trespass
by the latter for receiving them; the he
may recover 5 B. & C. 164. pl. 15. 175. pl. 33
&c. after demand, for the original
receipt of the property was not torture.

If property is sold or given to one, he
may maintain trespass as stranger
before he has taken actual possession.
5 B. & C. 164. Lat. 214. pl. 10. for property deere
a pos. in Law where there is no in-
terfereing right (ie constructive pos?
as by strangers) But a no vendor or
donor's retaining of the remedy, would
be summary况且ed or property, their
original pos. being lawful.

If part of Testament are taken away be-
fore will is proved Executor may main-
tain trespass after proving the will.
5 B. & C. 164. 2 B. & C. 288. 176. 483. He has
by relation a constructive pos. from
Testator's death his right is from the will
not the probate. The latter is only evidence
of his right.

A legatee of Specific goods may maintain
such breach for taking after 86. at against
the 8th he before delivery to him by 86.
5 B. & C. 164. (ie the if the legacy had been of
a third part of Testator's goods not
Specific for no particular good, or by
and in the first case this act could not
lie, I conclude, if the taking was, before
due, agent to the Legatee, 1 T. 208. If
without such agent the ten, and the leg-
ate title is just, nor does the agent
transfer it by relation - for the Case.
Agent is not evidence of prior legal
title but confer, it creates it.

So, if trespass is brought for goods taken
belonging to two - both should join
but the non-juror of one is pleaded
in abatement only. 1 Com. 142, 305
2 De G. 354. 1 Bost. 31, 62, 41. 3 S. & L.
323. No 123. The objection does not sup-
port the general issue - nor go at all
to the action - but only to the man-
ner of bringing it; i.e. the writ. It is
first evidenced under the issue general
to mitigate damages.

At Com. Law. The suit does, nor lie
for an act amounting to felony; as
theft, grand larceny. By reason of
major of the civil injury in the pub-
lic offence. 5 Com. 572, 574, 576
5 S. & L. 171, Post 2147, 1 Com 139.
Post 90, 126, 375, 2 Post 577, 1 Rob. 283,
1 Com. 443, Later 144. May 12.
No such principle here.
Agent founded in forfeiture. Secth
Com. - Bull 131.

If off or under theft take the goods
of one or execution of another, both
are liable to this action in the latter case, as the Riff is in the former day 40.

In declaring the proof must be decisive with certainty, Est. 22:9, if "dining place" or "off's goods" not sufficient nor owned by verdict for the recovery would not be a tax to another, they could not justify. 2 L. Payne 1408, 4 Dec. 1735, 87 Va. 5 2335. defect of goods should have notice for what goods he had.


But this applies only when the action is founded on the taking of, or injury to the goods themselves, and whether the injury is laid by way of appropriation that Off's goods, generally, is sufficient to sustain the prayer for breaking & entering Off's house & stealing his goods to sufficient. Est. 408, 3 1014, 292.

And even on special damages, it is a thing to the goods being only appropriation, for all the reasons in the last case apply to this.

Prayer for breaking & entering a house, setting off goods & expelling Off. "or pulling" or destroying only appendages, unless Off make a direct assignment of it as, a substantial trespass (case of such assignment) 103 Cal. 230, 3, 292.
Tender to Personal Property.

1826 555. 1 Bent 211 - 217. 2 10th 315 - 320
4 Dec 12. Without such new assignment
or justification of the entire wrong, the
whole wrong. See Pleading (Special Plea).

So, a general description is insufficient
of it to be made particular by reference to
other things in the declaration 629. 326.
[Emphasis: General key, for opening the
door of the house aforesaid'] Slat 643. 1 Bent 114.

627. must state prof. or a property
showing a right of prof. at the time
of the injury done to excite an actual
or constructive prof. 629. 326. Slat 140
Slat 49. 46 - 47. 490. 1 10th 280. 2 Lev 156.
Taking "key from off's land" not suffi-
cient. Taking a "horse from off's
possession" held not sufficient. "off's hole"
instead of "a horse" would have been
sufficient—The latter would have be-
ianing in effect a lawful possession
the former is not: The horse might
have been stolen. "From" 56. Declare
true in three cases, not good even after
verdict.

Value must be stated 629. 487. 5 196-
12th 299. 2 Lev 238. 129. 5 10th 349.
1 10th 170 (629. 587 - 8. that value need not
be alleged in From not correct. See From
137). 1 Bent 114. 317-

Outing account of value sued by
verdict 629. 487 - 5 196 12th 299 -
4 10th 24. 35. arg's but 129.
Irreparable damage or the same party of parties, for the same trespass, is a good plea in abatement. 50 V. 61. 110. 8 A. 15. C. 9. 67. 56. Seay, if the other action for the same trespass is to a stranger - 23 V. 53. 66 A. 4. 9. 50. 72. 11. 15. 142.

But the party first recovered in either will bar the other. 294. 93. 73. 17 1178. 834. 592. (said from 6a.) Where the opinion is, this rule is referred to.

Any caveat not material. 121. may prove the facts at any time. 121. 415. 319. 21. Bull. 17. 121. 251. 656. 32. 683 6. 82. 114. Thus, if a release is pleaded, this must be proved at the next suit time to be 8th 415. See 5. A. 4. 10. 83. 10. 33. 114.

According to Conn. Practice at any time, not within the Statute of Limitations. As the Statute is a good defense under the general form, if the provisions from the Statute of Bleeding. In Say, the Statute of Limitations must always be pleaded. See Bleeding 9. 9. 2. (See to Algernon.)
In respect to Personal Property.

showing the manner & circumstances
of the act....

If trespass is committed by several, 
all may declare in one or more, or
all. To be more or each one sepa-
rate. 5 Deo 17, 1, 2. 426. (As in bu-
ning damage, see "Battering" 18)

But it is said that at Com. Law, if
appears from the declaration, that
the defendant another person certain-
ly (known) committed this trespass, the
declaration is ill, for not joining the
latter. 5 Deo 17, 1, 2, 5, 1. 426. 199.
In re to the principles (It is aided
however by Stat 13 Eliz.) Torts, being
several and joint, pleading & showing
the fact, it is agreed, &c, but not
the cause. 426. 199.

If in a Jury, in Trespass to Real
one is compelled to pay the whole, he
can not oblige the other to contribute
rule common to all torts. 164
67 Deo. 181. 198. The law will
raise a presume out of an illegal
transaction between the parties to it.
"If trespass. 17. "Battering" 28

Justification must be pleaded spe-
cially. 60 411, 2, 282. 198. 11.
Such defense being inconsistent with
the part issue. If justification pled-
ed by one of several Co. Defts, then
that upon the whole, ifff had no cause
By the Com. Law "bi t armin" an word of substance. For at Com. Law the judge is held in cases of forcible injury as a 
Capias pro fine - in other cases the judge way. 4 Bae 11.
In our a fine - in the other answer.
6 52, 89. Being in alter, the judge 5 Bae 191, 11 N D 196, 18 638.

Now the word of Capias pro fine is taken away by 5 Stat. 5 to t. But the D is
found to substitute in bringing judge an action for injuries with forcible recovery it back in his judg from the court
and t 8). Therefore a reason for the rule continuing 5 Bae 191. Sal 638. 5 May 985. Com: t the distinction must still be
preserved to let in the provision of the

So "bi t armin" are words of suit. [D]
stance at Com: Law 5 Bae 192. 6 B 448.
51 93. Castle 18. Sal 536. Com 9 426 -
448 for some reason a in last rule.

The D is yet un both now aided in.
Suit of Personal Property.

Verdict shall be amended (8th 408 Cal 480) by Stat. 17 of 1799 Eff. 1801 Dec 93-9

In Cont. the always have been regarded as matter of form. The Cont. Law
reason for considering it a mis, a
substance never existed here. So that
diversity of judgments, neither capitation
nor misconduct.

At Cont. Law. a joinder in the
same declaration of trespass on the
case would be ill, because different
jury would be necessary on the
two counts. So 34. And held dif-
sent in Cont. but not now con-
cidered as Law here. It would
destroy all distinction between different
forms & kinds of actions.
Replevin has been defined to be a redelivery to the owner by legal process of his cattle or goods, detainer 4; 38. 392. 506. 146. 2c. 458 b. for an oath on his giving security to try the rights of the distress or to redeliver if just to be his. Actions of Replevin thus are one by which such redelivery is effective.

"Distress is the taking of a personal chattel out of the possession of a wrongdoer (or person in default) into the custody of the party injured to procure satisfaction of the wrong.

It is the act of the party injured 381 b. Some times signifies the thing taken by distress - but the thing here does not mean merely a test-finger but includes several descriptions of persons who are in fault for not discharging debts or duties.

Replevin lies not it is laid for goods to be taken by mere trespassing act 1 72 522 Rule 52. 366 146. 502 672. 146 672. But for goods only as have been taken by this trespass is it lies not for any taking which is not in form or professedly an act of distressing. The latter in point of fact be utterly tortious (p. 18). This is laid down as a common-law rule. But by that the action may lie in other cases, then that of distress (as in this, state it does) laid by other common-law authorities. It appears that Replevin will lie for any tortious taking 9 John 140. Rule 51. Cow Rek. 4 17b. 1 L. & L. 320 1. 327. Roll. Replevin 3 

This is the action of 6.
Replevin.

The latter opinion has been the better.

We're not disposed to give up the right of the distrainer to the benefit to redeem the property. *3b* 13. 147. *1* 145. *6* 247. 8.

In const. the security being a writ of *12* Replevin is a substitute for the property, has replained. It obliges the Bondman to be delivered in damages, which the property is not delivered to the distrainer in any event. *1* 147.

In Eng. *14* 145 in Replevin does not try the right (it does not purify his action), or fail in it; the property is to be returned to the distrainer, who may have a writ of *11* 145. *1* 382. 373-375. It being returned to the distrainer he may keep the still tender of sufficient amounts or longer. *3b* 147. *158. 940. 147* 616. 147.

Tender of sufficient amounts before the seizure, makes the distress lasting. For the latter is but the means of obtaining a creditor for some debt, duty, or debt, a fact of damage done. Is before impounding. It makes the imposing...
or detaining torturing - but not the taking Co 147 a Bull to 14 after judg. for

detainer it makes the further detainer
- or by him unlawful to take 8 Co 147 a
Sic 40. 5 Co 70 a 2 Note 561 t in the last
two cases self may have detainer or I

suppose from 8 Co 147 a.

When the trust is taken it is to be two
- pounds of inanimate chattels in a
ound court - animals partly in a
ound court 383 L 12 - Co 2 47. We have
no pound court.

At Com: Law a distrifg being in near
- time of a pledge, it could not lawfully
be sold - the detainer could only
keep it, as a punishment to the owner
if he was stubborn 383 L 10. 14. 1 Note 588
Statutes have in a great measure re
undied this inconvenience - especially
in case of distrifg for rent - in all kind
ing a sale in certain cases - but not
in case of cattle taken damage for
- Land 383 L 10. 13. 14 a some other case.
There were always some exceptions to
the general Com. Law Rule 383 L 14.
1 Co 41. 12 Mod 339.

The act of Replevin is demandable as a
matter of right - it even the rent is
pranted with right of distrifg in
- 383 L 10. 14 a 573 a 3 48 145. The rule
is designed to guard to oppression -
Replevin.

The principal cases by which distress may be taken by law are two:
1. In case of cattle damage precedent.
2. For non-payment of rent. (The second rent in use here 2 liv 89. 3 Br 1 b.) C 46 6xp 364 to 385. In Eng. there are certain other cases, ex. neglecting bull or horses under certain feudal tenants for amendments, tolls, leagues, etc. 3 B 8 6. C 46 6xp 38 at cap.

In Eng. Replevin may be at law (4) by a writ out of Chancery or under the Stat of Marshbridge 52 Hen 8. by plaint (631 341) 25. Shy's own present on com. planet made. Shy may order his Bailiff to Replevy 6 B 247. 3 N D 169.

In Eng. writ of Replevin lies in all cases. Replevin in which distress is taken except when distress is found on a case in widows nam. This is a distress by the owner of the original distress. The latter is carried out of the county or concealed. In which case the Shy having returned the goods on demand. It is carried to a distance to a place unknown to the owner may obtain the goods of the distraint, by levy of replevin, if there are not repleviable

It obtains also when the original distress tenant having retained the goods in the writ of replevin on a claim that they are his own (which claim is decided by courts) there no latamma: so if there is
Replevin

no claim, but the property is called to 3 RE 149. No. 69. 77. - 52 475. In this case there can be no replevin of the 2 distrisf - till the original distrisf is proceeding.

When a writ de venire is awarded to the distrisf can not be found. He: for his by the pleading in the writ of Replevin. - 4 Dec. 382. No. 172. Est. 849. Case 322. Le Est 371. - 27. 63 41.

I. In case of Replevin of cattle damage pandemic. II. In case of goods attacked.

I. Of Replevin of cattle distrisf, dam. age peasant. In this case the owner of the land has his election to bring two pafs, or the train it incurred the cattle. But if he distrisf, the distrisf creates his action of trespass if done - unless the train was without his fault. 2 Sec. 91 2.

Same rule in case the cattle's dispar. 5 Dec. 79. Cal. 248 - 12 Est. 658. 8 33. 7 27 7 20. For he is bound by his election to make aside by the act of he has chosen.

At Com. Law the proceeding by replevin were taken - the writ must frame out of chancery - the goods are were then long detained from the owner. By stat. of Marlbridge (52 Hen 8.) The suff'f is enabled to reply immediately - 4 Dec. 373 - 3 RE 149. 6. 9 13. 18 63. 1.

Taking pledge, that the parts, collating will prosecute his action of distrisf. 
Replevin

If the owner of the goods has the right to be decided for detainee. If he fails to produce, pledge liable to distraint. See: 12. Lie, 4. The pledge in their recognizance, 6th 347. 4. 3 Dec. 382. Lie ca 2. 2 Wil. 4.

Analysis, between taking away of debtor & lie, then among cattle. Both are pledges. 2. 3 Dec. 382. Demand not satisfied by death, & by escape until the party impounding it is in fault for the escape, or consent to it. In both pledges being taken, no other remedy. 5 Dec. 179. 12. 3 Dec. 113.

In Eng., owner of cattle distrained must provide for them, unless they are put into pound. 30 El. 13. 20. Lit. 47.

If the owner repudiates in this state, it judg. is sure for debt in repudi. He recovers in the action for damage done by the cattle (2. Lie 91) to his execution for the amount of damage from instead of the writ de resc. bond for at Law (ante 2) 20. Lit. 145-3 Dec. 372-3. 382.

If the execution is not satisfied by plea in repudi. He's pledge, are liable.

The pound keeper has a lien on the cat.: the impounded for his fees, in case of settlement between the parties.

Generally, when cattle entra through the insufficiency of the fence or the owner.
If the land no damage, no recoverable.
But if they pass a good part of a fence
party pass & partly bad damage, are re-
coverable - if they may be supported.
So if the cattle are chiefly Stegton 311-
So if they come from the highway, imma-
cessant at Com: Law, whether the fence
is good or bad (28 Bk. 527) because it is
unlawful to permit them to go at large
in the highway.

But a Stat in Com. enables towns to make
any cattle commonable (Stat of Com. 414.408)
then it is said no difference between con-
trolling from highway & from an adjoining
field as no damage recoverable if the
fence was insufficient. Can it be better
with town regulation has any other
effect than to prevent here, be from being
presumed for running at large on high-
way?

For mischief done by an animal from
a disposition common to the species,
owner is liable without nature or kind.
edge. As for a bear, biting cattle, etc.
pestering. For that committed from
a disposition not common own not
liable without damage - 82 N.S. dog's
biting - torts. In Com 8.5) Bk. 25-29. 66
P 618.86. I'm declaring for damage done
by 4 dog, by biting - scienter must be also
liable. 62 218.38.

If the owner of land have a beast damage
present on to the land of the owner of
the hands; he is not liable for cheating
If a stranger steals, he is liable to both.
Leviticus 19:5 50.

A trainer not allowed to use a beast
outside of his 3Bl 13. Or 9:148. He becomes a trespasser at law if he does "[use] to
own a [beast] 50.

A sale to land may come in question
in this action, as has been called [when
the is the case] a real action - contr
but due to be personal a trespass or del-
for land can not be recovered in it.
This title may come collaterally in ques-
tion 40 Cal 379. 1316 Const 456. 47.
2. 27.

Rule. that all trespass must be taken by
an except in case of beasts damage for
land. In this latter case a trespass may
be made by right eft this third 18,
- 3Bl 11- 380 - Co lit 142. 18.
- is meant further damage, I suppose would
be a different reason for the exception.
The general rule is intended to guard against
the abuse of the license of the law, by
fraud, or violence.

distress of cattle damage-payment must 13
be made while the beasts are on the
land. 3Bl 380. Co lit 142. 9. 22. So at
one. law is case of distress for rent -
except it might be taken on fresh rent
now remedied by Stat 3Bl 11. Or is a
general rule where one has a lien on
Replevin —

fects & voluntarily let it go — he can, all

II. As to a trip for rent. Formerly the
lenders might take a large a trip as
he pleased. In most had no remedy. The
now has by Stat. of Mass. (1832. c. 56) a
special action on the case for enforcing
the same. — 35c. 72. 3ter 45. 1. Rent 104. 72. 66.

But trespass is not maintainable for this
injury. (13 Bar. 578) it being no injury at
Civil Law. Except when gold or silver
(bearing of a certain known value) are
distained. (91) In other cases, a special ac-
tion on the same found on the Stat. of
the proper remedy. 66 & 57. (section 5) —

Trespass for rent is incident of Com. right
(according to the Com. Law) to those cases
only in which the owner of the rent has
the reversion — not where he has no
true interest: as in case of rent charge
by, Where the owner of land conveys his
whole interest — reserving a rent. 204. 5
215. 218. Co. Lit. 140. 3. 6th. 355. 6. 2. 66. 42
But he may in this case have the right
by clause of the trip.

(14). Now the right of detaining is by Statute
of 4 Geo. II) extended to all rents. 236. 43
66. 5. 6th. 355. 6.

In some cases the writ de restituta sit
been made to damage to left in Replevin
substituted in case by Stat. 30. 12. 9. 4,
ch. 17. Section 1.
If the claim in equitable jurisdiction is not to exceed the damages, as is equal to the value of the destruction; if that is less than the rent due, he recovers in damages the amount of the rent with costs. In the first case, the tenant may have a further stipulation to the rents.

2. In case of personal property attached on mesne process:

The action when brought for rents attached is joined by statute in this state, unknown to the common law.

It is called a "mandated process," requiring the officer who has attached goods, on whom process is served, to administer them. See Part 276.

A magistrate taking the bonds, acts ministerially, hence he is liable if bonds are insufficient (but not if the bondsman is responsible at the time) and the action may be brought in his name. The proponent of the action has been brought to the pledgee, if they can be proved to be insolvent. (p. 60)

The action is Case 4, v. Jaff in Cap. when he takes the pledge. (p. 60)

He becomes liable in the case for the whole debt I conceive (infra) as in Cap. Jaff does even over the amount of the
Replication.

bond taken as the case may be - 
see 5 Th 78. 11 N. B. Jb. - Comp J. - (2 N. B. 54)
cont. 2 N. B. 38. - the case in N. B. being -
than similar case here - Bond in Sup. -
being for the return of the goods - Esth 348.
bond 33 B - 4 Th 433. - (cont 2 N. B. 54).
The action is case. Date 60.
Bond in Sup. is double the value of the goods.
Sail 10. 2 N. B. 38.

It has been a question in Cont. whether
Jeff's bond (it the Jeff's in Replication )
might be taken by the magistrates -
decided in the Court of Stales that it
cannot.) At least that magistrates is liable on Jeff's failure the respondie when the bond was taken - Court 165.

It has also been questioned whether
when property to a small amount
is attached to replications the bond man
is liable for more than the value of the property. As decision in C. But
the words of the Stat. are explicit
- to subject him to the amount of the
recovery - on the attachment - analogy.
In the case of receipt man -
who is always liable for the whole un-
less he delivers the property - or limits
the extent of his liability by the terms
of the receipt.

It seems in Cont. bondsman cannot
discharge himself by surrendering the
goods after just - for dept in Replication.
The delivery of the goods is one part of
Replevin

the condition of the bond. The unders
-taking is only to answer such damage
-demand, &c. That Con. Replevin. Not
like the case of receipts where he is only bound
to deliver the goods on the execution. Not
like bondsmen in English replevin who
engaged only for the return of the property.

It has been held here if property of one
is attached for the debt of another, re-
plevin does not lie. But trespass does.
For replevin on attachment is not an
adversary suit - it is one can replevy
goods attached unless he is a party to the
bond. $1197-2 Tr. 935 - 56. to the writ of
attachment. But go. Since by many
judges the action lies for a taking
merely tenant.

If cattle of a farm tale are distrained
of the marriage - husband alone may re-
plevy - for the property becomes his
property by intermarriage. For as the
distris gives a more lien not altering
the property. It must be considered as
the property in replevin - as contrasted
-distinguished from property in action.

He has a right to replevin on paying the
wife joins it is good after verdict. For
the presumption will be that they were
joint tenants.

Edenton may reply. Distribs taken from (5)
testater. Est. 1795, 1181: 2. Bull 53. For
Replevin.

the property to the right to it are presumed.

If the several parts of several persons, are dis
tained together they can not join in replevin
the rights being several & let 145 to
be 173. Sale 13. For their interests & rights
are several.

Def'ts is trained in a foreign country they
brought here while under the distress can
not be reapplied here 6th 372. 2 Jan. 91
as the capture might be lawful there. It
was the reason that the cause of action or
claims for which distresses are allowed at
sum. law are local & not applications in cause
debt for rent to (6th 23)

Replevin lies of things personal only, & ther
fore if a deed of deeds of land. It is
a sufficient reason that deeds of any kind
are not attainable provides replevin
lies not for taking merely titles. But on
as to the rule of relendum lies for such as
taking (6th 202 & 6th 380)

Replevin is founded on the right to the
property in the plff. Therefore it is a good
plea in statement or in law that the
property is in a stranger 6th 372.
3rd 873. 2. 921. 7th 242. 1st 94.
Different from action of trespass (6th 33)
where plff. replevin is sufficient
& trespass being founded on replevin
(6th 331 6th 37 & 6th 57)
Replevin.

Pleadings.

Declaration charge the taking & detaining of the goods in \& demands

\{P.4, 384\} Em. R. 34. 10
\{2 Sam. 19. 40\} 292. 310. 320 2. 1.

In Replevin Repl. may either deny the taking
to show his right to take - 4 Dec. 388. But on
our part Replevin of goods taken by attachment
there is no trial (P 14 & 16)

The on't issue is. - non caper - 17 Dec. 249. 4 Dec. 10
388. Bull 54 - upon this issue a claim of
property in Repl. can not be proved in evid-
ence. it should be pleaded - Bull 54. Sale
2 Lw 92. 6 Mod 81. Such claims being in a
consistent with the gen'l issue -

If Repl. justifies the taking - a., because the
right were damage [\& so]. he is cal-
lled the accouintant (Bull 300. 310 130. 2 Sam.
195.) if he justifies in his own right or in
that of his wife - if he justifies in the
right of another - as tenant to he is said
to make compensation - 310 130 -

These terms are derived from the words of the
justification in two cases. - 1st - "defend
> from the taking" to 2. Dept. 99. it is to will
acknowledge the taking

Assurance is in the nature of a plea to the
act to of Replevin - it is also of a declaration
or itself in Replevin - The replication is in the
nature of a plea to the assurance it is usually
so called -
Replies.

In this case (in of allowing re) both part.
the action & damages. The owner of the cattle being for damage, the owners claiming at law. 2d generally a return of the cattle re. in some cases, 3d damages. 4 Deo 373. 2 Hen 149. Ex 6798.

Bill 355 to 130-1. So that both parties claim a right of recovery. a pecuniary in this action.

In C. both claims damages. only. The cattle being here not returned in any court to the destractor.

Answer is in the nature of a declaration in certain respects. 1st a writ to
put. for the return of the dispossessed in some cases for damages. In other words their prop 
point. in chief 4 Deo 373. 6 Hen 276. 7. 2 Hen 117. Sal 90. 2. C 114 may plead to states. 
ment of the answer 4 Deo 373. 3. Account need not close with a verification. Ca 130. 798. Cant 122. 4 Deo 373. Clerk 103. Read 163. Feb 142. In these particular, the an
swer is like a declaration.

But the answer is in nature of an action. one tenant all common may it is said 
avow without his fellow. (Ex 1520. 4 Dec 373. 6 Hen 194.) For taking cattle damage.

Penant. But this is perpend. The tenant may make copzynage as bailiff of the other.
(20s. July 253. 2a 12 136. Note 220. Feb 14) as well as aver for himself.

Tenant in law may have serve as
Belewin

Waring (i.e. aerow boroall) for rent, because it is in the realty & their interest in it involved. 2D. D. 35. 29. C. 340. Tal 389. 5 Bay 422.
This action is,  
1. For wrongful acts, not accompanied with 
   some.  
   II. For culpable neglect or omission.  
   III. For consequential injury occasioned by 
   acts which are wrongful.  

Examples of the first kind of wrong - Conve- 
    ntion in favor, Malicious prosecution, Dis- 
    dentity, Escape, Extortion, Fraud, False Re- 
    turn. Maker praxis re.  

Examples of the second kind of wrongs. Neglect 
    of duty in a Badger, Servant, Officer or when 
    injuries to another.  

Examples of the third kind of wrongs which 
    consist in consequential damages occasioned 
    by forcible acts, are laid in declaring con- 
    trol the pure good to an aloctation of 
    civil damage - 3 Bl. 122-3, Esp. 598, N. I. 180 
    2. Day, 1299, 1412. 2 Bl. 1283- 3 Bl. 183-4, 238-9 
    1297. 1242. 4. This is throwing a log into 
    the road over which one falls, dipping a 
    pit then to - 2 Bl. 130. 17th of June 12. In con- 
    sequence of beating one's servant: the the 
    action of trespass with a pure good has by 
    confounding the form of declaring damages 
    very generally in the English practice. M. 
    in (pros - 17th)  

Actions of trespass on the case are generally 
    founded on the equity of the State of New E. 
    13 Ed. 1. - 3 Rec. 1. 4. 2 Bl. 149. 242, 3 Bl. 51-2 - 
    the case was, in a few instances, known as 
    Con. Law 3 Bl. 123. 3 Bl. 129. 3 Bl. 445. 2 Bl. 20, 
    vid mody per escape part 4.
Trespass on land vs delicto.

Afterpruit is the most comprehensive of all actions on contract & trespass on the case ex delicto is the most comprehensive of all actions.

In Cont. the forms of declaring & common parlance often make a distinction between action on the case & actions of trespass on the case. Afterpruit we call an action on the case, Trespass an action of trespass on the case. The first class arises ex contractu, the second ex delicto. The English law knows no such distinction. 3 Nair. N & L. 245 & 394 & 382 201. But the action denominated trespass on the case whether founded on contract or tort.

If case is brought when trespass is the proper remedy (action) judg. is arrested & to c. connotes 6 Th. 125. 2 Nair 131. Case 2 171. 96. Difference of the judg. at Con. Law is the reason 5 Nair 191-3 4 de 11 - 2 de 506. Tres 59.

It has been a subject of much controversy in particular instance whether trespass or case is the proper remedy. Where there is no force in the transaction complaint of there is no difficulty to determine; it is always case. When the original act causing the injury is with force trespass or t. arms lie, in some cases, in others rule on the case.

Rule. If the possible act is immediately injuring, & the relief is sought for the immediate injury, trespass or t. arms is the proper remedy. Battery of one to kill, false imprisonment, & stealing property with actual force or

But if the injury for which trespass is sought...
There is a case where a witness from the defendant was
questioned that the evidence was brought up because of
minor incrimination in the trial. The court ruled there
were doubts in the case.
To trespass or cause a trespass.

by consequential, trespass on case seems to be the proper remedy or action — as for coming a leg into the way over which one falls. 2

law derives from the taking of one's servant or child re. 7 120. 28. 11. 3. 12. 14. 11. 10. 5. 12. 20. 11. 10. 28. 1.

In the last case the action is usually called trespass, or trespass is held to be the proper action. [2 CH 7. 227] 2 292. 1. 34. 2. 200. 2. 21. 29. 12. 40. 2. 202. 9.

There has been much difficulty in applying the rule of discriminating or of distinguishing between immediate & consequential damage. The injury or damage to be immediate will

in the rule need not be of course the instantaneous effect of the original force, but when it is so it is of course immediate. 282 4. 199. 1. 112. 2.

But injuries which are not the instantaneous effect of

a part of the original force are sometimes regarded as immediate, sometimes as consequential. Of course they are in some cases remedied by trespass, and in other, by case.

Rule.

1. when the immediate or proximate cause of the injury is, but the continuance of the original force, the injury is immediate, & the author of the original force is liable in trespass for in this case he is the author of the whole force, the ultimate violence is his, & the injury is considered in law as the immediate effect of the original force.
II. But where the original force ceases to cause the injury commence, as is always the case where the injury is produced by the voluntary intervening act of another rational agent. In many other instances, the injury is consequent on the author of the original force; he is liable (when liable at all) in the same extent as if the original force were his own. For the proximate cause of the injury is, at a continuance of the original force, hence the injury is not considered in law as the immediate effect of the original force.

Example of Rule I. A strike a football at B's head, A is by the first rule trespasser, for he strikes a football at B's kick, B against C has no remedy against A, but trespasses against B. By Rule I.

So our shoot a ball which after spacing a number of times hurts A's servant. The bodily hurt is in law the immediate effect of the original force, for the proximate cause of ultimate force is but a continuance of the original force. The original force being the cause causans — t — the force pass — id est the cause causata. The servant has therefore trespass by the first rule.

But by the second rule A's injury is not the immediate effect of the original force. The immediate cause of the injury to A is the cause causata viz. the physical hurt done to the servant. A's privity remedy is therefore. Case 1. 167 8. 629 545. Say 268. The it has been called trespass. 2 189 274.
Trep: on Case or delicts

341. 3 Wils. 18. 2 Ib. 17. 2 B. A. 446. 476. 3 B. B. 599 (p. 21.) And it is now settled in 2 N. B. 476. that the Master may leave the pool - this is clearly contrary to principle - the open prudent

Further Example.

But if A puts an instrument of mischief in motion & another rational agent B on - (4) immediately gives it a new impulse it would be the injury is not the immediate effect of A's act but of B. A therefore is liable in trespass & B if at all, liable in Case 206 A 892. it depends upon whether his act was in the 1st instance lawful.

Suppose a ball that at a death places which incites trespass lies. Cutting through - (4) a tree. Tham. 467. 11th. 424. 3 B. 523. In this case the injury is the immediate physical effect of the force continued, it is not aided by an intervening free agent. But if a log is thrown into the road & A falls on it, case lies. - for the injury is not the effect of the original force continued, the original force ceased before the injury began.

C. 444. 1 Com. 284. 6th. 599. 1 Com 6 10.

Is if A cuts a spout, which thence water is:aming of rain on B's land - case lies. Th. 6th. (post 6. 20.) same reason. A layer of cutting down a head of water & the flooding B's land (p. 6) for here the injury is the immediate effect of cutting down the dam - & trespass lies.


So of turning out a mad ox - 1st & 2nd cases.

Case lay 1 Com 295 for riding a wild horse to which ran own plow 1 Com 283. line 1.
include defendant was not considered an agent to pass as relative to the force. So at 1899 he was regarded a plaintiff being unable to govern the horse, but quality of importance & want of care in riding him 2 P 17.

Both cast (he shewing my landscape) ran with force or against plaintiff horse & case was alleged to be. Not alleged as the act of the defendant in 3 P 593 the declaration did not describe the force as the personal act of defendant. 8 P 118. Declaration had charged the defendant with negligently driving against plaintiff horse & as would have been the proper form of action, for if an injury is the immediate effect of force, it being negligent or wrongful & immaterial as respects the form of action.

For if it casually discharge a gun & the shot of the window is communicated to B's property & burns it — Case lie for B. Ex 6 29. For force acts before injury begins burning is not A's act. The burning is a new distinct act or cause. If willfully this would lie in this case. It seems the negligence being wilful or not deciding the immediate cause of injury. If the burning to be A's immediate act or not. If not wilful the burning must not be deemed his act but only the consequence of it.

If I dig a trench on my own land to divert a water course from my neighbor.
Deep. on case or del.

"- bone, the injury is not immediate or case will Deepass.... Here the proximate cause of the damage is negative viz. the failure of the streams, therefore it is not a continuance of the original force.

2 cases 174. 646 138. St. 5. 638-9.

If a servant in performing his Master's business negligently commit a direct injury with force, the remedy is the same as 2 Camp. 484. Master & Serv. 36. 39. If Deepass or case the proper remedy against the Master?

1807 7 Cal. 472. 61. 123. Md. 441. 5 Md. 49 160 24 12 442. Case I think clearly. St. 1082. 7. 12 279. 4. June 1093-

If a ship ran over another boat with force to negligence of Deep or pilot Case is the proper action it is not the personal act of Deep but of his agent. 2 St. 446-(p6)

This distinction has been taken. If A willfully run his vessel against B's vessel by negligence call it was an act in the former case not to consider in the latter. 5 Ta. 188. 36a 523 - in the latter case the court did not consider the act as his act. Scaggs. If it stood he own self at the time of the injury.

In case put before of cutting trees, lopping them or the force is continued, it is one continuance act of force therefore trespasses. Case of Sport (not act) arises for creating the sport does not cause the falling off the main, not that joint act. There the force...
ended, before the injury took place, that no
other defendant should be needed. Viz: pain
to produce the injury, hence case is the
proper remedy.

But for cutting down a tree 1/2 (of) woode.
the remedy is, Tresspass - for this is like pour-
ing water on the dry land, it is one cons-
 jurors act of force. The cutting down can-
be the flowing of the water.

But the first general rule (or the first
branch of the distinction) holds only
against the immediate agent, the
actual author of the injury. So for
Principal if employed in the
remedy is case, i.e., when the injury is
the immediate effect of force, Es a
servant negligently driving his master's
carriage against another's carriage
or person - remedy against servant is
Tresspass, by the first general rule
but against the Master it is Case: for
in law the act is not his - he is liable
only on the score of negligence. SM
49 - 6 Ex 125. 2 Ex 142 - 1803 10 2 49
2 PR 446 - 1083 - 7 2 279 - 8 2
+ Sec. 37 5 3 82

Where case lies for an injury occurring
in consequence of an act with force.
the original act may be laid to have
been done by t'arnity, this is the action
of Case - 3 receiver, 10 2 244 - It is but
matter of evidence or a decrip-
tion of the manner in which the
consequent damage was occasioned.
Trespass on the Case ex delicto.

occurred—by throwing a log into the highway & killing horse or carriage injured by going over it.

Whether the original act was lawful or unlawful the question as to the form of action, 25 Edw. 2d 1876. The injury being the immediate effect of the force or not, decides the form of action. The unlawfulness of an act may render the author of it liable when he would not otherwise be so, but cannot affect the form of action.

This action lies for a great variety of misdeeds, 3 Kent 338. 10 Edw. 2d 52. 122. 10 Edw. 2d 224. Many of them from distinct titles. From. Harms. Malicious prosecution.

A more specific for which this action lies, on the ground of delictum must be a neglect of duty imposed or recognized by law. 83 Em. 399.

2 B. & 7. 1st Com. 252. 6 & 7. 217.

Thus, for negligence in his office, to the damage of another, a Shiff is liable, & all other offices & private persons in other cases. 10 Edw. 2d 205. 176. 10 Edw. 2d 205. 1st Com. 73. 206. 1st Com. 203. 10 Edw. 2d 205.

It lies on an agent for not effecting insurance according to his instructions, if a loss happens, on the ground it lies in three cases. 1st. Where an agent has effects of the principal, who is absent, his hands. 552, 17. 1st Com. 73. 2nd. Where one has been in the practice of insuring for another who is abroad, under prior notice to discontinue it. 3rd. Where one accepts Bills of lading, sent on condition of
incurring. March 4th 74. 205-6. 270 288.

1. to a voluntary agent (i.e. one who receives no reward) if the principal to execute the trust, or commit a mistake by negligence. March 4th 205-7-9. 136th 274. 274. 32 D 49. 49.

See Satt. 1852.

A person performing business for another in the line of his profession, or doing it as a daily or unskilled labourer, is liable in the case of

the latter. But if the business was out of the legal profession, he is not liable for want of skill - unless by a special agreement the for negligence he is. 2 May 214. 276. 357. 66th 281. 214. 41. That for negligence or gross ignorance in a surgeon, by which a patient is injured, the action lies. 66th 281. 2 May 213. 276. 357. 8 East 348.

But in case of an undertaking in physic or surgery, unless the person undertaking make the practice of Physic or a common profession, he is not liable if it is laid by (66th 281) even for neglect, without a special undertaking. 3 Dc 122. 166. 66th 274. 214. 1 Esn 165. 235. folly of the patient. Sc 105. In case of neglect, regardless, do not at this point suppose him for ignorance or unskilfulness, they are not liable, except by an express undertaking for negligence, they are strictly liable, the
not regular practitioners.

It lies in every one to whose act or culpable neglect the health of another is impaired (p. 26). It lies as a duty of him who has injured another's health. Indeed the Law implies a warranty that proviso, tells one good from bad, safe or food which he injures another's health. Indeed the Law implies a warranty that proviso, tells one good from bad, safe or food which he injures another's health.


So that the injury be different as to the subject of it from what the owner had notice of. Notice of a dog's biting sheep. He afterwards bit an ox. 9 & 26. 162. 3 & 26.

For injury done by animals, heed not heard, the owner is liable without notice, all such animals are supposed to be addicted to mischief. See Dean, supra, Rylv. 9. Plow. 68. Esp. C. 254. 1 Com. 248.

The owner's liability in all such cases is in the ground of negligence, and of course the action is trespass on the case. 1 Com. 248.

It lies for the disturbance i.e. for unlawful hindering one from the free enjoyment of an incorporeal right-p. 248. 3 Sel. 236-241. 1 Com. 199. 9 & 11 H. 3 Litt. 266. Esp. E. 845-851. 2 & 3 W& M. 275. 2 & 3 W& M 186-2 Roll. 124. 6 & 7 obstructing a right of way, directing a water course to the mine. 8 St. 5. 638.

For an escape on mine or final prongs the action lies in the Shipp. 2 & 3 &c. 245. 11 & 12. Anciently, the only action on the Shipp in such cases was, Green on the Case. 7 Will. 3. Now by the Stat. of 1 & 2 Will. 2 the debt lies to him for escape under final prongs—both title titie in both instances. 6 & 7 R. Esp. 217. 6 & 7 835. Where debt is brought the jury can set a five-pence limit to the whole amount of the debt. 3 & 4 & 5 & 6 & 7 R. 1023. If it lie in case 6th & 7th 126. 6th & 8th to 201. For the remaining heads for the action of Escape see Shipp & Denton.—

For more presence of under Shipp, Shipp must let it be only liable & for misfeasance or tort, both lie & under Shipp are liable.
Trespass on lawn &c. Del.

62. Voluntary escape embezzling a writ 
2. Mar. 32. For the reason of the distinction
See Shipps v. 5. a (In Ch. Vinton Shipps is also 
liable)

If a Ship having arrested on a seizure for 
3 35. S. 140. or 146. 23. 106. 106. 
23. 126. 313. 2. Mar. 31. 8 Co. 184. 2. Dec. 189
1 Com. 489. 5. de 112. 2. Dec. 56. 2

The action lies, also in recover, of one taken 
3 35. S. 140. or 146. 23. 106. 106. 
23. 126. 313. 2. Mar. 31. 8 Co. 184. 2. Dec. 189
1 Com. 489. 5. de 112. 2. Dec. 56. 2

So it lies, for seizure of one taken by final proc. (1)
3 35. S. 140. or 146. 23. 106. 106. 
23. 126. 313. 2. Mar. 31. 8 Co. 184. 2. Dec. 189
1 Com. 489. 5. de 112. 2. Dec. 56. 2

Shipps v. 21.

So it lies, for seizure of one taken by final proc. (1)
3 35. S. 140. or 146. 23. 106. 106. 
23. 126. 313. 2. Mar. 31. 8 Co. 184. 2. Dec. 189
1 Com. 489. 5. de 112. 2. Dec. 56. 2

Shipps v. 21.

So it lies, for seizure of one taken by final proc. (1)
mean or final process (Sec 612) that the 'the Stiff himself has not been sued
Sec 610. Cor 6 52. So to the under Stiff that
the Sec 62 is from his own favor of the
Sec 613. But not in favor of the
party as an under Stiff unless the ce-
= cause be voluntary. (Capra Cor 6 234-5
55. Co 526. Puff 2 23)

But the Stiff or bailliff cannot maintain the action on the party escaping even tho
the Stiff has recovered on him - for he is
not liable to the Stiff by Law, but by con
tract - Sec 613 to Cor 6 234. The injury
is to Stiff & party not to bailliff - Puff 2 23-4.
So it lies in the Stiff re for a false return

So for omitting to execute legal process to
make an answer - 2 Bac 236 n. 2 Mot
234. 2 Dan 331. Puff 2 14

Attorneys are liable to the actions for
neglect or misconduct, injuring their client
Sec 617. 2 Del 325. 4 Dan 76. Mad 6 Sept
57. Puff 14. If he neglect to appear
for his client.

Attorneys are sometimes liable to the ad-
verse party for dishonest practice.
Sec 618. An attorney fraudulently takes
a judg. of the Dept after the Stiff had been
wronged - Stiff had case in the Attorney
Genl 125. 5 Wil 377. 30 El 165. 1 Mot 269. Mad 2
So if a person acknowledges, judgment being given, the action lies 1, 17 Roll 105. 31 Le -

It lies in the name of the Peace who refuses to do their duty - thereby failing to require the persons in question - a writ - by deposition or by 618. 17 Ten 323. 171 Han 90. 1 Hal 97.

It lies in a person who has, and on a writ for not countermanding it on settlement unless malice is proved.

Post 386. 2 70 to 302. No legal duty requires it - If afterward maliciously proceeding action lies for malicious prosecution -

It lies in an officer, corporation as for a false return, to a mandamus. (See mandamus 7. p. 22.) 3 25 148. 12 Bent 111. 19 Sal 92. 180 134 - 4 189 17 Sch. 486 - 4 189 17 Sch. 486 -

It lies for a breach of trust in bailors - 6 205. 2 70 to 909 -

The action lies in the ground of mismanagement for malicious for the bailor and all cases of bailment - when the property is injured for the want of that degree of care which (according to the nature of the bailment) the law requires, or which is expressly stipulated for - 1 Com 205. 209. 14 Co 178. 4 4 Co 93 - Sal 26 - 132 183. 2 70 to 909 - 6 205. 2 70 to 909. 6 205. "Sec From & Bail."
To the case of the case of 62 Ed.

on text 3 Ed. 62. Pla. 46.

If he, is owner, or master, or replace for good, lost, or injured this the latter any.

licence 62 63. Sal 440.

But the owner, if sued it, is laid and all be joined - a, the right of action is ex quasi contractus - Sal 440. 3 Sal 203 - 5 TA 451. contra. The true rule is when the action is founded on wrong - licence all sued must be joined - the first being took - 5 TA 649 - 57 - 3 East 62 - 70. And if the action is on the contract of bailment - express or implied. Pleas, 46. Bailment, 66 - 62 (contra 3 cent.

And if one is sued alone upon the contract, he must plead it in abatement 6 Ed 123. 5 TA 651. 5 Dan 2611. (contra 3 Sal 203. S & C 160 440.) In the last case cited (Sal 26) the action was treated as quasi contractae - (5 TA 451) But it had the same jurisdic in the rule now, which should have been pleaded in abatement - 20 -

(14). For a actual fault of his own a Post master is liable - To are under office for his. Comini 765. & 2 & Haref. 5 Wil 443.
Post masters are not liable for notes or letters lost through the fault of laborers, etc., nor are they liable to hire paid to him to ply therfore, nor liable as a common carrier. He is an agent for the public, or, such is not liable in such a case. (Mart. & Serv. 42).

Liability for injudicious selection of persons, to the public only.

Inkeepers are liable for all property of their guests, lost for the want of that degree of care, which the law requires of them. 3 Dox. 179. Psalm 374. 2 Nott. 345. Bull. 73. & Co. 92. 1 Cow. 214. 622. 626. 3 B. 165. 166. 2 B. 261. 178. 11 Inn. on Bail. 117. Not liable for goods stolen by guests, tenant or companion, or taken by public enemies. (See Bail. & Plunk.)

A guest subject. Inkeeper for goods stolen & lost must have been a trespasser or guest. 1 Co. 92. 626. 551. 273. 3 Nott. 78. A master procuring lodging, is not a guest within the rule 1 Co. 52. 626. 626. See Bail. & Plunk.

Inkeeper is not answerable a, such an (14)

- He left, he receiving, previous from the guest or his guests 626. 551. 625. If the guest
- pays away to leave, his goods, he (4)
- keeper is not liable. Co. 9 163.
- Article if he leaves, his house, for this
is a profit to the owner is absent. See by
Sal 388. "Lone, st-

So he is liable for dead goods if the owner's
absence is but temporary & he is able to join
going out in the morning or returning
returning before night - E 29 627. Co 397.

Pickup or own lane memory is no excuse
for the innkeeper - E 29 627. Co 6 8 622 -

Innkeeper not liable for injury to the
person of his guest by third persons - 3 1
as 628. 8 Co 326 -

Innkeeper liable for not receiving guest
unless he has good reason to refuse - 3 186
H and 163. 2 14 327. 1 12 3 - 3 do
118 - 2. Del 70. 1 1 17 - By 138. So of a con-

The action lie for deceit - in sale; as
false warranty or false affirmation -
6 29 629. 629. affineinng rent to be more
than it was - Sal 217. Warranting goods
to be sound, or of such a value - 2 1
C 10 117 - 1 12 70. 1 2 6 29. Co 9 4 -

*$ 2 1. as to
found in the sale of real estate - 2
C 1 12. 3 8 - A note 1 2 3 26 -
C 193. 1 12 38. C 5 - 5 57 -

Where an express warranty unaccom-
panied with any collateral stipula-
tion, is false at the time of making
In props. on the Case ex Debito.

It, vendor may support an action upon it, without either returning the poss.
- posy, or giving notice to the vendor of the defect; 12th June 22. 26th Oct 17. 27th
745. 6th Dec 17. 27th Dec 1813. 26. 1814.

But if the warranty is coupled with an
agreement that vendor shall take back
the property, & refund if it shall prove
unsound - vendor must return it
on discovering the defect, in order to
maintain an action on the warranty.
(27th 745) 1 Camp 194 n. 27th Dec 573)

And if vendor such an agreement
the sale is rescinded by returning the
property & an acceptance of it by the
vendor; or by returning it only. (Which
by the terms of the contract &c. act ac-
& mains to be done by the vendor) Inc:

Not for money but & & it will lie to
recover back the price. Sec. if the
sale is not thus rescinded. 17th 133.6-
Comp 818. 26th Sept 23. 7th Oct 111. 5 East 449. -
7th Oct 274. Com in Com 38.

Where the contract is not thus rescin-
ded (as where vendor's concurrence
in rescinding is necessary to its validity)
the action must be brought on the
warranty, or Special agreement. (156)
Comp 818. 26th Sept 24. 10th Dec 112. 571. 2.
3 East 42. 4 Nils 135. 7 East 274. 3 Ind.
475. to recover back the price will not
lie. As the express contract still exists
there arises no implied one.
But if the warranty is void, without lack of an agreement for returning the purchase money, in case of discovery of the
warranty void on discovering the
warrantor retakes the property, even without the seller's consent, it lies in 
the
warrantor to recover back the price paid. 3 Ed. 3d 595. 9 Ed. 3d 688. 11 Ed. 698. 15 Ed. 774, 23 Ed. 274. According to this rule the warranty seems to be regarded as a condition precedent to any right acquired by the vendor under the contract. 10 Bl. 3d 771. 16 Ed.

Or the buyer may in the last case sue on the warranty. (9 Ed.)

But a buyer cannot recover back on a count for money had and paid, if the property is returned as soon as the
warranty is discovered, or if the property (if a house) has been worked by him or declared unfit. 17 Ed. 157. 4 East 274. 17 Ed. 260. In such case his only remedy (if no fraud) is an action on the warranty. 3 Ed. 82. 4 Ed. 95. 26 Ed. 74. An action on the warranty is in a suit for breach of the contract, and the vendor retains the property. Sec. 14 Ed. 771. 23 Ed. 1067.

Upon express warranty an action on the warranty as such, or after payment will lie (Dow 26) 1 Ed. Special 1793.
The action may not lie in vendor for false affirmation when vendor has been guilty of neglect or when it is his own fault to have confused in it. By if vendor might have easily learned the true value it be vendor's affirming that 113° would give 100. So if the defects are visible, a general warranty, or affirmation extends not to them. E. & H. 629-30. 3 Eagle 118. 1025 h. 110 F. 289.

Inw. Will not a special warranty be subject in this case? E. & H. 630. 1 Com. 70. 38 Lion 68. That an apparent defect will occur in real estate or damage. I should think it would.

General warranty of a horse held good after verdict—then, he had before eye—(4th 211.) Upon the ground that the defect might by negligence be located or undisclosable by vendor. He might be blind.

If vendor of warranted goods sell them to day, suit over him of his right of action on the warranty * 252 748 17th 807. (* As the warranty's right to cite in his warrantee to defend, in a suit for failure of title. In Ashin. 89 517. 52 37 02.)

So it lies on the ground of fraud, for artificially the purchaser knows defect—E. & H. 532. 2 Hold. 5 1 Ed. 2d 249. 115 h. 105.
whole, willfully concealing known defects, amounting also in law, to a warranty. 1 Edw. 5, c. 69. b. 62. 2 Lev. 120.

And it has been decided in cont. that if one without fraud or badness, sells property for the price that it would be worth if found, the seller implicitly warrants that it is found, unless the buyer expressly assures the seller. 2 East 407, 2 Lew 120.


In the single case of a sale of provisions, the law implies a warranty of soundness in quality. Semb (3 101 116, 1 Semb 180). This exception seems to be founded on the right to a good. Law pays to life and health.

It is where vendor practices fraud by false affir-
mation, in respect to his title to goods sold, this action lies. Science in this case is necessary, when the fraud is the fruit of the action is founded on the warranty of title, expressed or implied, because can not be necessary. The fruit is breach of contract. Bull 30. Edw. 29. 62. 1 Com 171; Cartago, 57, 1. 1. 189, 375. Esq. 1474. 1 Shaw 63. 1 Talbot 210. 20 Rev. 593. 2 Stuc 123. Doug 532. 2 East 448. 1 John 127.

A sale of personal chattels, implies a war-
ranty by the vendor, that he has the
Do not assume the risk of the quality of the goods - he may still sue if they are
undertake. 1 John, 118. A wise man is slow.

If goods are sold by a Bill of Sale, there can
be no implied warranty of soundness (the
vendor may be liable for any fraud in the
sale) 6th 248. 1 John, 138. And exclude,
it.

Nor will an action lie in such cases
on a partial warranty. The deed exclude
part evidence of a warranty. (6th 248)
1 John, 241. There can be no finding on-
serts in such cases, unless it be in the
deed.

So it lies for injury occasioned by false
affirmations made to deprive (or a for
fraudulent recommendation) the person
making it, had no interest in the fraud
372 54. 1 Com. 167. 168 & 318. 2 D. 92. 12 de
132. 52. 102 226. 8 John, 25. 3 de 271. 618
3050 or 367. If the recommendation be not
fraudulent, the action will not lie. It is
if he was honest in giving it.
Trespass on the Case of Debit.

So for injuries done by cheating or false pretences, or false dice - phishing an (ante 625 - Mod 633 - 67 6 of 1525. Sull 32. Action big. There must be damage as well as fraud. If damage is no fraud, action will not lie. Not if fraud is no damage.

And it being now settled that generally, decided otherwise (Camp 39) that where an action is brought for the price of goods sold, or labour done either upon a guarantee, warrant, or even for a stipulated price (whether upon warranty or not) the defect may reduce damages by proving defect in the labour, or in the quality of the goods, it has been where the one or the other is absolutely worthless, proof of the fact will defeat the action (Camp 39, 150-4. 8 John, 453. 1628 43. 1668 10 Yeak 85 283 - 2 169 century.) 1 Sull 691 7620 479. And (tender) if he does not make the claim in either of these cases but suffers judgment to go as him for the full price or value claimed - he must bear the loss. He can not afterwards maintain tenant (as was formerly the case) a crafts action for the defect in the value or quantity or quality. (Camp 190. 8 John 453.

So if a public nuisance occasioning private damage is obstructing in the highway Sull 26. 194 451. But if the petty damaged might have avoided the damage by reasonable or ordinary [rest of text illegible]
If I by a wrongful act, I make a minor person able to a person, am liable to the former. So if I drive a cattle into a land & thereby subject a to damage, I am liable to him for the loss.

Const. c. 525, c. 325. Bull. 184, 1 Hath. 34.

So if my servant, by my command does an act, which he supposes I had authority to order, but for which he is subjected, I am doubtless liable to him. "Contract. 21, New Law c. 13, 8. 14th 55. So to indemnify myself for taking property on my executors at my discretion. -- Const. c. 17, 8.

Where a public right is obstructed or violated, (18) to the injury of an individual, he may maintain the action. Calc. 107. But he must state the special damage. -- Calc. 107. If he is an inhabitant of a certain place, he has a right to pass a ferry toll free. Penman refused to carry him. He brought his action stating the common right but not laying special damage. Action lay. Calc. 12. 5, 10, 13.

So if a public nuisance occasioned private damage, he may recover in the author of the nuisance. -- Bull. 26. Calc. 194. 457. But if the party damanished, might have avoided.
the damage by reasonable or ordinary care he can not recover. 11 East 66.- Bull 26 Con.

So it is for injuries received from negligence in general. Abstracting ancient light - 9 Co 55, 3 Bl 216, 17 East 239. But it is said they must have stood time immemorial. Pope 179. Cem 8 116. Taaffe 5 & Mod 116. Now, however long enjoyment (as for 20 years) is sufficient proved for presuming an ancient grant - 8 Sep 636. 2 Sernd 575 a & b, 1802 6 Bl 1407, 1 East 77. 2 cont a 597-8. (In such case viz. 20 years uninterrupted enjoyment of the land are bound to presume such a grant.

Enjoying rights 20 years by the tenant of an adjoining premises will not conclude the landlord without evidence of his knowledge of the fact. 11 East 772.

How far is the privilege of ancient lights recognized in this country? As adjudged case here. I believe see 2 Cont a 597-8.

If a man having built a house on his own land, lets it, neither he nor any person claiming under him may erect any building that will stop it, lest they are not ancient. It would be in derogation of his own grant. 8 Sep 636. 1 Lev 122. 1 Cont a 14. 1 East 237-9. (I. C.)

If the same doctrine is ever enforced in this country it must be with restriction.
The facts on the Case Ex Delicto.

But obstructing prospect is not actionable as a matter of pleasure or fancy merely. 3 D.C. 217. 9 Co. 58. 662 636.

A house built near a street, is on the street side, immediately entitled to the privilege of an ancient nuisance. Sains (662 636) 697, action lie for raising the street, so as to obstruct the windows. 3 D.C. 217. 2 D.C. 924. Builder not responsible in the case, as when he builds by another's land.

Our recovery of damage, for a nuisance is not back to another, for subsequent damage. 662 637. 4 C. 191. 2 D.C. 113.

Every continuance of it is a new wrong or the repetition of the original act.

So too in the last case, the action lie in the assignee or lessee if the continuance occurs in the continuance of the land. 4 C. 573. 662 637. H. 285. Secs. where there is injury is done by the first erection.

For obstructing ancient lights, action lie, (20) both in favor of lessee for years, &c.
Surplus on the case ex delicto -

= figure: for it is an injury both to the
inhabitant & present adjudgment.

bel. 135-7. 4 San 2441. Csic 925. or 237-

1 East 372.

So the action lie for over-hanging. NY house or land, so as to cast water up-

on it 38c 216. 8th S 184. 190. 13th 203.- 2 Noll 440. 5c 100. 6c 137. 8th 634.

So for erecting spent 10 (Sti 134. & anti-

4) Inn. Whether for the spent, barely

hanging over action would lie. If

owners wished to build & spent was in the

way, action would lie.

So for obstructing a right of way over

another's land - bel. 639. Ck 6 84. 466-

Ck 170. And each right may be pres-

erved from long & uninterrupted usage.


In Ck. the acquiring a right of way

over another's land by 15-years uninterrupted

use all. This if a corporeal right de-

rived from the statute of limitation

(20 years in Eng. gives a right to really.

Right of way is saved to have been pres-

erved in favor of the public from a use of 6 years 11 East 376-2 1 Camp 260.

So, for erecting a manufacturing & the

vapor of which inspires OP's house;

lage or bel. 633. Noll 69. Ck 6 101-30c

217. As a smelting house - action lies.

So for injecting the air about one's

house or any way, so as to render it un-
Propos on the Case ex delicto.

- healthful - 6th by 637. 9 Co 59 a 10m
  214. 2 dote 141. (p.)

So for turning an ancient water course
from eff's land or mill 6th 648. 4th
16th 7th 4th 8th 1st 5th 6th 26th 26th 2nd 6th
6th 5th 4th 2nd 9th 3rd 8th 2nd. I think, the case
wrong in principle & there is considerable
out of the judge. He says if D has occupied
the use of a stream for 20 years, B may erect a mill
above on his own land. He
cause he never has acquired in it as
Joseph. The country might have been wild

But a right adverse to the original, or
natural one may be acquired by 20
years by uninterrupted adverse use. Or in
15 years in Cont. 4. 244. 1st 26th
1st Oct. 4th. 1 Camp 4th 10 9th 24th
3 Cairns 307. 8 Sept. 10th 15 11th 213. 1 Cont. 12
92 2 do 514. If one has used a stream
 uninterrupted for 20 years. There below can
have no action to him

Injuries affecting persons, as standing in
relation to others, if husband, parent, ma-
sTER are remediable by the action they
have been treated of under the title of
the domestic relations 6th 644. 5th 6-
Case J. Newland (Bull. 78. 149. 581-582)
of Parent (3 Oct. 18. 3 Dec. 1974. 2 24th
2 May 1032.) of in action 2 Sams 189. 3rd
8 390. 2 Dec. 18. Camp 45. 20th 387. 3 Dec
1347. (see DOMESTIC RELATIONS)
Trapsue on the Case of delicto.

The action brought in these cases have been in form of trespass - but they are substantiated action on the case - Ex. 645; 2 Tacs. 67; 1 Co. 266; 2 Tacs. 1032. Beal 317. (85) 'Indebt. & Wife' 67. Patent v. Child 115.

For other personal injuries: If a legal vote renders a vote. If the returning officer refuses to accept it, can he, to him - Ex. 647. Sal. 19. 3 Tacs. 7. So a candidate for an elective office, may have the action to the returning officer, if the latter refuses to take his vote. Ex. 146. 2 Vent. 25. 1 Tacs. 266; 2 Vent. 50. 3 Vent. 24-32 -

So returning officer is liable to the action in favor of the candidate, for making a false return of the votes at an election. Ex. 647. 11 Co. 99 -

But it is held that it is not for a false return of a member of parliament, unless the right is determined by parliament, in favor of 68. or cannot be determined as in case of desertion (Sal. 562. 6 Beal 45-9. Denieux 768) 125 29 Ex. 647. Because the legislature has the ultimate & paramount right to decide upon the election of its own members. But Ex. 68, is this a sufficient reason? Small 67. No, not the case - to decide an absolute right to a trial of the question by jury. decide, however, the decision of the legislature be tried - arise upon the Const. or upon the parties.
In prosop in the Case or delicto to the action? It is not in the action.

The Eng. Stat. on this subject gives double damages & costs (7-8, W. 111.

So, if it be an officer at Com. Law for making a false return to a mandamus 2 Stat. 62. 3 Stat. 111.

But not now in Eng. 2 Stat. 62. 3 Stat. 111.

So an Author may at Com. Law maintain this action, to such as publish his work without his permission 2 Stat. 62. 3 Stat. 111.

* The copy right is now secured under certain limitations by Stat. of U. S. See Stat. of U. S. Tit. "Improvements."

* (Not elaborate if any case to be found in the books. This action lay in Eng.) for publishing notes taken by Student from oral lecture.

So for violating the patent right, it lies in the violator in favor of the patentee. But the patent must be good in law, by any statute 2 Stat. 62. 3 Stat. 111.

victor 2 Stat 144, 4 Stat. 444. Bull 76-8-9-174. 482. (It is, to what, patentee must prove in support of his patent, see the author just cited.

Copies here of the question now confined to the federal courts (i.e. U. S. courts) not its former (vide U. S. St. supra)
To the procuring process. If an offence is prevented, by a change from executing process, is by lodging the sheriff, case here for the stay in the process. 1. Orange County.

Sec. 8. 9. 10. 9. 2. Obstruction must be in nature of violent obstruction.

In declaring the special actions, on the case no specific form of words is necessary, as those in termed actions bill is 193. 114. 54. 47.

All the actions treated of under this title are special actions in the case.

As to the actions pursued as wife, and child. Also of first. These.
This is a proceeding 

in equity, where the defendant is to be 

directed to the specific relief afforded in chancery. 

It may issue from chancery (1656, 1767) that the right is not 

exercised only by the Court. It is called "specific remedy," as emanating from the high peculiar 

jurisdiction of the Court, which gives it -

It is granted only in those cases which 

relate to the government or the public. 

Then, without it, there would be a fault.

The object is to enforce obedience to the 

acts of the legislature or to the public. To the things 

chastened, to prevent disorder, from a fault, 

we have a aspect of justice. it is an infraction of that, injuring to the public or the act 

an interference of justice. 3Dav 126. It 

is used only in those cases, in which there is 

no specific remedy. Generally not granted 

where there is any adequate remedy by action. 


The writ may in turn be granted by the 

State Court; as it probably may in each of the 

States, by the highest Court of Ordinary Jurisdiction, in the State -

The special object of the writ is generally to 

secure a person to some corporate or other person, 

thing, or right which concerns the public, 

or the administration of justice, or of which he is deprived or to assert a person to the same rights.

Writ of Mandamus.

The writ issues to some public officer, body, corporation, or inferior court, commanding a performance of some official or corporate duty. 3 Sack 520. 4 Sack 52.

It is a writ demandable at right, at the Court of 3A; to bind to grant it, without imposing terms. 3 Sack 520.

It issues to compel officers, of corporation, to call meetings, to hold elections, &c., when by law it is their duty, if they neglect to do it. Sack 473. 1 Leav. 91. 1 May 59. 62 062.

So to relieve a person to every description of corporate office, of which he is unlawfully deprived, by 3 Sack 631. 11th 14. 62. If two clerks, constables, &c., should be illegally deprived of their office, 1 Sack 77. 4 Sack 419. 528 173.

So generally to command persons in authority to do their duty. 62. To the judge of an inquest, a person court to proceed to judge. Sack 113. 2 Sack 871. 3 Sack 557. 6. To Ecclesiastical Court of probate in Conn. 7. To grant probate of a will or administration to whom it belongs. 62 062. 3 Sack 594. 4 Sack 497. 529 552.

It lies by a clerk of a corporation, requiring him to deliver up the books to, to his boss, a censor, on his being removed from office. 62 062. 572. 529. 17th 385. (Guadna's String's case.)
What office concern the public or administration of justice - to which one may claim to be restored or admitted by the writ - the writ has been much extended in modern times. 3 Bac. 529. Decided that a Mayor - Alderman, Common Councilman, Town Clerk, Constable - Justice (in Eng.) Parish clock - committee are entitled to it - 3 Bac. 530. 1694 - 2 Bulk. 122. 578. 1 Ent. 143. 155. 3 Ray 211 - 2 Sin. 112. 46 Rolle. 535. 1775. C. R. 371. 377.

So it lies to return one to the place of entry in an inferior Court (3 Bac. 530. 1694 1706 898 1711) as to our County Court -

The office, in this case, must be of a certain permanent nature. Therefore an office cannot be an establishment or institution depending on voluntary subscriptions, not endowed, is not entitled to it - 5 Ch. 625. 1706. 11. 1723. 331. 440. 125. 172.

Privy library company, premonstrant 1829.

But the office need not be perpetual. It is sufficient that it is an annual office, they, just annexed - See 166. 172. 176. This rule extends the writ to all our public offices in Court.

It lies in Court to command a county treasurer to pay money to a county creditor. For a county, not being a corporation, is not liable at Law. So to command justice to lay a county tax.

When the office is merely of a private nature the writ will not be granted - Ex. In Eng.
the office of Attorney of Court Queen 56th 866. 2346
West 140. In cont. office of private companies to carry on the desig-
nation of private offices. As to turnpike companies incorporated, the grant of incorpo-
rations being analogous to the name Citizens of public concern, the writ would probably
lie for the officers. 3d Abs. 528 n. So probably
for the officers of a Bank.

The writ never goes to enforce an act by a
Court magistrate to when it is uncertain
whether he has by law, a right to do it.
Ex. 685. 1706. 286.

Nor when there is another specific legal remedy
Ex. 6. It goes not to a Bank to compel a trans-
fer of stock. For Cash lies, or in particular,
cases, a Bill in equity. 666 666 long 586.

If given is granted to compel a court or magis-
trate to do an act, when the thing of it is
its duty, (Ex. 685. 2d 6. 881. 2B 2 a 380) a, to do-
not. or continue a cause, or to grant a new
writ.

If several are deprived of a fund, each must have a separate mandamus
they can not join for the wrongs are distinct
the causes may be different. 6d 685 9. 3a
490. 666 288. 666. In case of several officers
more of the same kind.

As to the mode of granting the writ: it is not
usually granted in the first instance, though
it sometimes is. The usual mode is by Rule.
to show cause (S. 692, 697) to that rule is not found in the rule itself, the case of the party applying. 30. 4. 528. Rule 149 - 203 - 382 111-

For under these circumstances, it will often in the first instance, in motives, 382 111 it will order what is a poor act in any. It is the nature of courts to be cases of uncertainty where the probable ground is manifest. 382 111-

2) - It is never granted till there has been a demand, i.e., it goes not to prevent a default, in the first instance 382 170. Rule 149 -

The writ is directed to the person whose duty it is to perform the act commanded. 382 572, 383 b. It is to be delivered to him, or to such at his peril do the act or return sufficient reasons for not doing it. Return to be in writing because in the nature of a plea to the writ.

When the act ought to be done by a part of a corporation aggregate, it may be directed to the whole corporation, or to that part which is to do the act, but not exclusively to any other part. 382 572, 579 - 701. 382 55.

When sufficient cause is shown the writ is not granted under the rule to show cause the writ itself being at first in the action itself - to do the act or show sufficient cause for not doing it. 382 111-

If the party returns a true and sufficient reason
Writ of Mandamus.

be a cause, and at law: law the return could not be traced - but case lay for false return - 3 Bl. 473. 3 Dace 543 - 2 May 521 - (The court have adopted the reason of the State.)

Writ: on Case: 12 -

And if the complaint prevails either by verdict or otherwise on the pleading; he may recover his damages & cost. But if he thus recovers on the writ of mandamus he is barred of his action for a false return.

3 Bl. 325. 326 - Oct 12 5190 -

Since this State of the return is false (which is a question to be tried by the jury) the party in ejectment has a prerogative mandamus. (It is a prerogative order to do the thing required.)

3 Bl. 325. 326 473.

So if the return is insufficient upon the face of it, a prerogative mandamus goes both at law: law & Equity: the State. No issue to the jury is there necessary. 3 Bl. 325. 326 473.

Bull 201 -

Before the State of 9 of June the only remedy for a false return was an action on the case, as the return could not be justified in the proceeding on the mandamus - Bex 648. 3 Bl. 325 326 473. 479. And if the false return were made by assault, the action might have been by all or any of them, for a false - Bex 185. 3 Dace 544. 2 Carth 171 - 2 - And the action lay for suppression false in the return.

(Wey 47) a well as for a positive false return.
But if any of the several parties not voted on the false return was overruled, no recovery can be had by him. 20 V. Carth. 32. 3d May 584.

At Law. Law. If the return is falsified in the action on the case, a premonitory writ of discovery of return - 20 V. Carth. 32. 3d May 584. provided the action is in the same court by which the writ of mandamus was joined, for the falsity of the return then appears from the record of that court, in 3d 15th or 3d C. 7th Cont.

If the action is in a different court, the Truth of the return must be tried by an issue joined for that purpose (3d 42d. 3d V. 6th ante.) after recovery on the action. But the record in the action is an evidence I suppose upon the issue.

If after premonitory writ of return, the writ, no return is made, the attachment issued for contempt - 3d 111. 3d Bac. 457. 2d 429. 437. 3d 183. And if the writ was to recover the attachment issued so to all the losses would have made a return. 3d 608. Con- tempt is punishable by fine or imprisonment or both, in some cases, with corporal or in- namorous punishment - 3d 287. 3d 246.

Those however who would have obeyed the rule, will not be punished under the at- tachment.

If the party to whom the writ is directed fails in respect to the court, in his return, he is punishable for contempt by attachment - 3d 111.
Writ of Prohibition.

1) This is a Pecatorium writ, issued generally from State to prevent inferior courts from deciding cases out of their jurisdiction. 3 Bl. 112, 48 Cal. 140. 4 Com. 478. 3 N. B. 34. 40, 12 Cal. 6, 279, or to prevent them from deviating in the mode of their proceedings from any regulations prescribed by Law.

It may also be done, even out of the Superior Court of California. 3 Bl. 112. 10, 20, 478. 48 Cal. 15. 40, 12 Cal. 241, 48 Cal. 140. 4 Com. 478. 19, 20, 478.

It is directed to the inferior court or the party presenting it, or by process on a suggestion that the cause itself or some collateral question arising in it, is out of the inferior court's jurisdiction. 3 Bl. 112, or that the court is deviating out of it.

The mode of obtaining a prohibition is by oath to show clearly why the facts, in any of the cases, affidavit must be made that the cause or question is out of the inferior court's jurisdiction. Often when that fact appears from the face of the declaration itself to be out of the inferior court. 4 B. & C. 244, 10 Cal. 67, 879. Holt 593. Holt 79. 2 B. & C. 124.

2) Whether the awarding prohibitions is, or declaratory, and declaratory, or declaratory, or declaratory, or declaratory, or declaratory. Bullen's opinion seems to be that it is declaratory. 4 B. & C. 242. Holt 67, Page 13. 4 B. & C. 67, 68, 77, 879, 879, 879. 879, 879, 879.

(Reserved 24, March 29, 13-14, at declaratory.)
Out of Prohibitions.

It lies in some instances where the inferior court has jurisdiction of the cause - be when a suit has been joined regulating the proceeding in such a cause to the inferior court derives from those regulations. The case of a want of jurisdiction on said to be the only one, in which a prohibition can issue. - 3 Bl. 113.

For the purpose of obtaining the writ the party applies in the Court below, it's forth upon record in the Court above, a 'suggestion' containing the nature of the cause of his complaint - 3 Bl. 113. upon which a rule is issued to the inferior Court to cause party to show cause.

If the matter 'suggested' in support of the rule is sufficient the writ is made - 3 Bl. 113. Absent if it is insufficient - The writ comes on the Court below and to hold parties to the adverse party not to prosecute 3 Bl. 113.

But if the sufficiency of the cause suggested is doubted, or presents a question of difficulty, the party complaining is directed to declare in prohibitions - 3 Bl. 113. 4 Bsc. 248. 2 Ed. 736.) 120 to prosecute an action by filing a declaration to the opposite party upon a fictitious agreement not traversed. That the latter has prosecuted in accordance of a prohibition, before granted. The suit has in fact been granted - Barnes, Note 149. 2 Bsc. 147. 1 Ed. 125. 4 Ed. 131-2. 2 Ed. 736. 4 Bsc. 248. This is done for the purpose of having the question more deliberately.
considered than on motion - on which the procedures are summary.

3. The declaration must follow the description, the action of their peculiarly proceeded with, as if the petition alleged time were true - if the question of the insufficiency of the cause alleged is tried upon the pleadings in the action. If the cause insufficiency alleged is adjudged insufficient, with nominal damages is given for 

off - a prohibition - filing in the 

off - the inferior court - commanding there to proceed no further - 3364 4 113 2481.

If insufficient, it is for itself to a suit of consultation, awarded - be a suit opened upon the petition, or consultation, had - as admitting the cause to the inferior court to be then determined in accordance with the petition, prohibiting - 3364.

It is a suit of consultation is sometimes practised where there has actually been a prior prohibition. The party prohibitory may take a declaration (completing the injunction) to name the fact on which the prohibition was founded, or if the plea is found for him - a consultation is awarded - 3364. The effect of the proceeding is to receive the former actual prohibition.

The Court also of its own motion will consider any action brought - sometimes awards a consultation, after a prohibition issued by when upon further consideration it finds the insufficiency insufficient - 3364 4 113 517.
Error of Prohibition.

Disobedience to the writ is a contempt, punishable by fine or imprisonment at the discretion of the Court. 4 Dec 262. 33 B 40 & 279. 460 267.

It is also contempt to commence a new suit in the same inferior court for the same thing after a prohibition. 4 Dec 262. 33 B 40 & 279. 460 267.

On the attachment for contempt, the party recovers, damage, costs for the other proceedings after the prohibition; at a fine or other punishment is also applied for the public officer. 4 Dec 262. 33 B 40 & 279. 460 & Dec 248 267.

We have a statute vesting the power of part: 3) ordering prohibitions in the S. Ct. or enabling the Ch. Justice 2 2 2 2 2 2. Justice to do it in vakation. This State allows the Or. Law on the subject. 33 B 40 279.

Fine.
Out of habeas corpus.

This is a writ by which, a person restrained of his liberty, may be brought before some inferior court, for some special purpose, as either on his own application to be relieved from confinement, or to obtain justice, or upon that of some other person having a right to require his appearance. 3 Bl. 129, 130. Of this writ the forms are various.

I. Ad Responderendum.

This is, where one by cause of action sues another, confines by process of an inferior court, to remove the prisoner to a new action in the court above. 3 Bl. 129, 130. Dec. 2, Leg. 177 & 178. 2 Mod. 158. Not in use here, being unnecessary in our practice.

II. Ad Saei faciendum. This is, when just has gone to a person, and the party would bring him up to serve him with process of execution. 3 Bl. 129. Not in use here for last reason.

III. Ad faciendum & Responderendum. This is, where a person confined by a process of an inferior court, either himself or another the action to the Sup. Court to be there decided. Here his body is removed by Habeas Corp. the proceedings by Certiorari. 3 Bl. 130, 131. 2 Mod. 235, 2 de 198. Frequently called Habeas Corp. Common Cause.

This kind of Habeas Corp. is demanded of some men right and without any motion. 3 Bl. 130, 2 Mod. 336. It instantly suspends all proceedings in the Court below, or any subsequent proceedings.
20th of N. Y. & Co.

[Text not readable]
Writ of Hab. Corp.

They are subject only to the executive go-

ternment, it must be brought up, if at all, by order of the executive.

Then are some other kinds of Hab. Corp.

V. The principal writ of Hab. Corp. is, that

of ad substantiam as the same is to a person

holding another in custody or commanding him to produce or to do or forbear to do what the court or judge shall award.

3 Bl. 131. This is a Common Law writ in favor of the subject. 1 Bl. 631.

This is the great writ by which release is

obtained from every species of illegal con-

finement. 3 Bl. 31. Ch. 92. 3. And the

Stat. of N. Y. 31 of Car. II. Which gives the

full benefit of it to the subject, as regarded in Eng. as a breach Magna Charta.

A person imprisoned by either house of Par-

liament for Contempt can not be dis-

charged by the process (138 314) Such in-

ception would be an invasion of the

privilege of the Legislature. Rule the

same in this country.

If there at Com. Law, from B. C. Chanc?

ty by a fiction (Of Privilege of being a tur-

e) from C. B. 7 6. Being now Ch. J. 143.

30钮 637. 2 Cent 24. 3 Bl. 32. 2. 3 Bl. 3. 246.

198. 2 Hall 144. But in case of commitment

for a crime, these two courts could at Com.

Law only, take bail for appearance in B. C.
35. The great object of this writ is to afford the
proper relief to all persons, who are restrained
of their personal liberty, without lawful cause

36. For this, that any of the 13 judges may be
used it in vacation. 396 131. 132. Oct. 7543.
It lies for persons committed by the thing or by
Council or Secretary of State. 12. 396 155-4.
By the Constitution of the U.S. the privilege of the writ of Habeas Corpus can not be suspended, except when in time of rebellion or invasion the public safety may require it. (Const. of U.S. Art. 1 Sec. 9) and it must then be done by Congress.

It is used for persons committed on executive or military trials, for persons convicted of treason, for persons denied under special circumstances protection, in case of commitment for treason felony, and in certain other cases. 3 Bl. 131-33; sec. 9; 429-526; Sci. 142-

It lies in favor of children, wards, insane, unreasonably confined by parents, guardians, insane asylums. 3 Bl. 151; 326; 526; Sci. 128. Sec. 982, and the writ may be sued out by the person so confined. Sec. 982. 1 Bl. 666; 5 Mod. 21; (2 Sci. 128.) Dan. 631. 1562.

By obedience to the writ punished as a contempt. 3 Bl. 10; 5 Bl. 666; 12 Mod. 666; Sci. 1.
Due Warrants.

This writ lies to any one who usurps an office, of franchise, without right, or ex-
exercise, in which he has forfeited. 3 St. 262. 2 Inst. 282.

The proceeding in modern times, is usually by information filed, in Aid by the Attorney General—a criminal proceeding, the writ being now denoted 3 St. 262.

The effect of this proceeding is the re-

committal of the usurping incumbent by a jury of twelve 12.

See for the proceedings, the authorities.

*Due Warrants*.

Com. same title—Fin.
Bills of exceptions.

A bill of exceptions is a statement of facts occurring on trial or of some interlocutory judgment, founded on them, annexed to the record. 

Most not originally appearing on record - in pleadings - called Bill of Exceptions because it contains exceptions to the interlocutory judgment. 

3 Bl. 372, 10 Bl. 265, 9 Cr 132, 40 Alb. 378. 

All decisions by the judge upon any point of law is an interlocutory judgment. 

Charge by the judge to the jury - is a judgment within this rule.

Bills of exceptions were introduced into 6th ed. by statutes within 2°. They were not known at Annius 1 Bar. 325. 3 Bl. 372, 9 Cr 132. Bull N. 315. 1 Feb. 324, (Hibb. 180) - 2 March 426. The Stat. of W Partition: is probably adopted either by the & of Justice or by some legislative act in most of the States in the Union. 

When taken:

A bill of exceptions cannot be taken except in a court from which a writ of error lies. In 6th ed. bill is a bill seeking to render a writ of error, and consequently it may be filed only in a court of record.

Bull. 316, 1 N. 327.

But it may be filed in any court whose judgment is liable to be reviewed on writ of error, as in C.R. 9th. Court of 6th ed. shows it - not in chancery. Thus: 2d Cr. 324, 2 Stew. 287. 147. Bull 316, 2 Stew 237, 336. 2 Stew 287, 147.

In the State it may be filed in Superior Court - County Court or Justice, 6th. Some doubts as to Justice Courts - (Hibb. 289) Why?
Bills of Exceptions.

For what cause.

Some cases, in which Bills of Exceptions may be filed have been mentioned under former titles: 'Pleading.' But the asking an offer to examine the evidence.

Bac 32 b. 2 Lev 337. Bill 567. 4 1805 3 1805.

Again. The Bill may be filed for a verdict by the Judge in point of Law to the Party.

1805 4 5 1806 220. 1 1802 17.

But the usual remedy for a misdirection by the Judge is a motion for a new trial.

If evidence is admitted or rejected, or the decision is erroneous, a Bill of Exceptions may be filed.

Bac 32 b. 2 Lev 337. Bill 567. But such a mistake is more often remedied by a motion for a new trial.

But if the Judge admits a party's evidence, a Bill of Exceptions will not be allowed because he did not exclude the party, how to judge on that evidence and make Interlocutory Judgment in the case; it is a decision on a point of law.

Bac 32 b. Bill 25.

If Cramer is refused to a party who is entitled to it, he may file a Bill of Exceptions for this cause. The advantage of usually taken by entering an on the Record as a plea. 'Pleading' 1805.

So, if ordered when it ought to be refused.
Again, when a Judge allows or consents to a challenge to a jury, the mistake is a good ground for a Bill of Exceptions. This is often remedied by motion for new trial. For the rule is, a point of law, if incorrect may be affected.


But on an interlocutory judgment or order relating to mere practice, to which does not involve any principle of law, a Bill of Exceptions cannot be taken - thus if he compels a party to plead within a certain time, if he orders security for costs or refuses to order an execution -

Rule - when a decision of any kind is discretionary with the Court, a Bill of Exceptions will not lie for that cause. For a want of error would not

The granting or refusing of a new trial is no ground for error. Again the interlocutory nature of terms on him who moves for a new trial, if there be no error is not predicable.

Bac 316. 12 Mo 327. 12 Mo 290.

The Court cannot arbitrarily grant a new trial, (as it may refuse one) or if it does, or if it is granted by a Court which has no power to grant it in any case, it is ground of error.

In prosecutions for treason or felony a Bill of Exceptions cannot be allowed. The reason assigned (which I do not think the Court) is that the Judge is a counsel for the prisoner, it must be that Justice is done in
Bill of Exceptions.

But this is surprising; the Bill is always founded on a supposed mistake of the P. 1 Lea 14. 2 Lea 18. 3 Lea 324. 5 Lea 436. 16 Lea 15. 2 Mc Val 80. 325.
The reason is that such cases are not within the purview of the Stat. West 2; it became in prosecutions for treason or felony, these can not be at C. L. a new trial.

"No man shall be twice punished for the same offence." 2. No man shall be twice put in jeopardy for of his life for the same offence. 3. and 2 maxims of the common law.

May not a Bill be filed for the writ vs. The prisoner. How far Bills of Exceptions are allowed on indictment, for more misdemeanor appear and to be clearly settled.

1 Doe 325. 2 Wnek 428. 1 Lea 5. 1 West 316.
Bull 316. Teding 15. 1 Mc Val 326-7. 5 Lea 436.
115. It has always been allowed in England on indictment for more misdeamors of the peace. (1 Lea 5. 0 Doe 325.)
for the defendant. for he is often entitled to a motion for new trial but the present never can except in the particular instance. See "New Trial."

Regularly when a Bill of Exceptions is allowed the Court will not suffer the party to move in arrest ofjudgment the point on which the Bill was allowed. 1 Doe 327. 2 Lea 237. 1 West 316.
1. John, 17. or the party's remedy is by his writ. of Error, i.e. on the point. But upon the record by the Bill. But this rule has sometimes been dispensed with in 1 B. Bull 318-17.

Confined to specific points. As the object of the Bill is to draw before a
higher Court the judge on some collateral point it is regularly not allowed to embrace in a Bill of Exceptions the whole merits of the case. The rule therefore is that a Bill containing a general statement of the whole facts or arguments in the cause is in a competent. The sometimes practiced.

Bull 88. 1 Moore 6 2d. 260. & Term 29 549.
Bull 88. 16 L 1555. 240 270.

And if the Court below allow such a general Bill the Court above will quash the Bill of Error 156 2 555. Engl 8th. 77. 339. 451.

Now certified.

As to the mode of stating and authenticating the Bill. I observe that it is authenticated in 2d. by the signature of the judge. It it is certified by the Judge appearing in the Court above acknowledging it to be true for the first time it becomes part of the Record.

1809 1 Dall 52. Engl 118. 1 Dec. 325. 1.
For Cont. The Bill becomes hand of the Record in the Court below it is exemplified with the rest of the Record.

The Bill must contain a statement of the Substantive Point. & of the facts on which that Point was founded. & of the facts are truly stated, it is the duty of the Judge below to certify. If of the statement is not true he is not bound to certify it.


If the Judge below refuses to certify a
correct Bill - the Stat of Calif. 2 provide a writ compelling him to appear it.
Bac 32. 1 Lev 237. Ball 216. Cas 1112. Dist 111.10.

In the State the Bill is certified by the presiding judge (if more than one) or by the Judge if there is but one.

A motion for a new trial is not to be made as a Bill of Exceptions as the former is discretionary the latter strict juris.

When to be tendered -

In the English practice the Bill must be tendered in the evidence of it reduced to writing - at the trial or during same time. Ball 215. Bac 288. Dist 311.

In CA. The party must give notice or issue to file a Bill at the time the cause comes up or the Bill itself must be filed within 24 hours after decision. (If before Judge) if of 3rd or 4th Department of Court. It must be presented to the Judge. The end of the time 1st before court rises. Dist 179. Bac 278. In computing the 24 hrs. Sunday is excluded. "in dominici non est judicium" Vid. rule of Sup. Ct. May 28 1899.

A Bill of Exceptions is no bar to recovery of the party, but merely enables the party to obtain a supersedeas by writ of Error.
Bac 329. 12 Mod 609.

Outline of CA. Bill of exceptions -

(St is a separate instrument or writing.)
Bill of Exceptions.

Such a bill is a year 1802 or 1803.

The question is whether the Court will grant a bill of exceptions. On the trial of the said cause to the

jury on the testimony from the bill offered in evidence, such a witness to prove such a fact to the ascertain of which evidence the defendant objected. The Court proceeds to decide to which objections he will except, to pray the Court to certify the bill of exceptions that it may become part of the record.

This bill, when it becomes a part of the record is a ground for a writ of error. In Eng., it is as part of the record in the Court below. 1855, 9 Oct. 32, nisi vile certificat in the Court above.

Writs of error.

A writ of error is a commission to a judge of a higher court to examine the record on which a judgment has been given in a court below, to affirm or reverse it according to Law. 2 Dec. 117, 59 El. 467. Bank 25, 2 Oct. 48.

In Eng. the writ of error does not summon the defendant in error to appear. It is summoned by being joined at anderentum service. 2 Dec. 29th, 38 El. 229, App. 173, 192.

In Court, it is an original writ summoning the defendant in error to appear. It bears the original record, and the answer to which it contains the assignment of errors.
When writ of error is pronounced on a mistake in the legal opinion of the Ct. below, it is pronounced on some point of law appearing in the record.

But not to rectify an error in the determination of facts, or weighing of evidence.

2 Dec 187, 300 447. 233 6. 293. 357. 233. 233. 526
28th. 1 Dec 74. 218. 218
2 Dec 187.

The term "writ of error" without further description means, and always signifies an error apparent on the record or error apparent on the record below.

2 Dec 187, 300 447. 233 6. 293. 357. 233. 233. 526
28th. 1 Dec 74. 218. 218
2 Dec 187.

If on a writ of error the party in error can recover any thing of the nature of debt or damage, or land? if it is considered as an action, because there is a just and recognized form by the remand of the first below it is apparent that (Writ of error)

And a release of all actions will bar such a writ of error.

If the a a is one which entitles (Writ)
only to release of judgment, to which below it is not an
included as an action. of course a release will not
218. 218. 218. 218.
Writ of Error.

Cram v. Cram.

There is, however, another species of writ of error, founded on matter of fact alone, the same.

This is to Courts of Error capable of trying the question of fact, as O.C. but not to others, as the Exchequer Chamber (that C. has no jury).


As it may be brought in the Court in which the original "judgment" was rendered, so then it is called a "writ of Cram v. Cram.

1. Jews. at some court alone or of Infant appearing without guardian or next friend.

2. Indef. at some court alone or of Infant appearing without guardian or next friend.


This is not strictly true for an Error of the Court but consists in an error on some extrinsic fact. In case of same court, Baron v. France may join in a writ of Error to reverse the judgment, or in the court before the C. that renders it to a higher one. In case of Infant (def.) Court on in formation will appoint a Guardian ad litem.

So, if Obj. or Def. is dead when "judgment" is rendered.


If Obj. returns that the original party is alive he may come in a Plea "in millis et ostentat."
Write of Error.


So, if the Judge who gave judgment was interested in the cause. Iohn 177. St. or Stile 139.

So if one dies, it becomes the Executor of A. B. B.

being alive, 35th 129. Compare with 35th. 184. I think of error will lie to reverse the judgment, either before a higher Court or Common Pleas. The case of S. is such. I have no doubt judgment in this case may be reversed in both ways. 18th.

A writ of error will not lie on any judgment of a Court not of Record (for it is founded on the Record) 20th 194. as County Court in Eng. Co. Lit. 208. 6.

Hence in Eng. the writ on any decree or sentence of Chancery, 20th 194. 35th 289. 169th 134. Bull 235. For this is not a Ct. of Record. The remedy in Eng. is by appeal to the House of Lords.

But on a judgment given in the petty tray Office in Chancery it does lie in A.C. For this Court proceeds according to the Laws of the land. It is a Ct. of Record. 18th 48. 20th 194. 169th 134. Bull 235. By 315. No 570.

It lies on a judgment of non-suit. 15th 92 a. St. 288. Roll 744. 17th 6432. In the last case the judgment must appear. I conclude on a bill of exceptions. But not on a voluntary non-suit. To also on a judgment by default. In?

In Court. by Stat. Erroneous on a decree or sen-
-
ence in Chancery, as on judgment rendered by Court of Law. Stat. Court.
Writ of Error.

To an issue of County Court and of Single major -
beats (36) to Sup. Court. And from issue of
Superior Court. to Supreme Court of Errors.

As was observed (ante. 13. 14) the writ is. In
matter of law apparent on the face of the
Record & matter of fact not the apparent.

Still. Assigning Errors in Law & in fact together (16)
& ill 2 Bac 217-8. 5 Am 392. 2 Pet 3 Ors. Nord. 79.
Sid 147. Law 105. May 231- 1 Dent 252. For they re-
quire diff. kinds: matter of fact. In jury.
of Law. by the Court. 1 Bac 217-8. Valor 50. Sid 93.
May 59. The writ is in the nature of duplicity.

But the matter of fact & of law are blended in
the assignment of Errors, yet if kept in Error
plead, "in nulla aut ex parte in recordo", he has
the advantage of the double assignment. & that
then partly confesses the error in fact or else-
ser the fact assigned for error (for there is room
for but one trial & perhaps not that for the
confession may preclude the necessity of it.)
2 Bac 209. 218. Dardt 338. 9. 1 Dent 252. 1225.
Sid 213. 1 Nord 113. 201. 2 Bac 257. The should demand

But a general demurrer cannot reach the
defect of it. It is called duplicity. 2 Bac 218. Dardt
338. 9. 70 & of Error not being within the Stat.
27th. which requires a demurrer for duplicity
to be special. 1 Bac 95.

If the unsuccessful party should assign
Improving & Exercising both at once, it would be
clipping—on either of them is sufficient to
arrest just. on each there should be a
distinct issue, as there always must be for
totally and in fact.

Thus, assigning several errors in fact
amounts to duplicity. 5 Com. 397. Fitz D. 20.
Then, when several errors in law are assign-
ed: 5 Com. Plax 315. 315. (Duplicity is not
predicatable of mere matter of law as there
one issue reaches through the whole record.)

In errors in fact require several distinct
answer, as errors in law do not.
"In mille ad volumum" answer the whole.

If an error in fact be well assigned, it
should be traversed (otherwise Def. in Error
cannot prevail) Placing in mille ad volumum
volumum confesse. It. 2 Dec 218. 1 Com 303.
Cede 57. 1 Side 93. Aug 87. 231. Com. 20. 815.

Thus, if Def. in Error pleads that "he was an
infant," Def. by placing in mille ad error
a time confesse. It. 138.

But if Def. be ill assigned, in mille ad volumum
277. As if the assignment contradicts the record.
just It. to allege a fact, not assignable as
error.

decided by the Sup. Ct. that assigning with inf.
errors in law error in fact, not assignable does
not vitiate the suit—this was on special de-

mension. (Note 27. 30.) In another case on

706 of Error.

An assignment of error in fact, which contradicts (1) the record or court record. 202, 203, 707. 717.
8a. That the court did not sit on the day of the date of the judgment. That the judge died
before judg. to. That RPP in error did not appear when his appearance is required on
the record. 212, 208, 707.

In some of these cases, the plea "in nullit
esse ut cetera" confers the assignment.
(199).

General Rule: That the defendant in an action
cannot assign an error, what he might have
pleaded in statement in the original action
unless he pleaded in statement in the plea
has been overruled. 214, 706, 722, 207, 209, 249. (He is deemed to have waived the
advantage) via "Pleading" division "Statement.

When error in fact is assigned, the proper
conclusion of the assignment is with an "or
vermunt" from "para. to 1" 207, 201, 220, 208.
None 220. 21, 38, 211. 10, 20, 32. 207.

What if one would be this found? E. in a
situation assigned, RPP can't conclude this
for there is no title. no one has, denied that

W.R.B.
he was an infant. Case in fact, cannot be law,) it should conclude like a special plea in bar with a verification.

Coram vobis, in what case.


So if one dies, it recover: i.e., a executor or administrator to L, S. &c. being alive - Note 761. 2 Lev. 38. 1 Vent. 207. Crow vs. 84. 12 (anci. 15)

And although it may be carried to a higher Court a coram vobis is the most liberal way in such cases.

But this rule cannot hold where the Court rendering the erroneous judgment cannot try an issue in fact - a. the Executive Chambers. It must be brought to the House of Lords.

Deb. generally if the error is in law, a writ of error coram vobis does not lie. Since it would refer the question to the very judge, who committed the alleged error. 2 Dec. 215. 10 5 Com. 281. More 186. 1 Dick. 228. 1 Lev. 149. Contin. 1 Roll 749.

Exception. When the error is occasioned by the default of the Clerk of the Court or Sze or other Officer of the Court. Roll 746. 1st 621.

Then error coram vobis lies for error in law.
Words of Error.

Since in this case the error does not proceed from any fault or mistake in the Court, it is not an error in the judgment of the Court. If it was the fault of the Court, Error coram volgi would not lie—5 Com. 286. 1 Nott 746. 14. No. 186.

If the error is in the process, error "coram volgi" lies. For this is not an error in the judgment. The judgment is being rendered only on the pleadings of which the process forms no part. If therefore the judgment is vitiated by a defect in the process, it is not a misjudgment in the opinion of the Court.—12 Dec. 255. 5 Com. 286. 3 Nott 21. Polk 181. 1 Nott 746. 66. Prowse; what? Vide 3 Nott 279.

At what time to be brought.

Old rule. That an writ of Error the brought on an interlocutory judg. could not be brought till final judg. For the party’s right prevail after an interlocutory judg.

But in Eng. it seems, it is now settled (20) that the test may be before final judg. —this the return day must be afterwards—2 Dec. 145. 1 Kent 255. 3 116. 308. Laidley 133. 1 Self 114. 486. 170 280. Ste. 867. Con. Amund. 22d. 2 C. 4 —2° May 1531.

This final judg. may be waived & a writ of Error lost on an interlocutory judg. & face we know that can result from this practice
by which useless Technical Objections are de-

In Conn. the old rule prevails. (1 Ross 131, 247)
our Courts have decided that an agreement
of the parties to dispense with final jury
should not suspend the rule. (Conn. R.)

By joint parties.

It is a joint rule in Eng. that where a
jury, or joint of several, they all must
join in a writ of error, to reverse it. "New
Trials," 52. Ca. 367, 1 W. 747. 3 Ca. 298.
2 Deo, 198-9. 47. 486. Ca. 7, 6; 3 Mod 134. And
if one refuse there must be a common juries
reverence. For an entire jury cannot
be used in two, or not at all. Incon-
venien. that each should have a separate
writ. (298)

But in Conn. the Superior Court of Conn.
have reversed a jury: as to some of the cases it
affirmed it is, to others. Ex. Where there was
a joint jury of several towns of whom
were adults, & other infants. Deceased gave
the infants only, as they pleased by Actee?
Thirt 114.

But the Conn. Law rule is otherwise: 2 Deo 198-9.
228, Wilt 774. 48. 287. Is not the Conn. Law
rule the correct one on principle? If the In-
jury had not been Joint, the Damages might
have been much less.
Writ of Error.

be reversed in part - 1st 189. 2: 508. 4 Dec 2022.

[Text 1]

[Text 2]

So (according to our decision) if the jury is
liable - Eq. Erroneous, as to part of the
cost, as, where there should be no, more cost
than damage. 1 rest 138.

So of judg. The rest actually decided is
separately by any rule it may be reversed as
to part & affirmed as to the residue. Rest
138. See 1 rest 2. 2.

Who may have the writ -

No person can maintain a writ of error ex-
cept one who is party or privy to the original
judg. And if the suit regards an estate of
inheritance he, heir (after death of original par-
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If, through one of several Co. Dgs., obtained judgts.
of the action are subject to the former can inter-
join in a suit of error to reverse it.
Those of whom judgts. have been rendered must
all join in bringing the suit of error. Hale
Camp. 425, 426 (1796). In 1792, Rev. 226, Took 72, Rev. 191,
Rev. 226.
But the final rule is not universal. - The
prevailing party may be allowed to maintain
a writ of error.
This he may do where the error is in the
fault of the Co. & alter, the manner
of judgment. This is allowed for the sake of regularity
(1291, Hinde 37; 7 Rob. 189, 11th.)
Thus, if judgment admit an amendment
or a stipulation. the party for whose judgts.
previse may reverse it by writ of error.
So, if awarded for damages & costs or
the judgment is entered for damages only, the
prevailing party may reverse it (3
10 Rob. 106. 10 Co. 226. 10 Rob. 37. 7 Rob. 226. 11th. 189,
Feb. 10)
Why?
And in cases of this kind, the judgts. is incon-
sistent. It is in itself defective.
Again, if on a conviction of his defen-
sants in an action or delicto. the whole
or the costs are adjudged against one
only. The other - or the party obtaining
it - may assign for error.
And a fully may apply the court of jurisdiction in a case in which he does the action

Where a Superceded.

In England the rule formerly was that showing the writ of error to depend on error operate as a supersedeas of his right to the court below, or in which time he is to obtain it from the court of errors.

2 & 3 Will. 4. 2 & 3 Will. 4. 10 & 11 Will. 255.

But it seems now that the writ of error is superseded like it had been allowed by

17 & 18 Geo. 1. 10 & 11 Geo. 476. 10 & 11 Geo. 476. 20 & 21 Mar. 210

By supersedeas is meant a suspension of the right of proceeding party below, to enforce the judgment by final process, noted.

The allowance of the writ of error is a bailee, only for 4 days after the judgment, and if bail is given is paid in within that time. If he does not give bail the supersedeas continues. The writ of error is dischargeable.

By otherwise noted 17 & 18 Geo. 253.

The permanent supersedeas there is the effect of bringing in bail in error, which must be in within 4 days after judgment.

17 & 253.

Till in error is paid over for the security.
A copy of the writ or other process, being in the nature of an original writ, is here (con't) subject to a plea in abatement, being in the nature of an original writ.

And in 1816 it was settled that the time for pleading in abatement of a writ of
error is the same as that allowed for pleading an abatement of an original suit—i.e. by the second opening of the court on the second day of the term. 2 deg. 557. 239. 17

If a writ of error abates, or dies continued thus the fault of the Pth in Error a 2d writ of Error is to be had out by him or in supersedeas.

But if a stay in Error is now limited he can not even have a 2d writ of Error. 2d sect. 218. 2 Dan. 269. 1 Text. 150. 2 deg. 97. Lamb. 159.

Reason is he abandon, his right to complain.

But if the writ of Error abates by the act of God—i.e. by death of Pth in Error—so (in Eng.) of Chief Justice. This rule is different. (In Eng. the writ is not subject to plea in abatement: not an original writ.)

1 Text. 158. 186. I Feb. 208.

Now for amendable.

Writs of Error are not within the Statute of Limitations & Amendment.—(Stat. enacting to and to rectify slight mistakes or errors) for, the object of these Stat. is to affirm the judgment of the Court of Error directly the error.

But now by Statute 5 Geo. a writ of Error.
Write of Error.

may be England be amended to be a. to come
from the Record on which it is founded
2 K. 11. 49. Salus 44. Cartl. 320. Eng. 1. 3
2 El. 4. 2 Dea. 202. 209. n.

A writ of error does not abide in Eng. by the death of judge on error but a
Corr: for every if none of his representatives (according to subject matter of facts) to
show cause why the judge should not be
revoked. Scacc. 46792. 1250
This rule must be founded on the statute
42. 15 Hen.
2 Dea. 207. 91 Litt. 34 - Sal 264. Gel. 228.
Cartl. 235. 293-

The allowance (we have seen) of a
writ of error is not strict juris but may
Sometimes be disallowed. It is to prevent
writ of error being taken up some pri
through mistake. Hence it is clear of error.
Here a judge examining record if he has
promised for writ of error he will not
sign it.
2 El. 4. 277.

But on judg. may be sustained not a
withstanding a writ of error pending on the
same judg. for though the execution is hou
pended the debt or duty remains.

An erroneous judg. is binding until it is
revoked by due process of law. Rule 342. 33.
If a 3d person obligates himself to buy what shall be recovered in a suit at law, or in any court of equity, or recovered of A B, but in suit of error it is brought by A B, the 3d person may plead the recovery of the suit of error in bar of an action at law on his obligation, because it is not yet ascertained whether he will have to pay anything as the suit against A B is not determined.

27 N. 372.

When any execution below is completely executed, as by taking the defendant in execution and committing him to prison, the suit of error is not superseded. 4 Dec 670, 5 N. D. 237, 17 N. 39.

So, if the defendant or property has been urged when the suit at law according to law, the suit of error will not affect the valid.
If 62d has issued a bond, an action may be brought according to 2 Nye 491. 3 Dec 20-11. 370. The suit is a supersedeas. The bond, once to be relied on. But this must not to be kept. For execution where begun must be completed. Yelv 1. 4 Dec 184. 13 Tuck 237. Side 17. 323. 2 Nye 491. 3 Dec 57. 1 Ed 370.

All the acts under the execution have relation to the first. The execution is indivisible.

According to our practice an erroneous judgment by the original bail as a final judgment, by the original bail, if not corrected by the final judgment, are not liable on its reversal. 2 Sw. 118. 2 D. N. 200. 2 De 372. Analogous. This rule is founded on the construction given to our statutes.

Succ in 67. 13 Dec 77. 469 8. 5 Dec 419. 526.

If error in error does not assign error, judgment is not affirmed. (Revived it certainly cannot be.) But the final judgment remains good. The action is done upon it. Left in error therefore does not secure costs on the suit. But must resort to the bond. 2 Dec 218. Side 244. 2 Feb 37.

This rule is not applicable to our practice. Bonds are assigned here when the suit issued in Eng. I suppose after the return of the 61st. pro. ad audendum errors.
Effect of Reversal.

A reversal of judg. in some cases overreaches or avoids the proceedings (on the execution) under the original judg. Or other it does not—see Rule page 38. 62. If goods are taken on the execution & kept till reversal, by the exec. to be sold for the debts. Or if goods or lands are delivered to the creditor at a valuation & afterwards removed, the property is restored to the debt. in the execution. The RJF in 2 dest. 2 Dec 23. 2 379. 1 Dec 23. 579. 4 Dec 23. 679. 2 Dec 24. 3 Dec 24. 779. 3 Dec 24. 879. 9 Dec 25.

The rule laid down by L. Coke is that 'on such collateral things executed, are not deliverable on reversal. Collateral things in execution are not deliverable on reversal. The person in execution are not deliverable on reversal. Collateral things in execution are not deliverable on reversal.'

But if goods had been taken on execution as collateral things executed, are not deliverable on reversal. Collateral things in execution are not deliverable on reversal. The person in execution are not deliverable on reversal. Collateral things in execution are not deliverable on reversal. The person in execution are not deliverable on reversal. Collateral things in execution are not deliverable on reversal.
Write of law.

Thus the judge, to bind it, is now reversed by the reversal of the original jury, because the collateral thing is executed - the time for pleading and trial records is past. 810. 142a. Nunn 28.

But in this case the sheriff may be relieved of execution by an oath purgation, which is a writ removing of execution.

Cor. 2 V. 2 Dec 231, 2.

But if the jury has been compelled to pay on the execution, what relief has he, after the reversal of the original jury? By Bill in Equity. It is known of no other.

Norden, Ch. 131.

I suppose that, in the original judgment property has been taken and delivered according to law to an appraiser into the hands of the sheriff in the suit under in satisfaction of his judgment, it afterwards the suit is reversed. Is the property to be restored? Judge thinks that it is. No harm can be done him, for he is no longer entitled to it.

+ to 142b. Cor. 2 V. 2 Dec 231. 179, 108. Amst 107-8

If this is not the remedy I suppose that Judge below must have a new action, but there is no such case.

So if, as above, the sheriff in execution has sold them to a stranger, then the "judgment reversed" now will the vendor hold the goods under suit for he must look to the title of vendor. He must take his security on vendor's executory of title, as if sold or implied. If there is none it is
If such has taken property on execution & told it to stranger when he has no authority 
only to tell it was not by law bound & such 
day a subsequent receiver will defeat 
the right of purchaser to hold it. except the date it must be restored.

2 Dec 232.

Thus if a judge of our Court is authorized 
& in an execution of a capital 
will the judge forsooth not the sale 
more than a time the sale is reversed 
the sale is not valid. It creates no title - 
For the force of telling them acted without 
authority. He is required to keep them, that will -

Note 778. 5 Co 90. 2 Co 6278. 3 Dec 778

In this State (Connecticut) a writ of Error is 
based within 3 years from the time of 
rendering final judgment below.

1st 54. In Scol. The limitation is 20 yrs.
2 Co 637. 2 Dec 223. Under Nat 10 11 20 3.

5 Jan 246.

By Statute of N. State the time for bringing 
Writ of Error is ten years.

When judgment below is affirmed or 
Writ of Error the Jt. in Error secures 
his costs on the writ of Error is his 
costs above - When it is reversed 
no costs are taxed on the writ in 
Error on either side. If in Error by 
the court, because Jt. in Error is not con 
cerned to be in debt for not abandoning 
his judge below.
when 1/1 of several 2d. have a personal period to the controversy, the 2d. 1/1
receives his costs below under the name of damages.

Now in most cases, where a 1st award of 2d. 1/1 is 2d. in error, it reverses just 1/1.
the reversal will generally put an end to the controversy—but not always.

Example:
1st. below 1st. on demurrer to declaration 1st. for 2d. 1st. brings up 2d. of error.
2nd. just 1st. for insufficiency of declaration. This, put an end to the con-
troversy.

On the other hand, when just 1st. is for 2d. 1st. below reversed it. In
such cases, the judgment of reversal does not put a final end to the con-
troversy. Ex. On a demurrer to decl. the judgment below is for 2d.
the 2d. below reverses it on error. The
one proves that declaration is insufficient—but he has no just 1st. for damages or
property. He therefore has a right to enter his bill de novo in Court
above or to have it remanded to the
court below to be there tried, Sec. 11, 18 St. 3, 18.

In Interlocutory just 1st. the effect is the
same. It does not decide the merits of the controversy. In point of law he has
a right to try it again.

The case may happen where there may be
Write of Error.

Several years of judgment is yet the
suits may not be decided. In other
the whole suit follows the final event.
Cmrs. 4. 158.

But where he does not proceed to further trial by statute
he is not entitled to costs. Cmrs. 4. 158.

If party in error has paid any thing on
the erroneous judgment he may recover
back the sum under the name of dam-
age on the reversal. And is also entitled to
the costs that ought to be awarded him.

But he may sue for the reversal only,
to recover back money he has paid
in an action of sed: "
"Aftermath."--
But if party in error has paid nothing
recovered nothing but the costs, he was enti-
ated to on the reversal of the judgment,
or
on the judgment of reversal.

But where the case requires further trial
at party enters for another trial, the costs
await the final event. Cmrs. 4. 158.

Under our statute when judgment is af-
signed the party in error is entitled to
interest on the supreme judgment at
the discretion of the Court. The rule
is the same as in Eng.

1662 Oct. 29. 2 K B. 284. For the want of
error has superceded the original judgment, &c.: but
the rule leaves this to the discretion of the Court: yet in our practice the
Court always award a, matter decided p.
In Court, if on "null and void order" the parties are deemed to differ from the record, the
Court will order the original record to be brought
up. Post 88.

"Exemplifying the effect of an af-
firmance or reversal of judge's in writ of
Error.

In the Court below.

Case 1. Judgment below for $.00 debt on $100 debt. Inapt revised (for inde-
sistency or invalidity, before $100 debt collected or part of his execution). Inapt, above is that
"null and void order" is revised (that $100 debt of $100 debt is the
am the amount of the debt incurred to be the
Well of born.

And below. But no costs are recovered by D. on the suit in Born. D for Rs 12 on whom never came into recovering on the suit of Born.

II. The case as before except that I have also included the contents of his execution: viz $20. Debt $ 12. costs. Indent of appeal as before and that I recover $40. viz: the $20 paid to J. on the execution indent: of $10 costs which is ought to have recovered in the indent below. Scanned.

III. Indent below in favor of A as before. Again below in the suit above. Here the indent above is that the indent below be affirmed: that I the debt in Born recover his suits on the suit in Born. The indent below is again operative interest is allowed on the final suit if the indent is there is certain thing, proper execution of parties for it. The practice is I believe to allow it of course. Pat. Born.

IV. The indent below was in favor of D the suit below. I to suit of Born recover the judge. The indent: in this case is merely a indent of reversal. If the suit above is competent to any execution of part (as $20 in case 2) the suit B in Born.

I on the indent: of reversal enter the same in the indent above, for that, on final judgment (if the plaintiff) recover together with his debt or damages, all his costs, which occurred before the indent: of reversal as well as those which have occurred since. But he recover our costs on the suit in Born if I had paid the costs taxed.
against him in the suit, below he could have recovered that in the suit to error or damage. But I must enter the action if at all, on the same terms as which the suit of error was rendered. Most 85.

V. The court which reversed the suit in the last case was not competent to try questions of fact (as the exchequer chamber in Eng. the Court of Errors in Cm thinks). The same is evident on mandamus to the court below, where it must be again prosecuted with or if it is wise for judicially, it will be understood executed through by it of board. decided Blouen 6 Blou 17 Church 9th of Errors 1805. [Page 27-82.]


VI. Remover in the Court below to the decision, declaration adjudged insufficient. The suit of error the suit is reversed. Here it would generally be absurd for I to enter. Since his declaration is adjudged insufficient, he shall be heard enter as that of his declaration can be helped by amendment. he may have an opportunity to do it. Ruled in Sup. Court. And the suit below never rises to enter for trial.

VII. Declaration in the C. below adjudged insufficient. Reversed on suit of error. Here I enter for trial if the Court above can try questions of fact. For he has a good declaration of the merits have not been tried.
VIII. The in our demanded to be heard. No judgment sufficient. No judgment reversed. I enter for trial for a yet there is no judgment for J to receive. On the face of the decree, he has for an it that appears a right of recovery.

IX. The in bar adjudged insufficient, below. Judgment reversed. If I should enter it would be to no purpose. I do not wish to enter for his object is only to defend that object is attained by the reversal.

X. Here in abatement. Judgment below that the writ abate. Must remand above. Pff enter for trial. For he has a good writ; he has a right to proceed to final judgment.

XI. Here in abatement as in the last case. Judg. of respondent writ in the Court below. Decreed in our. It cannot enter for he has no writ. May he not enter if he writ can be aided to amount as in Case XI.?

XII. If error is brought for the admission or rejection of evidence. Pff below may enter for trial on reversal whether he is in error Pff will
Write of error.

Whether the judge's reversal is for or against him.

I. No witness was excluded below. On a bill of exceptions the judge is reversed. I enter for trial. Here he is. Error in error. The judge in error is in his favor.

II. Witness was excluded below. Judge reversed error. Here I am. Error in error. The judge of reversal is in his favor. Yet I may enter for trial if he pleases. For he was perfectly entitled notwithstanding the absence of his witness.

Note. In all the above cases, in which the original error is supposed to enter for trial on a reversal of judgment, the court above is supposed competent to try questions of fact. If the case is not the case, the record is remanded to the Court below to hear the final trial and hold (See IV v. Caw, supra) Stat. Conn.

When the judge in error puts an end to the litigation between the parties, the action is never entered in the Court above, nor remanded for trial. The litigation is always ended when the judge is affirmed. But it is in many cases, otherwise on a reversal of judge.
New — Trials

The mode of obtaining a new trial in Eng. (45) is by motion made after verdict or before judgment.

In this motion the regular course is to obtain a rule calling upon the party in whose favor the verdict is, to show cause why new trial should not be granted.

The granting of this rule lies with the judge.

The plaintiff is from being entered up, till the motion is disposed of. At the decision of the motion are afterwards discharged before the court sitting in banc.

It may be granted at any time before judgment.

In this state a new trial is sometimes obtained by a petition to the court, or by motion. Some to an application to legislature (Art. 15) on petition that. Court.

Again. The granting of new trial here differs from the English practice in this respect. A new trial here is often had after final judgment is rendered in pursuance of the verdict.

When the ground of the motion is any matter which occurred at the trial, as any interlocutory judgment of the judge, the application is made by motion, but
New Trials.

A petition when application is granted on any thing arising after trial is on discovery of new or material evidence will later be, there was no time limited in this state within which the application for a new trial must be made, and it is now limited to 3 years by Stat. of 1844, 10th.

The petition states the several facts of the application of the opposite party may demand to order them.

But the petition is new stage of the proceeding, the presentation of new evidence. It is accompanied with a summons to the adverse party, or is served in hand, like petition in chancery. An application for a new trial is accorded by law to the court and is a right to the discretion of the court. (Stat. 22.) Therefore, if a new trial is not granted where justice has been done, 1861, 19th., Bull 326; Stat. 457, 1806, Bull 328.

Yet when a point is decided by the Judge in the trial the determination of that question is entire issue. It involves no discretion. The verdict’s the C. considers itself in the situation of the Judge, if the Court has decided it wrongly decided a point, the application for a new trial is to the discretion of the Court.

But when Judge at 1st.

Review the point at law for the determination of the Court in Bank. The determination of that point is entire issue.

On the trial of a civil evidence of a certain kind is offered which is objected to. Now if it ought not to have
been admitted. (See the objection to it above).

Admissions,

To the evidence admitted, yet the application for a new trial is to the discretion of the Court.

If Judge admits it, leaving the point of law, it then strikes me,


1902, 338.

This discretion entitles the Court to refuse

of interposition where justice does not require it. The there may have been a

deviation from the strict rule of law.

Hence it what is called "hard cases", the "true" will not proceed with.


1802, 338, 1852, 339, 399. 2 7 12 4 15.

Sec 442, 429. Where it is made a presumption

caused by the Jury. Contrary to evidence, in which case

as new trial if the verdict is. According to being considered

we rule does not apply in all cases. (Pet 31. 1852-6)

In this principle it is that a new trial will

not be granted, to keep to let in the defence of insanity

in peril again. It will not be granted to

with the defence of infancy, of coercion

or any unconscionable plea or defence in general.

1802, 32, 429. 1852, 339. 1852, 1242. (Pet 97-8).

Now for a new trial will be granted as

afflict a party in taking advantage of

statute of limitations is not clear. In 1802, Pat

229. 39. 124-

In consequence of the discretion the Court in

granting a new trial makes the power of

imposing terms or conditions on the party

applying for it, not on the other party.
In English practice, if the proof of an
other, is any thing which depends on the
information of the fact on which
the Court in Bank must act, a generally
taken from the Report of the Judge
But if it is any thing which did not
appear at the trial, the Court is to be
adjudged by affidavit. As that one of
the former was interested in the trial to.

391. 200 R. 235. 2 Liv. 140.

47. Among the various kinds of error,
there is no other that is so frequent as
the one called "Error in Fact," which,
when committed, is often a matter of
consideration, and sometimes a matter of
consequence. It is a well-known rule
that the Court in equity must not
refrain from the decision of an error in
fact, as well as of an error in law, and,

3d, 392. 2. 1d. 148. 70 R. 529.

A condition of the latter test is utterly
incompatible with that for deposition.
men in court cases) be read as, if correct
or "with.

473. In English practice, if the proof of an
other, is any thing which depends on the
information of the fact on which
the Court in Bank must act, a generally
taken from the Report of the Judge

But if it is any thing which did not
appear at the trial, the Court is to be
adjudged by affidavit. As that one of
the former was interested in the trial to.

391. 200 R. 235. 2 Liv. 140.

(Conn. practice is somewhat diff. Our Court all set
in cases, we have no facts prior.)
I remarked under title "Error, of Error", that Er-
rons of fact, particularize the decision of
the Court in going or retaining a new
trial, yet if if be practis in cases in
New Trial

which there can be no to new trial (and
der any circumstances) on 2d one trial for felony
it must be found for errors. Nov 26,
errors." 27-
Judge Gould apprehends that the power of
granting new trials is limited altogether to
theinferior Courts: that inferior Courts
have no power to grant them.
In Conn. New Trials are provable by
Statute only by Superior Court or County Court;
does not extend to higher magistrates.

The practice of granting new trials was
unknown in what may be called the
ancient practice of English Courts. The
old remedy was by a proceeding by
daim for the same for their vecindars.

Blackstone traces practice to reign of Edw. 3.

acts that it did not prevail till
the time of the Commonwealth (1655)
31 403. The Trial. 21. Tit 45. 100 210. 1 Bar 995.

Since the case in Edo. 3d. it was for mischief of Lyme.
Now in time of Cromwell 1655 it was for exigencies of

provision of mischief liable for wrong caused.

By last remov new trials are granted after
the trials at the 1st before the whole Court;

hearing of the inferior Court; for some reason, as a trial

pointing to crimes except on single

instance of the mischief of Lyme.

31 395. Tit 45. 308 307. The Trial
2. 2d day 1380. 1 Tit 58. Tit 48. 7 Tit 37.
The general principle now is -

That in all cases of sufficient importance a new trial shall be granted if it can be made to appear that injustice has been done at the first trial.

If of small consequence new trial is not generally granted.


It was being through judic. if the delay not being worth the candle.

The object of the attainment of justice.


It is a sound rule in English practice that a motion for a new trial can not be made after a motion in arrest of judge.

But the rule does not hold &c arrested.

The reason appears to be that if judge is arrested the granting of a new trial would be unnecessary. The there is an exception vide where the cause for new trial was continuance at the time of moving in arrest - Oziel At. Trial 1. Ball 355-6.

Note not universal.

It was formerly held that where there were several Cts. adjt., & all important convicted, or part convicted & part acquitted, no new trial could be granted in favor of one or a part of them, for the verdict of the cause must stand or fall in toto.

Dulce 32. 6 Ball 382. 12. 257. 275. 373. 693.

2. 364.

Rule seems to have been overthrown by Const.
Caused for granting new Trials an

1st. Want of due notice of Trial to
the party at whose the verdict is found
is a ground for a new trial.
Out of this has appeared a difficulty.
he can't have a new trial for the cause
The waiver the defect of notice
Salk 646. Bell 527. Bell At Trial 21. Table
435. 428. (or 425 435)
This rule does not mean the want of due
service of the writ.
But the want of service by the party to the
other (defendant) according to the rule of practice that he
will bring on cause by such terms. Here it has not.

2d. A defect in the Judge or a mistake
made by him on point of law.
Bill of Exceptions is a concurrent remedy.

2a. Of defect.
If the Judge was interested in the suit
or stood in such a relation to the party
as would disqualify him.
11 N. 119. 6 Dov 244. 62. 6. Mistake.
If he improperly admits inadmissible
evidence or rules undue.
Dov 61. Trial 23. 6 Dov 244. 7 st. 53 514.
10 B. 202.
It also for a misdirection of the Judge.
be the same in point of law. A Bill of
exceptions may also be filed Bell 322 471 253.
New trials for a mistake of either
of these kinds have been practised after a
trial at Bar. (when made by the whole Court)
In Court then is no such thing as a trial
at Bar.

It may not be improper here to consider
for what causes are Trials at Bar allow-
ed? -

The proofs are the qualities of great
value, probable length, probable difficul-
ty in the trial being 420. Not a matter
of right.

(82)

In new trials for misdirection in law, of
justice is done. 2 72 & 5 (ante 46)

In improper admission or rejection evid-
ence is a good ground for a new trial.
Yet where a witness has been admitted who
was incompetent but not objected to at the
trial, the admission is not a substantive
ground for a new trial; the incompeten-
ty was not known at the trial.
172 717. Bacon's Adv. 10 (Oct 72 75)

In Court however a new trial was granted
on this ground. The evidence not being objected to
It is said that if a cause has been lost
by the testimony of a person legally in
favour, a new trial may be granted.
The Equity Rule, 1799, § 29, states: "A party may challenge another's jury on the ground of inherent bias, or the fact that the jury is related to the party in whose favor the suit is brought." If the challenge is successful, a new trial will be granted. If it is not, the new trial will not be granted.

The rule of law is that, in a new trial, the jury that was previously challenged will be tried again. If the same jury is challenged in a new trial, it will be retried. If the same jury is challenged in any subsequent trial, it will be retried as well.

In cases where the objection was not taken at the trial, or not established at the trial, the court may grant a new trial. See 121 U.S. 553, 1897 121 U.S. 553.

Although a witness called to prove a certain fact is improperly rejected, or if another witness testifies to the same fact, or if it is not contested, a new trial will not be granted.

See 41 U.S. 7, 1828, 41 U.S. 7, 1828, where the court states: "The defense or incompetency in the jury is in the interest of justice." See 189 U.S. 547, 189 U.S. 547, where the court states: "The duty of the party is not to prejudice the party." See 14 U.S. 527, 14 U.S. 527, where the court states: "The duty of the party is to assure justice."
New Trials.

in must have known of the cause of challenge at the trial.

In the state of motions in arrest of judg.
have been concurrent, where ground of non
that was that in the last case. See 'Pleadings'.

4. His conduct on part of the jury. Inter
very, are corrupt practices, 'one thing'
which conduces to show that jury
acted. Particularly, ... In construction of
or removing these to chance.

Cae. Mt. 'Trial' 1st 2 Dec. 140. 8 Pm. 142. Cae
Mt. 'Verdict' 2st. Pm. 6. "Pleadings' 17."

And in a particular case where the forming
of the jury declared before trial, that the
jury should never obtain a verdict
whatever his testimony might be.

Said 6. Cae. Mt. 'Trial' 1st

In very early times, perfect unanimity
in the jury in favoring a verdict
was not requisite. But for a long time past it
has been uncertain, (306 375-6) if they are not unanimous
a new trial must be granted.

But in English Practice Court have a
singular method of enforcing unanimity
in some of the C.S. I by casting
the jury, from place to place (whenever the judge fes)
and the judge will not discharge them till they agree.

Cae. Mt. 'Verdict' 1st. 306 375-6.

In this state they are usually discharged in
case of irremovable disagreement, at the
end of the term, but not before except by agree
ment of parties. i.e. if agreement of parties is
new necessary?

If the jury are not ultimately unanimous that verdict is, in strictness, ill, or a
new trial must be granted. A verdict of
which has been set aside in Eng.
See the "Verdict" §.

But an expedient has been adopted both (55)
in Eng. and in this state, to relax or evade
the rigor of this rule. this is done by per-
mitting the adjournment of the cause
to come
in court, the verdict being delivered in
writing by the presiding judge. ibid. 175. And 14. D. L. 794.
[142] Emd. 17. See 8th. Trial § 4. Verdict to think
and they are not afterwards allowed to testify to their doubts.

By the rule of Common Law, 4, term
an issue is delivered to the jury, they
are to be locked up in some apart-
ment by themselves and they are not to
eat or drink without the permission of the
Court. Their eating or drinking does not destroy the verdict, but subjects them
to punishment — ir a fine.

Enh. 1st. Verdict § 4. 302. 371. Denin 1235
by 218

If the times, eat or drink or accept of
refreshment from one of the parties, it
shall prejudice the verdict in favor of that
party. the verdict is bad if the verdict be
a new trial.
New York.

See St. 3d. 2d. Vol. 125. 12 Mo. 22.

The jurors go where they please. The practice is a very bad one & contrary to direct statute law. Kent 2, 401-2.

For the purpose of avoiding juries from hardship of confinement & assistance, if a verdict is delivered to the court, the court have entered what are called jury verdicts, written & delivered, sealed to the judge out of court. See St. Verdicts 3d. 22d. Page 211 to 217. By 27. No. 33.

The use of jury verdicts do not lend the party, they are still at liberty to join a public verdict opposed to the jury. See 'Verdict' 3d. 22d.

The jury is eating, or drinking after a jury verdict delivered at the expense of one of the parties, do not violate the verdict, until the chance is in favor of the party beating them. If they do thus change it, it will be set aside. Kent 125.

To occasion a count for jury verdicts of June, 40 where they please, & eat & drink at their leisure & pleasure. Kent 3d, 22d.

Jury verdicts are admitted in all civil cases, the same that a jury verdict can never be given in case of felony. If life or member or where the personal appearance of the heir must serve to his conviction. See 'Verdict' 3d. Page 193. 2d. 22d. Page 211. 2d. 22d.
Campbell (147.) says that a Jury have a right to form their verdict (partly or wholly) upon their own personal and secret knowledge. This seems not to be law. The very oath of a juror proves it. 301. 374-5. Dec at Verdict 31, 112 Ed 133.

But a juror has no right to communicate his secret knowledge to his fellow jurors. If he does, it will vitiate the verdict.

The result then is, if any juror can be excused on the plea of acquaintance with any part of the cause, he is to make known his knowledge to the Court and be excused as a witness and then he may still act as a juror.

1 Mc Kell 238. 301. 374-5. Again, each of the parties has a right to cross-examine witnesses to show that the jury received his testimony or the testimony of a third person, not under the oath of office, 112 Ed 133. Dec at Verdict 31.

And once more. The true rule is inferable from the fact that New Trials may be granted and frequently are, because verdict is contrary to evidence (112 Ed 134).

If no, the jury have no right to re-examine in their chamber any witnesses who have testified in Court. If they do, the verdict is bad. All evidence must be delivered in open Court. That opposite party may cross-examine and rebut it.
New Trials.

619. If they disagree as to what he said they may come into court and have him re-examined there. If the jury take with them any written evidence not exhibited at the trial the verdict is bad and a new trial must be granted. Vide 235. Dec. At Verdict 75.

Nor have they a right to take out any written evidence (the it has been exhibited at the trial) without consent of parties or of the Court. 627. If they do it is a high misdemeanor.

Nor there is a strange distinction laid down viz. That if the writing furnished evidence for both parties the verdict is good but if for that party alone in whose favor the verdict is it is bad.

Dec. At Verdict 75. 2d May 178. 20th 412. 12 Nov. 235. 2 Roll 744.

In Court it is the practice to deliver to the jury all the documentary evidence with out any written consent or leave of the Court.

When jury are guilty of misconduct they are not allowed themselves to testify to that fact. Evidence must be denied. Vide 436. 441.

Not furnish the rule 20th 189. 5 Dec 288.
New Trials

But Judge would conceive the principle of this rule to be that no jurors can testify to his own misconduct. Some consider it for an unprincipled juror might during the verdict.

If the Foreman delivers a wrong verdict by mistake, it may be set aside on a new trial granted.

The other jurors are admissible (or competent) to testify to the fact. Mass. 383.

In Court held that any one juror is just as competent to prove misconduct of any other juror for the purpose of impeaching their verdict. Stark. 1348. Enr.

In Court: a motion for arrest is concurrent with new trial, when the jury have misconduct during the verdict (be United) See Blair's, decision "Arrest in arrest."

V. Juror's finding a general verdict where the Court is bound to find specially, is not its legal conduct. Not proper to a verdict for new trial. For the jury are not bound to find specially. (The direction is generally peremptory on the application of one party, or both.)

But if the verdict is, against the opinion of the (16) Court, new trial is granted. See Trial 240. 10 W. 203.
New Trial in such case refused in point 37. But because after trial at bar, in which cases new trials were not easily obtained formerly.

VI. Verdict being contrary to evidence in cause for new trial. 1st in "Cam. 5 Count. (256. 272. 1st 3 to Count.) 2nd 1163. 3rd 311. 7. 4th 99. 5th. Verdict 4. Trial 5. 1 Count. 2 Count. 472. (50. now in Count. by Stat.) Not printed if the scale of evidence hung nearly equal. The evidence in the verdict must be strong. 50. 3rd 899. Strongly preponderate 300 899.

It has been said that in this case, there must be either no evidence in support of the verdict, or so little as to amount to nothing.

Via 519. 2nd Case 180. 16.

But this is not now the case. The principle now is, that the Court may, of course, grant a new trial if in the opinion of the Judge, the verdict is clearly against the weight of evidence. Bell 90 329. 5th 37. Trial 4. 10 a.m. 323.

This is not dictating the trial to jury, but only reviewing the verdict to another jury.

VII. If the jury have given a verdict contrary to law, upon a given state of facts a new trial is granted.

Wall 146. 1st 401. 2nd 12. 1078. 220 39. 300 8
311 425. 472. 499. 18 99 a.m. 279. 2.99. 5. 52. 425. 852.

By 247. 6th. Whether the verdict was against law.

But in this case a new trial will not be granted if the case is a hard one.
where justice has been substantially done
525. 5. 6 425. 0 525.

It is now a rule that if in point of law the PPF is entitled to recover nominal
real damages only, the sum found for the Def. at the Trial will not be reduced.
4 Dan 2093. 4 TH 755. See 6th Volum.
Note 49. for the case is too simple to hold, justice is substantially done.

VIII. Small sums of damages found by the verdict in some cases, a ground for
a new trial. But this ground has never prevailed, (I believe) except in actions in
Contract or for some sum certain. As in a promise note to
but where the damages are merely, pretense
also an application for a new trial has never prevailed. The objections to new
trial is, that there is no criterion.
See 6th Trial L. Strange 940. 1051. 4 T. &. 355.
Bell A. P. 327. 10 Dan 332. 2 M. 386.

It has been said — that there is
no reason why a new trial should not be granted for
small sums of damaged in case of tort — 8. 6. 49, the same
opinion 2 Dan 334 202 E.

Where we have made damages to 183,
low though a mistake in point of law,
or in point of fact, or by computation,
or if it is, any unjustly a new trial may
be had — 425. 12 59. 62 64. But in
New Trial

The case is founded on the score of mistake or fraud.

IX. On the other hand - if the damage be occasioned by the act of the party, it is in case of contract.

Formerly, it was contended, in case of tort.

To 42. - One Must Attend the

Contest. (? Case 37.)

But this doctrine has not prevailed.

Now in case of contracts, there can be no difficulty. - In case of delicto, the rule is not so definite, but new trial, may be granted. Park. St. Trials 24. - Tob. 529. 1 Sk. 277. 5 Sk. 257.

If 15. 270 it. 244. 405. 3 It 62. 1 It. 691. 2.

1048 it. 1841. 1 It. 357. 108. 231.

It has been sometimes contended, that a new trial will not be granted unless the exculpation of damage will raise a presumption of partiality in the jury. - From the context of the case, it seems not necessary, the more of even the modern cases look that way. Corp. 231. 5 Ann. 155.

This case of exculpation, damage, is the converse of the last Case.

Where there is a fixed rule of damages, a mistake has been made in computing:

a balance by the jury so that the party obtains a verdict for more than is due - a new trial may be had.

But if the party will remit the excess upon the record, he must present a new trial.

or, if the amount of damages, is no difficulty in doing

they (as in an action on a note or bond) 2 Ed. 113. 123.

Ch. 3. 213. 14 Ed. 88. Corp. 371. dag. 92. 2d. 292. 19th B. (see note 71.) - Se. if the mistake is occasioned by the party's misconduct. - Ch. 3. 215. 14 Ed. 88. 91.

In Eqn. a new action has been granted.

when an action of account is brought, the plaintiff suffers a default if the plaintiff

is held to have judgment for too much. - This was for a bond upon
the party to the Court.

But in case of Quirin. The new trial has not been granted for the cause, i.e. for excessive damages. 4 T. 161 (or 4 T. 56.) 15b. 169. Bac Ab Trial 24.

In 4 T. 154. 56. Where L. H. was held a Court whether Court have a power to grant a new trial. But Ch Justice Buller holds that the Court can for that cause as well as for any other. 17 T. 277.

New Trials have been granted for this cause in Queensland & New South Wales. 17 T. 277. 5 N. 287.

It does not appear that a new trial has ever been granted for excessive damages in action by Parent for the seduction of his child. 3 T. 266. 15. 2 H. 3. 167.

It seems that a new trial may be granted for this cause in an action of slander. (The principle is perhaps reason why a new trial should not be granted in any case, i.e. for this case.) 5 Dan. 258. p. 93. 11 T. 24. 12 Dan. 39. p. 1 Adam. 287. State 487. No case in which it has been granted in case of slander for excessive damages only. 17 T. 42. Statement of Caven 12 T. 249. 17 T. 277. 17 T. 277. 17 T. 277.

Rule laid down in T. 39. is that a new trial may be granted for excessive damages in any case whatever. In any sort of action. 17 T. 277. 17 T. 277.
X. In Court: New trials are practicable to enforce statute provisions for mis-
pleading. St. Cont. Actions Civil

But no such rule suite in English prac-
tice. So suppose that in action of
debt on bond where plea of infancy
the party should plead Non est factum
3 S. 1385. 1 Saet 637. 2 Th. 121. 11 Elzo 212-3. Bac. St. Trial 25. In 2 Th. 131.
Oh but Add. Allen remarks that it was proper
to grant a new trial as the Court &
the Counsel were both mistaken in point
of law, &

But the neglect of one's Duty or Counsel
is no ground for a new trial. The remedy
of the Client is to the City. It therefore
the
1 Med. 22. 222. 1th. 695. J. Story 62. 84-
& if City should neglect to appear it

A new trial for mispleading has never
been granted in Conn. except on petition
made on motion.
The petitioners must state the wrong plea
New Trials.

At the plea he intends to make to the

must state that he is able to prove the

of the plea. And he must prove it on

the hearing of the Petition.

[Note 573. 2 M. 217.]

Now for more surprise, by the introduction

of unexpected evidence is a ground for

a new trial, is not very clear [Note 2; 6

Browne 267.]

New surprise is not of course of itself

a ground for new trial (by English rule

this with other grounds it may be sufficient

165 El. 298. Coop. 8. Trial 81-

3 East 167. 222. 2 W. 319. P. v. Drf. 3 Meyn

667. 248 13.

Xiv. The absence of material witnesses

at the trial, this inevitable accident

as, by age, sudden illness, or other

causality.

See 46 Trial 2 6 or 4 - 11 Nov 1. 64 22.

Such an absence is ground for a postponement or a continuance.

But a new trial for this cause is not

practicable unless the 10th sect will make

affirmation of what he can testify that

the Court may discover whether

the testimony is material

See 46 Trial 2 6. P. 645. 3 Nov 84.
New Trials.

And (unless) new trial will not be granted if the defence to be proved is an un-considerable one. For the trial will not be postponed in such a case. (A priori as new trial) 1808 & 15 & 454.

In Court, when application is by petition, it must state the testimony before new trial is granted, the witness must testify on the trial of the petition, what he knows.

If the attendance of a material witness is prevented by cause or unfair practice of the opposite party it is a good ground for a new trial. 1808 & 454.

Nott 141. 6th Ed. Part 12.

But if a witness is absent—willfully, or by his own negligence—no new trial will be granted, for it is the policy of the laws to make the witness liable, and the opposite party is in no fault.

Spero, 322. 6th Ed. Trial 3d. 392 3d 8th.

"The Evidence."— Briefing on the Case of the party's remedy in such cases is by action on the case of the witness.

And a new trial is never granted for the absence of a witness whose testimony the party wishing for it might by due diligence have obtained—it is the consequence of his own default.

Spero 347. 6th Ed. 1766 p. 3, 2 Nott 22.

New Trials.

A mistake made by a material witness in the testimony given on the first trial is not a ground for a new trial. 12 Mod. 584. 22 Mo. Trial 26.


XII. The discovery of new evidence is said to be a good cause for a new trial.

12 Mod. 584. 22 Mo. Trial 26.

But in several later cases the rule is held contrary. 22 Mo. Trial 26.

The trial of a grantee, subject to debt or judgment, after the discovery of a receipt and other trial was not permitted. 22 Mo. Trial 26.


But yet in a very recent work of practice the rule is again qualified. 22 Mo. Trial 26.

Long since, where new evidence is discovered after trial, it justifies a new trial if it will be granted. 22 Mo. Trial 26.

But it may be granted on discovering that the testimony at the trial was false. This mistake was done. 22 Mo. Trial 26.

But it is clear that a new trial could not be granted on the ground to let the party into the defense of which he was deprived at the prior trial. 22 Mo. Trial 26. 20th ed. p. 289. 22 Mo. Trial 26.

In certain nearly discovered material evidence is made ground for
new trial by statute. And if by due diligence of the party applying for a new trial, might have known of the evidence before trial. New trial is not granted.

Rev. 282-3. 590. 290.

Application on the former has usually been made (in Court) by petition; as motion must be made within 48 hours after verdict, but in any it is made by petition.

Petition must state the new evidence or the substance of the fact: the witnesses to the new fact must be named. The all were not to be cited. 283. 280. 290. Note 37, certifying an petition.

II. Class XII. See p. 52.

XIV. Misconduct of party. - is where one of the parties has treated the other, or by stratagem (or by falsely accusing him, or arresting him by lawful process), with such injury to prevent him from testifying. (ante 83, 55.)

Note 78. See §§ Verdict. Note 433.

XV. where the party for whom the verdict was found, had informed one of the jurors to find in his favor.

To where a party makes any representations in favor of his own side to a juror and the verdict is for him (new trial is not, even if evidence is decisive in his favor.)

Note 78. See §§ Verdict. Note 433.

XVI. Similar practice by a party's attorney have the same effect. 2 Cent. 173. See §§ Trial 26.

And any kind of embezzlement practiced by
New Trials.

One of the parties - or his attorney - applied for a new trial. *N.E. 119. 10 Dec. 125.*

See New Trial 24.

The term 'embrace' is any attempt to influence a jury merely as to bias, prejudice, or passion. *Embrace* is an indicable offence.

Thomp. Opie, *op. C. 259. 40 Be. 140, 2 Dec. 79.*

It was formerly held in Eng' that a new trial should never be granted in an action of 'espoument,' because in that action the party in whose interest the suit is, is not entitled to verdict on admissions for unsuccessful party in

*Talk 45. 150. Bar at Trial 57. (120b. 'Such under special circumstances.' The parties, the petitions. The rule is never applied in Court. Here the suit's personal, as in other cases. The reason of the rule doesn't exist here. (Denial of evidence, collect plea, etc.)

But now [1823] held by Sir t. 46. contra - Lord eurumini!"

In Eng', there was no that new trial to be granted to keep when the verdict is in favor of the App' - because the parties are not kept in status quo. The matter in the mean time be turned out of possession.

But where the verdict is for App'. the final rule still prevails - that a new trial shall not be granted App', except for very particular reasons, for the parties are in status quo. It does not change the prejudice. *Bar 41. 32. Bar at Trial 57. 10 Att. 323.*
It was formerly held that after two
inconsistent exculpatory verdicts for the
same party, a second new trial might not
be granted. Rev. 37, Tit. 13. Talb 143.
Mct 22. 306 38. Sim. 117. Dee "Trial 21."

And in point of fact, a 3d new trial is not
often granted, though the rule is now exploded.
Burn. 115. Ch. Cau. in Penn. 139. in 1798 to 1799.

A new trial is not in such a case
upon any exceptions not made at the trial
which might have been taken there. 16 Nash 282-3.

In point of fact, new trials are not grantable in
the Court of Criminal Cases of any kind
the frequent use. They are in his favor.
*Coop. 37, 3 Mer. 108. 2 Edw. 89, 1238. 12 Edw.
3 He 59. West 867. ante 6-71.

In criminal prosecutions, for offenses higher
or than misdemeanors, a new trial is
never grantable for either party. For it
is a maxim, "That no person shall be twice
put in jeopardy of his life." 6 Tor. 68.

Now for the Court may discharge the
jury on their failing to agree in a
verdict, has been a subject of much
controversy. In Scotland (in Eng) take it
to be that they cannot be discharged.
2 Tank. Ch 475. 1 Scott 5 Crown Law 16.
New - "Trials"

Hindley's case) Pag. 54. 4 to 45. Earle 465,
Comble 551. 2 Leigh 361. 18 it (Broom's case)
but not even with prisoner's consent
just in (understood that without a verdict there
is no trial,) but this rule means that he can't be
put twice in jeopardy of his life.

extract laid down in Cooke's case is
that they can not be discharged in capital
cases, for their discharge, except
in cases of clear physical necessity - as if your death.
But in cases new trials have been granted
in favor of the defendant even after conviction -
by the Indicting law of the 23 5. 100 26-7

But where the offence does not arise
amount to a misdemeanor i.e. where it does
not amount to death - the civil rule is that
no new trial can be granted of the death. It may
be twice tried for the same offence -
See 349. 1241. 110. 1161. 1164. 1184. 1551. 83
2 346. 484. 1 397. 2 0 59. 1 86-7. Dec.
Trials 9 8. 1 63 31 3. 1 253.

But when the offence is not higher than a misdemeanor
the court may grant a new trial in favor of death - 614. 68
In case of trial of murder - 35. 36 159.

But of late new trials are granted of death in actions
on Penal Statutes for mistake of the judge in point
of law. But there are Civil trials - 4. 2 753. 750.
5 420. 3 481. 3 1 185.
New Trials.

But new trials in these actions have not been granted on the ground of a mis- 
take in the Jury - on the ground that the 
verdict is against evidence — 
Gib. 750. 952. 20. 38. 1238. 1200. 17. 9 9 59.

But a new trial may be granted to keep 
if he has obtained an acquittal by any 
former practice — by twice re-commnn inditement — 
1257. 70. (Contr. 128. 124. cit. 12th Mo. 69 -)

By 90. Nov. 396.

Granting a new trial after just in time vacate the 
judgment in this case is allowed when necessary. ^
In next page — infra.

Where there have been one or more new 
trials, the question of costs present some 
difficulty, according to English practice. 
When the court assumes discretion to decide 
the issue — if the party who was successful on 
the first trial succeeds again he shall have 
the costs of both trials —

If the party who obtains the new trial 
prevails on the second trial, he has the 
costs incurred on the 2nd trial only. + the 
cost of the 1st trial are taxed neither way.

39. 519 - 1210. 129. 84 - 3 52. 69.

The rule on Count is more simple — that 
the whole costs shall follow the final de- 
termination of the suit.
New Trials

See next page supra.
And in a quasi-civil prosecution new trial cannot be granted as to the civil part; unless it is granted as to the criminal part. (Post. 56.)

In Court. If pending the petition for new trial, the respondent died, his executor may be cited in by ed. in pr. (as in action.) If the petition may proceed, provided the right of action survives to or of the executor according to the nature of the case to him of his testator was still in the action. If to him of his testator was kept. "See, to" Tulp 3. Hart.
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New Trials.

But if the party in whose favor the new trial is granted, prevails on the second, he shall have the costs of the second trial only. Yet in this case the other party has not the costs of the first trial. There are not taxed on either side. 37 R. 619. 15 U.S. (159) 41. 352. 507.

In Count, the whole costs generally follow the final court of the suit.