Presented to the
Litchfield Historical Society
By Mrs. Catherine Dennison.
October 8th, 1902.
The decease of Mr. Daniel Sheldon Junior announced in your paper of the 5th. Instant is an event which may well excite many and deep regret, in the minds of all who knew him, either personally, or by reputation. In the death of this gentleman, his friends and the public have sustained a most severe loss. The instance is rare, indeed, in which any individual leaves the world, with higher claims to an affectionate and honourable remembrance among those who survive him.

It is not my intention however, to attempt a regular biography, or even a formal delineation of the character of this excellent and much lamented man: but justice to his memory, and to the public, as well as the respect due to the affectionate survivors of his family, seems to require at least, some slight and general public memorial of his worth.

Mr. Sheldon was one of those, to whose memory it is impossible to do even imperfect justice, without employing what is not less regarded, by the world at large, as the language of unreserved eulogy. But I have entire confidence that those who intimately knew him, nothing, expressed in this brief notice, will appear to partake of that character.

In describing personal qualities superlatives are in constant use, incorrect: but there can be no danger of exaggeration, in Fleming, that Mr. Sheldon's mind was in one of Nature's finest and most perfect moulds. The intellectual and moral elements of his character were so happily blended and proportioned, that it is justly be said of him, (if it were not too much to be said
of any man) that nothing was left to be desired, in the constitution of his mind. The remarkable and uniform mildness and refinement of his manners—the perfect amiability of his disposition—the purity and blamelessness of his life—his extraordinary intellectual endowments—and his very extensive attainments, in the various departments of all liberal and useful knowledge, distinguished him in the sphere in which he moved, and would have distinguished him in any sphere, as one of the most accomplished, and most estimable men of the age. No subject worthy of investigation, in science or letters, escaped his attention; nor was there any branch of learning, either useful or ornamental, which he had not successfully cultivated and familiarized, not only was "he a scholar, and a ripe and good one" but in the language of Mr. Burke respecting his lamented and only son, he was a "finished man."

Mr. Sheldon had scarcely passed the years of infancy, when he entered upon a course of liberal studies, which he prosecuted with extraordinary success, and in which he displayed an early maturity of mind, almost unexampled.

And these studies a mind like his, could never, amidst all its subsequent pursuits, consent to abandon. At the age of sixteen he was examined provisionally, as a candidate for admission to the bar of this state; and though legally inadmissible, as being under "full age," he received from the court, a certificate, declaring his proficiency in legal science, to be sufficient for the practice of the law, and entitling him to admission without further examination, when he should attain the age of twenty one years, but before that period arrived, he was appointed to a clerk-ship, under the Secretary of the Treasury of the U.S.—and thence to the day of his death, was employed successively, in the Treasury department, and in the capacity of Secretary of Legation, and Charge d'affaires, to the French court. In every public situation which he held he was eminently qualified for his official duties. With the constitution, the laws, and the useful institutions, not only of his own country, but of the several nations of Europe, and with the
political relations, and great interests of each, and all of them, no man, in the U.S. was probably, better acquainted than Mr. Sheldon, but though possessed of the most unquestionable qualifications for high preferment: he never sought it, and never wished it. He aspired to excellence but not outward distinction. His intellectual treasures were collected for use—not for exhibition. On every subject to which he diligently applied his mind, his knowledge was not merely correct: it was at once comprehensive and minute to an extraordinary degree. But from a lofty and delicate sense of propriety, which marked his whole deportment, he ever shrank from a vain, or useless display of his acquirements. He was indeed, not less distinguished, by the native delicacy of his mind, than by his intellectual endowments. Very few men, even among those who are distinguished by their talents and acquirements, have been gifted with minds of a higher order than his: and no one, probably, ever "bore his faculties" more meekly.

It must be very consoling to Mr. Sheldon's mourning friends to know, that he has been "honoured and mourned" in a land of Strangers: that his useful, honourable, and blameless life, was closed by a tranquil and peaceful death, and that he has probably not left a personal enemy behind him.—Seldom indeed, has a purer spirit left the earth: and seldom have the purest left it, so entirely without reproach.

Extract from letter giving an account of Mr. Sheldon's death.

"He appeared all along, aware of the little probability there was of his recovery: and frequently expressed to me, with perfect composure, his expectation of the fatal termination of his complaint. He retained his reason, until the last, and never did a man bear up under the pressure of disease and extreme debility, with greater fortitude, resignation, and patience than he displayed." "His funeral took place yesterday, (April 16th.) and was attended by all the Americans here (Marseilles)—by the English Consul, and a number of French and English gentlemen. The American Captains in port showed their respect for his memory, by hoisting their flags half mast.

by Judge Gould.
Notes taken from Judge Reeves's Lectures upon Law.

Steeple, Jan. 28, 1798.

Danl. Sheldon.
Introduction

Of Municipal Law.

Municipal Law is very improperly defined to be a rule of civil contract, prescribed by the supreme power in a state commanding what is right and prohibiting what is wrong. Sancti juris, justa honoris, prohibita controversiae.

Municipal Law is not capable of more than two accurate divisions. Statutes and Common Law; and of these the latter is commonly divided by the writers on this subject, into many other as Law merchant, practice, law of the sea,

Laws enacted by the legislature are not to be strict
laws, or the law making Common Law of that which has
arisen by the decisions of courts, and not not its foun-
dation in any debt or decree of the legislature or treaty,
but when the general usage common to the whole commu-
nity is; it is called the Common Law.

General customs are the universal rules of the whole
country, from the common law in its statute's more usual
signification; while particular customs are generally
called the books, custom on the usage of some particular
place only. What the common law is to the whole com-
nity, particular customs are to particular places, as for instance:

There are certain maxims universally acknowledged
and received as principles of the common law, viz., if none be
sacred, we have something to resort to. When there is no such
case is novel, the law has nothing to resort to but the dic-
tates of reason and justice which are written in the volumes, but
that of nature, which are indelibly impressed on the mind &
heart of man. Their existence is their mode according to what
is reasonable & right, it becomes a precedent for future acts to
resort to. It is not true, therefore, that no never made this
For time they do not make the law of reason, but they make
decisions according to that law. If these decisions established
rules as part of the Common Law, which was no part of it
before. If this were not the case, there would in many in-
stances be a failure of justice. To every case that comes be-
fore the Court, he must discover when, if the Court cannot
decide, and when those cases which have before been decided, in
all novel cases there must be no decision.

Another rule which is part of the law is, that no Court can make law in
that at the common law, which has been established before the time of
legal memory. The source of legal memory is the act of
Richard I. to the throne of England, all the care of
law must have originated before that time. To
say that this rule is a legal matter. It is only necessary
to observe, that many entire branches of the common law, as
the law merchant, the law of bankruptcy, and executor, were
entirely unknown at that time. It have arisen to form a
part of the common law, without the intervention of any statute. The law of bankruptcy was formed
into a system under the chancellorship of Sir Edward Coke.
The law relating to executor, which took rise in Elizabeth's time,
A great part of the common law, has not been framed till the
law has arisen into a science. Consequently, it is a much
more liberal system than the body of the common law which
was formed in very early ages — So that it is clearly not
ordinary to the entirety of the common law, that it should
have existed immemorially, or in the following of our legal
phrase, "time when the memory of man ran not to
the contrary.

Precedents are not law themselves, but only furnish
proofs face evidence of what the law is; otherwise it would
be indefensible that there should be any alteration in them.

If precedents were to govern absolutely, the invariability secured in all cases it would exclude all possibility of improvement. The law could be the same 2000 years hence, as it is now. And instead of altering with the manners, opinions, or necessities of the people, we in some measure conform ourselves to them as if we did not want a stale and antiquated rule, without spirit or meaning, to manage in many instances erroneous and unjust; we in almost all, useful and inapplicable—

So considering therefore, whether a precedent is binding, ought to look at the principle on which it is founded, and if it is not conformable to that, we are safe in determining that it is not law. Agreeable to this, we often find courts declaring that such and such precedents are not law at the recognized by heralded decisions for a whole century. Altho' we ought to pay a decent respect to the opinions of men of learning, our judgments ought to be made on principles, and if we can clearly convince that a precedent is founded on mistaken grounds, or is opposed to the principle that governs the case, we ought not to hesitate to determine it to be erroneous, the sanction by the name of a rule or a precedent—

When opinions or precedents are contradictory, we must endeavor to reconcile them with each other, with the principle of reason; but if we cannot, we must conclude that the judges in part of the cases have mistaken the law. From our opinion, what the principles of those precedents that are conformable to it are.

Those basic rules of law as that of a router shall answer to the escape of a Rabbit & an ox not to be distinguished because not reasonable to reason - In such cases, the Court must decide according to the principles established whether reasonable or not, & these principles are more positive and absolute, as between the immediate parties, they are
Introduction. Municipal Law

not necessarily founded on principles of natural justice, yet they may be broader in necessary, or founded on principles of general utility.
The civil law, so far as it is operative in Eng. derives all the efficacy which it has in that kingdom from its incorporation with the written or unwritten law of the realm. — The maxims of the civil law, when adopted by the king's courts in such a spirit of adjudication as is sufficient to form what is called the authority of precedent, virtually become a part of the common law itself, and are as binding as any precedent can be. — In the same manner, when the rules of the civil law are abdicated by Parliament, they are transformed into parts of the statute law of Eng. but they are not binding as the civil law, but as the Stat. or com. law of Eng.

The com. Stat. law of Eng. before they acquire any authority in the United States require a similar sanction. They may be adopted or rejected by our 39th or legislative, as this appear conformable or refusenent to the rules of moral right or as they are applicable or inapplicable to the particular circumstances of the country. And they become a part of our Stat. or com. law as they are sanctioned by legislative or judicial authority.

It has been a generally received opinion, that Eng. Statutes made previous to the creation of our ancestors from Eng. are binding in the U.S. as much as the com. law, which is considered as obligatory in all cases, in which it is not in itself unreasonable or unless a diversity of local circumstances renders it inapplicable. — All Eng. Stat. made since the middle of the reign of Geo. 8th.
The reason why ancient & not modern, that are binding in the U.S. seems to be this. That the first settlers of this country, on their immigration from Eng, are consistent in having held with them, so much of the Eng. law then in force, which is the birthright of every subject. The 13th, 14th, 15th sections of an extinct colony, such as instance, are not general rules of inheritance, & of protection from personal injury.

Where an Eng. Stat. has been adopted by our legislature, which not at the time of its adoption had received a certain construction on the Eng. courts, the construction is emphatically binding in this country. It forms the most important branch of the Eng. law with which we are acquainted. The same idea afforded by the continuance of English laws are applied to them in this country, and our courts are as much at liberty to reject them as the courts in Eng.

Statutes are either public or private. The distinction between them, it is not altogether so important: to observe in Eng. force, both public & private. It may in pleading be given, or evidence under the general laws. One must be specially plead. This is, however, the difference between them in Eng. One may be pleaded under a public act without reading it on the general law, a private act must be read. In such case as a part of the evidence — and in all cases (as well laws, with Eng.) in which an action is filed on a private act, it is indispensably necessary, to declare on the statute. 91
will not answer for the Off. in the case, to rely on giving the Stat. in evidence—

The distinction between public. & private Stat. is not very clearly defined. A Stat. respecting all tailors, or all carpenters, is a private Stat. A Stat. respecting all tradesmen is public. One respecting all officers qualified to issue process is public; one respecting all constables is private—however, in any of these cases, the Stat. proceeds to inflict a fine or penalty for the thing, in Eng. or to the State fines, in which case the public would be concerned, to attempt to public.

A public Stat. if intended to defeat a Privilege, must in Eng. be heard privately. In C. it is not necessary that it should. The uniform practice is to hear it.

It is said that a Stat. which seeks affirmatively does not abrogate the common law, unless the Stat. gives a lesser remedy. This cannot be true in all cases; for, as a Stat. which seeks in the affirmative, never purposely does necessarily imply a repeal of the com. law. As of sufficient notice of a suit were at com. law, two days' part should enact that ten days notice should be given. But in such cases the Eng. C. have decided that the com. law is not repealed. The only true & rational rule, is that the intention of the Legislature should govern the construction.

It is also said, that of two affirmative Sts., the former is not repealed by the latter. This, which is held to be the case in those instances only, in which there was an antecedent com. law remedied but not of those was no com. law remedied, the former is repealed. As this latter, the both are affirmative. (De. as to the distinction.
Of the method of declaring upon Stat.

24th. 384.
If there is an existing remedy at common law, the Stat. at the same time, it is necessary, for a party who brings his action on the Stat. to declare upon it, the fact to the public; otherwise it would not be known from the declaration, which remedy he intended to pursue.

Declarations on private Stat. must relate the Stat. Substantially, as in actions on specialties, but it is not necessary to state verbatim.

To decl. on Pub. Stat. nat. rec. may be used.

As to the rule: That in actions on public Stat. these must not count upon the Stat. in such a way that the wrong stated in the act is contra
formum Statuti. To this rule the exceptions are numerous.

When a general Stat. prohibits an act or creates a duty, it gives one remedy, or gives merely single damages.

Or, where a general Stat. extends a remedy to a new case, in which there was no remedy before (as the Stat. 2d 4th. Dec. 4th., which creates a new cause of action), the Stat. counts on the Stat. is not necessary.

When a general Stat. gives a penalty to the person injured, or to an informer, counting on the Stat. is necessary, as it is in all cases in which penalties are to be recovered.

In all cases, in which more than single damages are to be recovered on a Gen. Stat. counting on the Stat. is necessary.

If a contract, conveyance, &c., which at common law was good, without writing, is by a Stat. required to be written, it is not necessary for the person declaring on the contract to aver that it is in writing; it is sufficient
that the fact appear in evidence. But if, by com-
law, it is necessary that it should be in writing, a of a fact make writing necessary to the validity of a con-
unto the com. law (as in case of a devise) the
Declarer must aver that it is written. This rule has
been recognized by the Courts in Com.

Of the construction & operation
of Statutes

2d. 26.
Placed. 206.

A Stat. by giving a new remedy, does not annihilate
that which before existed at com. law, unless the remedy
thus given be more limited than that which the com.
law afforded. But when a Stat. thus provides a
smaller remedy, than might have been before obtained,
it is construed as strictly abrogating the greater.
When the Stat. & com. law offer different re-
dem, either may be pursued, except in the instance before
mentioned, by the party prosecuting. And if the
Pf., when thus entitled to one of two existing remedies,
should pursue his legal Rem. that which the Stat.
Virt. 212, 387, 385, offers, fail, for want of sufficient evidence, or the like,
to may still, on the same suit next to the com. law
remedy, recover at the he has in his Des., declared
of a Town, after having had written notice of a bridge
being defective. Should neglect to repair it, any per-
son shall receive damage by such defect. He shall
receive double damages. New, in an action by whom
the Stat. of the Pf. Should be unable to prove the
written notice by which he is to be entitled to double
damages, yet if he could prove notice by handt, that
that would not entitle him to a recovery in the Stat.
yet, that being sufficient evidence at com. law to subject
the Town. He could in the same suit recover the cost of single damages—

Yet if the State, without a remedy in any case, in which none existed at common law, the State, giving a
remedy, were in a mode of prosecuting unknown to the
common law, the State must be alone distinctly pursued.—

But if a State, imposes a penalty, it gives no
remedy. The common law will lend its assistance. Judges are
remedies for. In this case, the offender may be hanged
for a misdemeanor, as having violated the wholesome reg-
ulations of society. But when a State, without illegal any
act or omission, which at common law can not be, does give a
remedy, no other than that affected by the State may be
obtained. Can the remedy given be a separate, Substantive, or
cause? Tit. 5. 214. 5.—Br. 999.

For this, that all States continue to make or

With the laws of God, we need. This knowledge is con-

87. 82. 826.

Concern to them, to determine, who is to be said. The State bound by

Com. 31. —

The acts of the legislature, done to give them the pow-
er of saying that. Neither is contrary to reason in the law
of God. Which are written above this legislature—
In G.A., if no period be fixed for the commencement of a Statute, it is of course understood to commence on the first day of the Session in which it was enacted. This rule must necessarily operate in most cases, since fast laws are such must occasion great injustice, especially writ of offenses against public law.

The time at which a Statute commences its operation in G.A. is not to be fixed by any arbitrary or determinate rule, but justice, however, would require that all who may be affected by the operation of a law should enjoy the means of knowing its existence before they are subjected to its penalties. The principle has been adopted by the law in G.A.

Statutes give greater remedies than the rules of natural justice would require, as those inflicting punishments, are denominated penal. The general rule with regard to the construction of penal Statutes is this, that the former is guilty, the latter generally construes. By that liberal construction, the literal meaning of the law in the one case, the literal meaning of the Statute, collected from any other or reasonable implication, shall be obeyed. From this rule, however, we have little deviation.

An action, brought in an individual in his own right on a Penal Stat. of G.A., could not be criminal action.
Some penal Stat's. are also remedial, with regard to them the prevailing practice has been to follow rigidly the rule of strict construction, when the prosecution is by the public, but otherwise, when the individual injured is the prosecutor in his own behalf - this rule obtains in cases of Trea. Others, but has not been uniformly observed.

For such the rectification of a crime, be subjected to an additional penal, in which case it becomes necessary to prove a former offence, similar to that of which he is accused; this requisite may be afforded only by a former legal conviction: no other testimony than that of a record, is admissible — In this case, the highest possible evidence is literally necessary in most, or all other cases, the highest testimony of what is the nature of the case, all circumstances considered, is sufficient, is all that is requisite.

Any inconsistency of expression with respect to persons, on a Stat. is not construed to comprehend those, who by reason of legal incapacity, are excluded from laws, similar in nature or obligation, to those laws on Stat. in which such universality of terms, may be employed: Thus, in penal Stat. the word "all persons," do not embrace horses & c. nor enabling "all persons" to acquire of property by a particular mode of conveyance, is not to extend to those persons who were before enabled to convey the same property, by other methods than lawful.

(See on construction of Stat. Le. 5. S. —)
Statutes

Of persons capable of prosecuting on final Statute.

If an offence directly & equally affects all the individuals of a community by inflicting an injury, no person in his private capacity can prosecute the offender for the public injury but it must be taken up by the public officers.

The if by such public offence, any individual suffers for a special injury, he may sue for his own private relief. If an offence affects an individual only, he alone shall pursue the remedy.

When an individual sues for redress of a private injury, other than a public offence, he may offer the penal statute in evidence on his own prosecution.

If a penal statute affords not only a remedy to the party injured but also a penalty to the public, the public penalty is inflicted of course upon conviction by the individual.

In qui-tam actions, i.e., prosecutions commenced by an individual, in the joint behalf of the public & himself (as in cases like the last) of the individual prosecuting withdraws his suit in Court, the public officer must assume the prosecution, to recover for the public. If the qui-tam action be privately withdrawn the public officer on discovery, may institute a new action against the offender.

Conviction on a qui-tam action is a good bar to a public prosecution for the same offence.

If the prosecutor in a qui-tam action succeeds, he may remit his own share of the penalty, but that of the public, he cannot.
Fraud practiced by the prosecutor, on a go-between act, does not defeat the public remedy; as, if he delays the prosecution, to secure impunity to the offender, with the delay of limitations, was not made by the public.

If on a popular action (i.e., one which may be brought by one individual, to the violation of a penal statute). It differs from an ordinary guilt, in this, that the latter is but by the person injured, the former, by the individual whatever), any number of confederates be convicted, a single penalty only is recoverable. On penal acts, not this often to private locomotion if an action be brought, only to be obtained against a number of confederates, by the public, each one must pay the whole penalty inflicted by the State. The reason assigned for the distinction in these two cases, is that actions of the former class are founded on contracts, those of the latter on torts. For crimes are general, but contracts joint.

(A. A. With all deference to the latter. The same of the com. law. This distinction thus applied, appears to me frivolous.)

The distinction between remedy by forfeiture is, that the former is given to one or to any person, the latter to the Public.
Of the operation & construction of Stats. and from p. 61–

It is a general rule, that Stat. cannot have a retroactive operation. From this rule, however, there are exceptions in the construction of Stats. Sales, &c. If, after

the commission of an offence, which is punishable by the law as it is now or was at the time, the act by which it was punishable is repealed or altered, the offender may be punished under the latter.

If the act be not in itself criminal, it cannot be thus punished by a subsequent law, as arising in–

if a man covenant to do a thing lawful at the time, a subsequent Stat. renders the act unlawful, it

is held that the Stat. annuls the covenant. In this, how

ever, is a delicate point. So if one covenants not to do a lawful act, no Stat. can make his duty, the act, or said to be rendered unlawful.

But if the thing covenanted not to be done, was lawful at the time of the engagement, a Stat.

not rendering it unlawful does not repeal the covenant. In this case, the subsequent Stat. merely makes the act lawful, or said to be lawful.

If a Stat. repealing a former Stat. in itself re

healed, that which first existed is deemed received.

If a Stat. invests a body of men with power to

transact certain business, by majority (Act of Earl: respecting the British mission) it constitutes a certain number of that body a quorum; a majority of the quorum, being sufficient, is not able to act for the whole. This

point is not settled in C.
Statistics

In some cases, in which Acts have declared certain acts void, or have adjudged them voidable only. There appears to be some contradiction upon this subject; It is said, that when a Stat. declares an act "void to all intents," then it must be adjudged void; but that when the act is declared "void only," it may be adjudged voidable. And whereas the true rule to be this: That if the object of the Stat. were to be defeated by the act, being considered voidable only, it must be construed void, but that otherwise it may be adjudged voidable: And that the words "to all intents and purposes" have no certain operation.

When a Stat. declares void, a contract or transaction which was before only voidable, as to become circumstances like those, contemplated by the Stat., the term void is considered as intended for voidable. But if the contract transaction, thus declared void, by Stat. is not this circumstance, it is construed as absolutely void as before.

The construction of Acts, belongs to the Court to judge of facts is the province of the Jury, in the case of special verdicts, if it be possible that the facts proved, may consist with the innocence of the Off., the Off. cannot infer his guilt. If the facts proved are inconsistent with his innocence, the Off. may make the inference. The law is, that the "same degree of conviction," which is sufficient to authorize a Jury to find a Off. guilty, when the construction of the Stat. is as then understood, is also sufficient to enable the Off. in case of special verdict, to do the same by comparing the facts proved with the construction of the Stat.
Of Husband and Wife.

Of the right the husband acquires by the marriage to the wife's property.

In general from what is by the law the branch of the subject regulated is founded on the duty of the husband to maintain his wife, the law has given him the disposal of her property to assist him in the fulfillment of that duty.

1. Of the wife's personal property in possession.

The ownership of this description of property is by marriage absolutely vested in the husband to all intents and purposes whatsoever; but, on her death, goes to his executor.

2. Of the wife's personal property in action, or as it is generally called his choses in action, such as bonds, notes & other evidences of debt. The husband may during curtesy, dower, & alimony, exercise the right of ownership, & when reduced to judgment, is totally forever divested of any right over it. But if the husband neglects during the life of the wife to make any disposition of it, he loses at her death all title to it, & it passes to her representatives. From these principles it is obvious that the husband cannot dispose of his wife's personal property in action, by wills, for the act evidencing the husband's intention of disposing must be an act taking effect in his life time; in such case, therefore, when her death, they would remain to the wife.
Husband and Wife

If during the coverture, the husband has commenced an action upon a chose in action belonging to the wife, for the purpose of recovering it to possession, it is not binding the suit, it remains to the wife. So if the debt in such case, it accrues to him. This is when the principle of the jus accrescendi, which takes place, in the English law, in all cases of a joint judgment. Now, as in the States of Connect, we acknowledge no such principle as this jus accrescendi, this ought not to take place, but if the wife should die in such case, it ought to descend to her representatives; for it is not as yet arrived to actual, he is, by the husband, if the husband owes first in a valuable consideration, yet he may give a voluntary release of her hands.

By the Stat. 3 Willis 105, it is made as

new, when his wife's estate in the event of her death.

For he is not obliged to account to any person for her property which comes into his hands; he thus becomes virtually entitled to her choses in action.

It is even under the construction of the Stat. 6

Wills 105, for considered as being rent of the, that if another is a hired to whom the rent is entailed to the proceeds of her choses in action after the pay

out of her debts. But that Stat. has no appli-

action in C. 2. A settlement made when the wife

2 Eliz. c. 693, before marriage, by the husband, has been considered as a

2 Will. 693. 2 Wills, 693. 2 Will. act, in which have, of her choses in action by him. They became

15 Eliz. 2 Will. 9, 310. 15 Eliz. 2 Will. 9, and whether reduced to possession during coverture or not.

Asa Amb. 692, 2 Wills. 693.
husband and wife

3. of her chattels move. if then the husband's right is more extensive than her's, she cannot dispose of them during his lifetime, but they survive to him upon her death. upon his death they remain to her, but he cannot dispose of them by will or that will not extend until after his death. This he may by an act executed during his life, with the wife being alive, also grant his chattels next to 20% in satisfaction after her death, for in that case, a right of future enjoyment begins instantly. So these are liable during his life for his debts. In this the jurisprudence is equal in both.

4. in the event of the wife's decease, it is presumed that the chattels next to this one, who by her will or by operation of law, if no will, would not, on her death, vest in this husband, but go to her legal representatives.

1. of the wife's real estate. if this the husband acquires only a right to the usufruct. The right of alienation, or of the property itself, he does not acquire. it not being considered as necessary to enable him to maintain and support her. This right to the usufruct lasts only during the coverture, and, if this term has been by her child been alive incapable of inheriting the estate, in which case, it is intestate to an estate during his life by the curtesy of wife and is called by a word of him to husband's wife may have her lands for 21 years or 21 years. So such state is dead on husband's wife may in c. aline her land in law, it would seem that a clause by him, jointly for any term of time, would also bind her here after his death. If the husband alone grants a fee or any estate before then one for his own life, in his wife's lands, the grant will operate only as a lease for his life.
At comm. law, annes ofquit due to the wife
while sole, are subject to the general laws regulating
cases in actions lost by a Stark of Sen. 84 they went to
the husband on the death of the wife, for his death,
go to his R. 74. What restrictions bind a wife?
5. Durng 35 a wife an joint tenor of real for the husband alone cannot convey
of even her own part.
1. At comm law a sone covert can have no separate
1.3. 288. 28 property. But in case of a gift to a sone covert to
53. 2. Durn her Lordship by the Ct of chancery will have
72 S. 3. 544.
5.3. 354.
3. 466. 993. 393
1. 278. She were a sone sole, and property may be thus given
W. 15 a.
in to her either before or after marriage.

It was formerly indecently necessary in order
to settle a hereditary estate when the wife, that exec-
5. Durng 34. 5. Exec should be appointed as Fide legato to her use.
3. 2. 412.
2. 5. 86. 2. But in later decisions the idea has been adopted.
1. Durn 12.9 that profit may be unmedially granted in the wife
5. 15 a.
by the heir or any other person without the in-
tervention of trustees. 2. If the heir after mar-
riage? Is there any difference in this case be-
 tween real personal property?
II. Of the advantages in joint of property which the wife acquires by marriage.

During the coverture, it is evident there can be of no consequence except merely the partition of the husband's property, but after his death, she is entitled to one third of his personal property remaining after the payment of debts, if he has left no issue. She is entitled to half. She is entitled moreover by the Eng. comm. law to a life estate to one third of all the real property of which he was hold during the coverture, except that which is held in joint tenancy, provided she could legally have issue capable of inheriting it. According to this law, it is necessary that the wife should join in the hour in the conveyance of real estate,called of being entitled to her issue, in order to secure the purchaser against her claim of dower. If the husband dies before the age of consent, the wife is to be deemed. In Eng. if the husband was minor in law, having never entered, she is entitled to dower, not if having entered she is deprived before coverture. In the words of the Stat. of 1730, it is that the wife be endowed of all the lands of which he died possessed, it has been customary to give her dower in lands which he was at the time of his death, deceased.
Property in order to vest in a fema cavet, must be given to her for her separate use, and a gift of this nature, the husband cannot by disaffirmation defeat. But if it clearly appears that property given to the wife was intended to be exclusively hers, in particular form of words or necessary to vest it in her as such. The this is the general rule, yet in some cases, the wife is allowed to acquire an exclusive right to things given her, even the words are made evidence of the grantor's intention to vest the property solely in her. This variation from the general rule just laid down is founded on the nature of the property, or the circumstances under which it is given. Thus diamonds given by the husband to his daughter-in-law or her marriage, are ipso facto to belong solely to her. Present made by a stranger to a fema cavet, is in some instances considered as her exclusive property. His trinkets given by the husband himself in his lifetime to the wife became on his death in some cases, the exclusive property of the wife; not liable for the husband's debts. But this is not the case with property given by the husband to her, for the express purpose of being worn as ornament, or as it is usually denominated her personal ornaments.

These are of two kinds. The 1st comprises her necessary apparel and bedding, the 2d, her ornaments, as jewels, trinkets, &c.
During the life of the husband, the personal effects are his property. The second kind are absoluted at his disposal, the third are not.

But, according to modern authorities, by which the law on this point is now settled, he cannot devise them by will, the during his life, but for his personal effects, he has the power of absolutely disposing of effect to sell them or give them away; in the 2nd kind, the 1st kind of personal effects can in no instance be taken by the husband's creditors, for the payment of his debts, nor can he sell them.

Paragraph of the 2nd kind are apt in the hands of the husband, by the will of any other personal effects exhausted, but not before they may not be disposed of to be taken by him, as long as any other personal effects remain.

By the law, the real estate is not subject to the payment of debts by simple contract, but it is liable for those by specialty. But if a man die, leaving personal property sufficient for the payment of all his debts, the specialty creditors resort to the personal fund, and demand it, or so far diminish it, that it is not sufficient to pay the sum, and must call in the creditors by specialty, to come and take some of the real estate, as would have been liable to the creditors, by specialty, if they had taken it.

In this case, the wife in arachet of the 2nd kind, may also be taken for the payment of debts. She may be immediately reimbursed out of the real estate that being liable to her, for the amount...
of her personal estate, in case of the payment of her debts. 2. In the state of her estate, in case of the
payment of her debts, the husband is liable for the payment of all debts, and the
widow has the disposal of it for that purpose. So that, if she should be permitted to take the
personal estate in preference to lands for the payment of debts, he would be immediately obliged to reimburse
the widow out of the lands, hence it would seem to be improper to let him take the personal estate,
until both the real personal funds were exhausted.
Husband and Wife.

So it would be idle. Produce very unnecessary trouble to suffer the R. to deprive the widow of her
her portion. When to allow her to sell immediately on him for reimbursement out of a fund which he
might have discharged the debts for the payment of which the bonds were taken. Even is & how
ever, the bonds are liable in the last resort.

3. Atk. 393.

If the debt in his life time was owned
the parson of his wife. In after his death, but
the R. is entitled to redeem. And for this reason:
he is to have aid of the personal funds of the
trust if there be any left after the payment of
debts, other to the prejudice of legatees. So if the
personal fund has been exhausted by specially order
he will have aid of the real estate.
Husband and Wife.

of the husband's liability for the debts of the wife contracted before marriage.

It is a general rule that the husband becomes liable by the marriage for his wife's debts for the torts she may have committed before marriage. For such demands that cause must be proved.

But this liability lasts only during the existence of the coverture. After the death of the wife, her no longer liable, unless the demand has attachment upon him during coverture; by the institution of a suit it is a question whether he is liable even if a suit is commenced on the judgment is actually recovered during coverture. But this point is not.

In such case, if the husband no demand having been made upon him during the coverture for the debt it revives as the wife's, it becomes liable for it. The husband is entirely discharged from all liability.

The principles upon which this husband is liable for the debts of the wife is that she by marriage loses the command of her property. Thus of means of paying her debts, or of securing herself from servitude and from arrest or imprisonment. She ought not to be taken without the loss of whose legal rights resulting from the marriage. It is thus deprived of the means of personal protection, as those who might have claims upon her.
In no case therefore can the wife be taken without the husband either for debt or lest she may be taken without her. And if both are taken together, the husband, except the wife must be liberated.

If husband and wife are sued jointly for debt, it is doubtful whether her recovery can be afterwards had agst. the husband. Judge, says that in the general principle which enunciates the husband's liability, in the wife's account a recovery could not in this case be had agst. him, though the wife had no longer in those circumstances, under which that principle was before mentioned, a right to relieve her.

If judgment is recovered agst. husband only, 3. M.R. 180. the wife due before payment, the husband is liable on the judgment, because a right of collection has attached agst. him by the judgment.

The husband is liable not only for the debts of the wife committed before marriage, but also for those committed afterwards, during the coverture. And the law is the same if the debt is not without the aid, direction, or aulsion of the husband, in that respect both be said for it. But if the coverture of
text in company with her husband is liable upon the presumption that she forced her to do it, that in doing it she acted under his coercion. If she commit a tort in the absence of the husband by his direction, he alone is liable. But if it can be expressly proved that he was ignorant of the act or disapproved of it, this committed while in company with him, this must be held sufficient. And in all cases where husband and wife are jointly liable for her torts the liability continues after the husband's death.

1. Tindal P.C. 3.
1. Lov. 203.

The husband is liable with the wife for such of her crimes as occasion only a Penalty, for breaches are recoverable by debt or suit, which is a civil process.

2. 2Scr. 1120.
2. Scr. 370.

He is in no case liable for the wife's criminal utter words in case of keeping or making, committed by her in his presence, with his knowledge, unless indeed the act is considered as his. She alone is liable. This being entirely excepted.


In crimes of a higher nature, committed by both, both are liable, the husband using coercion. And if committed by his alone, she alone is liable.
If the wife have power to bind herself by her own contract.

In a general rule of common law, that a wife cannot in any instance make herself bind by her own contract to the husband. The true reasons of this rule are not, as the books frequently tell us, because of the marriage, her legal existence is merged in that of the husband, or that being a farm covert her physical power of making a contract is suspended. But the true and substantial reasons are the following. 1. That she has no property; the law having given it all to her husband, or deprived her of the use of it. 2. That she is bound to obey the coercion of the husband. It is, therefore, impossible for her to bind herself in the making of her contracts. 3. That if she were allowed to bind herself in her contracts, she would, like other persons, subject to arrest and imprisonment, when the moral weight of the husband would be felt, particularly that one which entitles him, to the enjoyment of her company at all times, a right viewed by the law as inferior to any other man by civil right, not to be transgressed except when public justice requires it, as a punishment for some crime. When, therefore, we find a case established in such a situation, that none of these reasons advert to prevent her making contracts, she is bound by them as much as any other member of society. Such a situation is the in, when her husband is banished the realm, when he is an enemy, or when he is transported for some crime.
for in neither of those cases do any of the above reasons forbid her to contract.

Courts of Chancery have also of late, since the 2 Vent. 1940. practice has become established of allowing her to hold separate property, suffered her to contract in Black 334. respecting that property, even while living with her husband. She held her to be bound by such contracts, 2 Pomeroy 142, so far as to the extent of that property. If that fail, her body cannot be taken in execution, or that would infringe the husband's rights.

In such circumstances, sustain an action against her; there appears to be no just reason why she should spend.

In when the wife lives apart from her husband, with a separate maintenance. She is liable 1 Den. 7. before a Court of Law to the whole extent of her goods. 5 Den. 682. Here, she has property of her own. She is not under the coercion of her husband. The right of her can be affected even if she is cast into union 11 Eliz. 1. 3 Bla. 113 for she has assigned them all by the articles of separation.
If the wife, along with her husband, lives a part of her estate, she is bound by it, but the husband may avoid it during his life. This is the only mode by which the can effect a conveyance of her real estate for she cannot make a grant of it by the ordinary methods as that would deprive the husband of his right to the usufruct. She cannot make a grant of it to take effect after his death, for that would rejoin the maxim that no freehold estate can commence in future. But in C. as a freehold estate may be granted to commence in future, this seems to be no reason why a free conveyance cannot convey away her real property without the intervention or consent of the husband. In this case, however, the conveyance must be scrutinized not to interfere with the husband's legal right to her estate.

The wife may purchase real property by a deed of conveyance to her is good, i.e. if the husband consents, for it seems his consent is necessary, whereas there has been an actual purchase. Why it should be necessary, it is difficult to conceive. For this rule there appears to be no reason; it rests solely on the sovereign will of the husband.

Such a purchase, however, it is said the wife may defeat to, after the marriage is determined.

The husband cannot by his default defeat gifts to the separate use of his wife nor a devise or devise of lands to her.
Of the wife's power to bind the husband.

The general principle on which the power
of the wife to bind the husband by contract is foun-
ded, is so laid down in the Law, as to be so
familiar, that no more need be said. But it
is well to state clearly, as far as it extends,
however too narrow to warrant all the consequen-
ces which have been drawn from it. For in many
cases where the husband avails himself of the
acts of the wife, his consent can be proved by
such acts. He is bound for instance, at all costs,
to provide his wife with necessaries. If he fail or
refuse to do it, she may coerce him, I make him
liable for the same. This principle, however,
is insufficient. The true principle, which swears
under this head appears to be the husband's obligation
arising from the marriage contract to provide the
wife with such necessaries as are
suitable to her rank and condition in life. For this is the
intendment of the word "necessaries."

In the following cases where the husband is
bound by the wife contracts, it is on the ground
of consent clearly. 1. Where her agent is expres-
so. 12, 122, 123. her, either before or after the cont. 2. Where the
husband has usually permitted the wife to make
contracts of the same kind. She has published them.
3. Where the wife purchases articles which come to
his use or the use of the family, if this without
any prohibition by him. In these cases agent
is clearly presumable in the following it is not.
Husband and Wife.

If the husband turns away his wife, he is at all events liable for her necessaries, or if he leaves his house for sufficient cause, without being turned away. And in either of these cases, he is bound by her costs for necessaries the same as with individuals whom he personally prohibited from trust her.

If a wife leave her husband, with or without sufficient cause, to desert her husband, it is not bound by her costs, even for necessaries. Or, if in any other case, he is not bound to leave his wife, because having desert her. To the statute. She has also relinquished the right of a wife. However, this has not been followed by authority. If in these cases the person trusting her has had no means of knowing the fact of the desertment, it may be a question whether he ought to offer the loss or the husband. The authorities are contradictory.

If the desertment be not adulterous, but without just cause, if the wife afterwards offer to return, if the husband refuse to receive her, she shall from that time be liable for her necessities.
Husband and Wife.

21. 6.

If a husband provides necessaries for his wife at home, he may prohibit any person, or the husband, to act at large to deal with her. Such prohibition shall, if the notice be sufficient, release her from her contracts. For in such case, it discharges the duties the law requires of them as a husband.

The husband is not liable for the payment of money lent to the wife unless it appears that the money lent was intended for necessaries. Then he is liable only on equity.

A son covertly purchases cloth. Laws: then without having worn them, the husband is not liable. So, if the laws her clothes before or after wearing, he borrows money to redeem them.

Voluntary conveyances by the wife before marriage are sometimes fraudulent by the husband not to when made to provide for her children by a former marriage; nor, when being made in consideration, the purchaser was ignorant of the fraud.

If articles of covenant are agreed upon between husband and wife, the husband shall allow the wife a separate maintenance suitable to her rank in life. He shall be exempted from all liability to her contracts. If she should make before marriage maintenance, be merely colorable. If she shall

still be liable.
The general rule under this head is that:

- Coa. 54. 5. The contract between husband and wife are void, if there is no contract between them, before coverture is established.

Now, or Cont. by the co-mortgage. The reason of this rule, are told by the old writers on Coa. law is that the legal existence of the wife is merged in that of the husband. And, therefore, any contract between them is inoperative.

A much more rational reason is this. That during coverture, husband and wife cannot maintain suits at law against each other upon such contracts, for the wife cannot au- no instance, sue alone. She must join her husband with her in the suit. If, therefore, she wished to sue her husband upon a contract, she must make him a party with her. But also to clasp, which would be a manifest absurdity.

But there are many exceptions to the above rule:

If the husband covenant with the wife not to enter into forfeitures with her or to his estate, if not to succeed with it, he is entitled to so doing.

At Coa. law no contract between husband and wife, creating personal benefit, could be valid as the Coa. law does not recognize her power to hold such benefit, but, in chancery, when she has probity either real or personal, settled to her sole use. If so, continues her contract with her husband, neglecting it will be enforced.
Husband & Wife.

At common law, a conveyance of land directly from the husband to the wife would be void. But a conveyance made by the husband to a third person for the use of the wife is valid, as the husband will make a direct conveyance to his wife by deed the day of conveyance resting the use, the fact is immediately vesting the fee. In Chancery, the vigor of the above rule is much relaxed.

If the husband to encourage the wife's industry, engage to give her a part of her earnings, this agreement is binding upon him, so the fact thus given to the wife becomes her separate property.

Articles of agreement between husband & wife.

3. Br. Ch. 864. On Separation will be enforced both at law & in equity. The husband, in this case, will be bound to the extent of his coat, whatever it may be. But he is bound no further than the article imports. If therefore in the article, he has not relinquished his right over her person, money still claim of any future property derived to the wife in descent, legacy &c., will belong to him, if he has not in the article expressly renounced his right to it.
Husband vs Wife.

Oft costs entailed into between husband and wife before marriage.

Sec. 182 a.

For it is a general rule that the marriage discharges an obligation due from the husband to the wife before marriage, yet if the obligation should be left unsecured by the husband, whether the cost would be considered as annulled by the marriage, or as receiving in lieu of the wife at the representations of the husband. The prevailing opinion is that the obligation would be wholly extinguished, as to the marry, that a personal cost once suspended is forever extinct.

But another question has arisen, if a man gives a bond to his intended wife, conditioned for the payment of a certain sum after his death. But, is this discharge, when it is at his hand, in the event of surviving her? What the intent of the parties was is evident, viz. that she should, but technical niceties have occasioned some doubts.

Sec. 182 a.

1. 1 Ch. 93.
2. 2 Ch. 481.
3. 2 Ch. 483.
4. 5 Ely 237.
5. 5 Bona. 381.

In Chancery, such a bond has been considered as affording sufficient evidence of an agreement. It is without enquiring into its validity, as a bond, the court will decree a specific performance. And, it has at length come to be admitted in a bill of law, that such a bond is binding. Unrecoverable after the husband's death.
Husband and Wife
by the husband
A covenant to leave the wives a certain sum at his death, is good if it has always been considered so even at law. This not being encompassed with the technical objections attending a bond, it not being a delusion in presence, as the final part of the bond is.

160 a.

If a seisin covert alone her property  
1 Pet. 3. 16. 16 b. by fine or common recovery, the conveyance is good ag. her and her heirs, the husband, by defect, may defeat it. (16 b. It is doubted by some.

If a seisin covert alone her property, the conveyance is valid to all intents.

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A husband and wife.

If husband and wife are made tenants in common, the latter may disagree to the purchase, after the determination of the covenant.

2. Lew. 30.

If land is granted to a man and his wife and a third person, the husband and wife take but one half.

By the old common law, the husband might divorce his wife, and his wife moderate correction. But this principle is now antiquated. As the law now stands, if the husband has beaten the wife, she may by complaint have him bound to keep the peace; or if he only menaces her, he may be bound to her good behavior. But she can never prosecute him for damages, for if recovered they would immediately be hers. To prevent the wife from destroying his property, or from seeking land company, the husband may abridge her of her liberty. (It would be well if some wives had the same power over their husbands.)
It is a general rule, that husband and wife cannot, in any instance, testify or be witnesses in a civil suit for or against each other. One reason for this rule is, that the husband and wife, in contemplation of law, are but one person. Hence, the accused, together with another maxim, prohibits any person to be a witness in his own cause; nemo in pro�ia causa, testis esse debitur. But a reason much better founded is much less technical in this. That maxim, they shall not testify for or against each other, but it should create domestic disturbances and in pursuance of this latter reason, we find that the wife of any party to a suit cannot testify, even of her husband. If the adverse party, with consent, so mightly has this above rule been adhered to, that the wife cannot in any case give evidence tending indirectly to criminate the husband, on the reverse, not even in a case, between third persons.

But, there are exceptions to this rule: As,

1. When the wife exhibits a complaint ag. the husband for a breach of the peace, or abusing her, threatening personal injury to her. She may be a witness ag. him. Since, the act.

2. When the husband is prosecuted by the wife, for an offence in abusing the wife, it has been shown, that she may testify ag. him. The case, in Hutton, however, which establishes this law, has been denied to be good law by some cases, but the latest case extant acknowledges it to be good.

When husband and wife are separated by a divorce a mensa et thoro, or by articles of separation, can they testify for or against each other?
Husband and Wife.

Of the power of Husband and Wife in Texas.

1. As husband.--There are two cases in which the wife may be joined with the husband in an action: others in which he may sue alone or join her at his discretion. Others, in which she cannot be joined.

The wife must be joined in all cases where the action would give rise to an action in which the husband is a party.

1. The wife must be joined in all cases where the action gives rise to an action in which the husband is a party.

Cited, 119, 22d. 119, 22d. 119, 22d.

2. The wife must be joined in all cases where the action gives rise to an action in which the husband is a party.

Cited, 119, 22d. 119, 22d. 119, 22d.

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Cited, 119, 22d. 119, 22d. 119, 22d.

10. The wife must be joined in all cases where the action gives rise to an action in which the husband is a party.

Cited, 119, 22d. 119, 22d. 119, 22d.
2. Where the wife or her estate is the maintenance cause of action, although the right of action would not survive to her, the husband may join her if he chooses, but by so joining her, she becomes entitled to it by survivorship of the husband, and not by the husband.

And this is the case with all estates in which husband and wife are joined; they are considered as joint tenants of the property. If one dies, it survives to the other, by the jointure, &c. But in C. there is no jointure, &c. States doubt whether they would give service here. To or to the wife alone.

3. The bond is void. Yet if it is void, the mortgagee alone, but the mortgage join the wife.

If it has been held that a wife might sue alone, when a bond given to the wife on administration.


Co. 2d 2d. But for the wife's labor, &c., which comes within the above rule, the wife can be joined unless there has been an issue binding to her.

3. The husband must not join the wife in an action which the thing may arise out of her connection with her, yet not survive to her on his death. It is that her interest descends from the husband is not concerning.
In an action to recover for a breach of an engagement growing on the wife's estate. But the most material
1. Sec. 501. care under this head is the action brought by the
2. Sec. 510. husband for the battery of the wife, for seduction or
1. Sec. 701. assault. In this action the husb. must not join the
2. Sec. 205. wife; nor is it brought for the slander-money of the
husb. but merely for the consequential damages which
the husb. has himself sustained by the battery of
his wife. So if the husb. has been slandered by
1. Sec. 140. which the husb. has lost custom at the house by
his wife, he must sue alone for it.
1. Sec. 340. The promise made to the husb. alone, to bring a
11. Sec. 367. debt due to the wife as executrix entitled the husb. alone
to bring the action.
1. Sec. 328. But if the wife cannot be joined for a battery
committed on them both, but if the debt is sound,
11. Sec. 105. strict, guilt as to the husb., but guilt as to the wife.
24. Sec. 305. Judgment may be given for her, because as the battery
was committed on her alone, husb. did right to join.

11. Sec. 51. Thus may the husb. alone, for breach of
1. Sec. 31. husband's engagement, this last charge being considered
merely as an additional circumstance to show the
violence of the breach.
If an action be brought by the wife alone when the husband ought to be joined, the advantage must be taken of the mistake by being in abatement or not at all.

So, if the issue while the suit pending the suit marries, it will abate the suit.

2. Where suit? Wife must be joined as party in a suit. — The general rule, under this head is, that when the action would serve as the wife, she should be joined with the husband in the action. In actions for debt due from the wife while she is, for acts committed by her before coverture, or for those committed during coverture without the direction or consent of the husband. But, if the action would not serve as for the husband, she must not be joined, as, in an action by lessee of lands leased to the wife before marriage, for rent accrued after coverture, as this belongs to the husband. The must not be joined, but if it was for rent which accrued before the marriage, she must be joined.

On a joint promise by husband, wife, husband must be joined alone.

For a battery committed by the husband and wife, husband alone must be sued, if the wife is joined it is not merely cause of abatement but error, i.e., if verdict is against both may not plead release as to wife. And even if the verdict of the wife, the husband being found not guilty, judgment may be set aside.
If husband and wife are arrested on same process.

3. 1619. 194.
in a case in which this husband must give special bail,

the wife may be discharged on common bail. Act 1522.

5. 1619. 194.

final process, nor if this wife has been guilty of fraud

in pretending to be single on some process.

2. 18a.

If an action is brought at a fine. See Snyder,

Ch. 28. the suit. The married judge may go at her in the

Act. 322. maiden name. She may be taken in suit without

2. 18a. 1325.

her husband imprisoned. This is the only exception to the rule that the wife cannot be imprisoned or sued without the husband.

In O. it is now settled that a fine covers not only

1. 972. 372. 4. 372.

Brist. S. 372.

1. 972. 372.

when personal property, not only that settled to her, etc.

1. 972. 372.

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of the celebration of marriage.

The Comm. Law of Eng. contemplates marriage merely
6.20 c. 135. as a civil contract, Deems a mere agreement. In a man
9. 120. woman to live together as husband and wife a subsequent
43. 8. cohabitation as such in consequence thereof was held
c. 99. to be a true marriage. The ecclesiastical Courts it
is true, attempted to compel the public celebration of
11. 170. marriages. They fixed all rights to the husband
over which they had control of the marriage was
not publicly celebrated. If this kind was the husband's
right to administer on the estate of his wife, which
as it was a right exercised under the jurisdiction of the
ecclesiastical Courts, they would never grant to any
one not married according to their requisitions. But
even in this case if these Courts attempted to compel
3. 370. such marriages as were others bastardize the slue
34. 135. 548 B.P. would grant an impotence. Thence their
proceedings. The Stat. of 28. Geo. 2. has made a vari
13. 36. c. 10. of requisites to a good marriage. This be in 1.88. 1.

By the Stat. of C. no person is allowed to cele-
te a marriage, till the parties are regularly
published, and have consent of parents or guardians.
But consent is not required if the parties are of age,
but Stat. also contemplates marriage as a civil institu-
tion, for both clergyman & justices of peace are required
to celebrate it. (Both may do it only in their respective
parishes and the neighboring counties. If they do, they are liable to a heavy
3. 280. fine.) If it were that a marriage celebrated by any
1. 189. c. 20. person other than a justice or clergyman, would be
valid, the this Union celebrating it would be as of

under age. Then the law.
When the validity of a marriage comes in question, in actions to set aside, in questions of property, or those of a nature generally cognizable in courts of equity, the question of marriage is a question of the legality thereof. It cannot be controverted. But in all cases of a criminal nature, as those which partake of it as in actions for crimes, petitions for divorce, an actual marriage or gross must be proved.

Of void and avoidable marriages.

I. Divorces.

The law of this country contains no system of rules on this subject. The Stat. 12 Geo. 8, authorizes all marriages not prohibited by God's law and not within the civil act, to be dissolved. This defines the breach, but imperfectly. The construction given to the ecclesiastical courts is, that to divorce such as acts have a husband or wife living, such as have been, or contracted to others, such as are barren or infirm, or within the degrees of consanguinity. As the impediment of incompatibility is now abolished.

1. 1. Pet. 340, 35. If a man or woman marries a second time, the first marriage is void. 2. Co. 3a. 855. The husband is living, the latter marriage is void. Ab initio. No divorce is necessary.

Cases returned by affinities, as well as by consanguinity may not intermarry. And the rule determining who may, who may not intermarry, is this: No person can marry his next collateral relative, or collateral relative, and vice versa. This rule is founded on the construction given to the law courts to the Matrimonial Causer. In concluding this
degrees the rule of the civil law is adopted.

1st. Sect. 124.
1st. Sect. 300. Both degrees are legitimate, until a divorce takes place.
2d. Sect. 102. During the lives of both the parties. After the death of one, the legality of the marriage cannot be questioned.

Devores are of two kinds, one which is total, a vinculo matrimonii; the other but partial, a mensa et thoro. The causes of a divorce in Eng.

a vinculo matrimonii are precontract, imbecility, &c. A marriage within the Lewisham degrees, and as these are all causes which existed before the marriage, and which went to render the marriage unlawful, the children issue of such marriage are rendered bastards, and this is the invariable effect of a divorce a vinculo matrimonii, except when such divorce is granted by Parliament, as it sometimes is for other causes than those above mentioned; in such case the children are declared in the Act not to be bastards.

In divorce a mensa et thoro is granted only for inconvenient causes in Eng. there are three. Acting's extreme cruelty of one party to the other; and a well-grounded fear of death, great personal injury to mean of the other party. This divorce does not bastardize the issue.

12th. Sect. 201. Clearly how affected by divorce. Yea, authors?
Of Divorces in C.—In this state, marriages contracted within the degree prohibited by Statute (and Stat. C. 257, as which are those particularly pointed out) are not now receivable, as in Eng. but absolutely void. No divorce necessary to make them so. Of course, the issue must be illegitimate. A man may now, however, by a writ of many, his wife's name force made.

Stat. 145.
The Supt. C. in C. can grant no divorces but that a suo motu motion, the causes for which are: 1. Fraudulent contract, which includes compulsion, all flagrant imposition. 2. Desertion. 3. Three years absence with a total neglect of marital duties. 4. Seven years absence unheard of. As this last course goes on the ground of the death of the absent party, perhaps a shorter time attends with circumstances corroborative of the idea of his death might entitle to a divorce. But it is to be remarked that after 7 years absence unheard of the other party may marry without a divorce. But if after such marriage, the first husband should return, he might annul the last marriage, but the parties would neither of them be reusable to a second in the first.

The words fraudulent contract have excited some disputes relative to their meaning. Some have supposed them to include precontract others to include only such words that the term will include any fraud or imposition made use of by one party towards the other, material to the contract.

Stat. 289.
If in case of a divorce a woman for adultery, the wife is not the guilty party, she may have one third of her husband's estate. In that case, also, the Supt. C. may grant her immediately a part of her husband's estate not exceeding one third. But if there is no real estate the C. may grant her one third of what they shall have
husband d'wife.

his personal estate to be. such a grant of the
lif. it has been sanctioned by the c. of terroig.

the general assembly of c. grant divorces brother
sister-in-law, brother's son, d' they may make them
a wife, mother, or a wife of the. at pleasure. d' they grant
such alimony as they deems reasonable.

the age of consent to marriage in Eng. is 12 in fe-
mates, 14 in males: a marriage contract by barbubs
under that age may be avoided by either, when either
arrives at that age. The same is supposed to be the
law in c.

the marriage of an idiot has lately been held
be void: formerly it seems to have been adjudged
otherwise. a strange determination! for an idiot falsely
was unable to assent to this contract of any other.
now by Stat. 18 Geo. 2. c. 30 such marriages are made to
be void.

A marriage obtained by duress has been adjudged
in Eng. to be void: this perhaps a divorce might be obtained.
This determination is certainly inconsistent with principle.

Statutes of marriage have been repeatedly held to
be contrary to each other. Actions to be maintained
for a breach of them, so it was for a long time contended
that there was no controversy. That such promises might
be broken with impunity.
Of Parent and Child, including the whole Subject of Infancy.

By the word child is usually meant a minor, or one under fourteen. And children or infants, which is a synonymous term, are entitled to certain privileges, subject to certain disabilities as they advance in life and arrive at different ages.

1. Sect. 12. 2. 4. 5. Sect. 12. 2. 4. 6.
2. Sect. 12. 2. 4. 7. Sect. 12. 2. 4. 8.

1. Sect. 12. 2. 5.

The punishment of his crimes may be either by an infirmity of mind, or by a plea of guilty, and be received by judges with the same caution as they are obliged not to have sufficient discretion to direct them to make a greater thing of it.


The punishment is always in their power if they are under 14.

Infants of not named are not to be punished corporally under a general Stat inflicting corporal punishment, when an offence, unless the offence was one punishable corporally at Common Law or, really so to the extent that it is made such an one as was punishable.

As if a certain offence be declared by Stat. to be felony, it is punishable under that Stat., for felony was punishable at common law; but if there is no case of personal injury. Detaining an offence is punishable for a day, but no other statute of that nature is known to the common law. If the are not included, unless specially enacted, but in such case the common law shall of those cases may still be in the
1. Forb. 3d.

An infant is said to be liable for his acts.

2. Vin. 7c. 39a. 11th, but it may reasonably be questioned whether he is not liable at any age, upon the same ground that a tenant in common, that another has actually sustained an injury from his acts, but it is no matter with what intention for whether without and they were committed.

3. Yor. 12th.

For one species of tort, viz. Landor, an infant is said not to be liable till 13. For gu.

The age for choosing guardians in Eq. is 14 in both.

An infant may be appointed an executor at any age, if his appointment is good, but he cannot act as executor.

1. Forb. 7d.

If a act be binding until 17 after which all his acts are binding, if they do not tend to make a deviation. But an infant can never be an Administrator, because he, by law in Eq., must give bonds. In C., both 25:9, 17:9, must give bonds, but by an exception that an infant may be an Eq. at 17, his bonds therefore given at that age must be bonding.

A person to make a good will, because of real property, must be of full age. It is uncertain at what age in Eq., a bequest of personal real it would be good. From T. 7410, different authorities stating at the different ages of 12.

1. Lom. 255, 327; 44, 178, 18. As to minor matters are regulated in

2. Pro. 104, 459, 538. The ecclesiastical acts, which are governed by the civil law, it is near unable to decide, that the rules prescribed by that law, which are 12 in females 13 in males would prevail. In C. the age of 18 is by

Hat. at 18.
Full age is 21 years both in males & females at which time they become fully competent to deal from all legal acts & are to be bound as adults in every respect. And this term is complete May 15th 1828 & is on the day before the 21st anniversary of one's birth.

Of the liability of infants on their contracts.

The general rule under this head is that infants are not bound by their contracts, but the exceptions to this are numerous.

1. For necessaries, infants may bind themselves and their parents. There are food, lodging, washing, & clothes. But it is requisite to bind the infant that they be necessary for him at the time of purchasing them. They must be of a broker quality suitable for him in his rank & station of life.

2. As to the acquisition of a servant master or servant. That servant is only exercised by the infant if he is absent from them or out of their reach; or if having one that parent guardian does not take due care to make suitable known for he may provide for himself & be paid.

3. As to the acquisition of goods which may be purchased in his name.

In case he has a parent who will be bound for him.
Parent and Child.

Ch. 33, sect. 3 ever for necessaries, for if he purchases necessaries, he is bound to give a certain price, for them. He is not bound to give that price, if it be more than the articles are really worth; indeed, the law will never allow him to be liable for any thing more than the real value of the necessaries purchased by a contract that has been what it might. It would seem, therefore, that he is liable, rather on a contract implied by law, than upon his own contract.

The contract of in this respect testing necessaries, is subject to two further limitations, or in those cases where they may bind themselves they cannot do it in the same manner by the same instruments that an ad


dult may, e.g. he can not bind himself for necessaries by a formal bond, or by a bill of exchange. He is liable in no case on a negotiable note, actually negotiated, till he is liable, while it remains in the hands of the original obligee, or on an informal commitment or account.

The true reason of the non-liability of infants in the above cases is that it should be the case that the consideration of the contract is reduced into the form of any of the above instruments cannot be enforced, therefore, if an infant were supposed to be bound by them, he might give them for other articles than necessaries: if given for necessaries it might be at much greater price than their real value. This rule therefore is evidently calculated to secure infants from imposition. It is to be remarked however, that the case of an infant, committed may now be enforced into, but it could not formerly, since the rule was established, and a single bill by which an infant has been held to be bound, the infant cannot now be sued into it, might formerly.

D. C. common notes of hand, by an infant, for necessaries binding, cause in such cases, the infant to go into the contract.
An intent is bound for necessities for one's own, where he is by law obliged to support, as for his wife & children. So he is liable for the debts of his wife contracted by her before he married her. This is when the husband is permitted by law to make any personal contract, and the marriage in the case, he is bound by all contracts ancillary or subsequent to that.

For money borrowed & actually laid out in necessaries, the in-law is liable in Chancery, but at law, he is not until the lender himself recharges the necessaries. Indeed, in C. have decided that he is liable at law.

As he is not liable for articles purchased for the use of carrying on his trade or business, the fact that he may derive his support & maintenance.
Parent and Child.

V[n infant is without convulsion, any act which he might be compelled to do by a ct of chat., or of law, or by any other jurisdiction. If the act be a reasonable degree of one, he is bound by the transaction.]

2. In 262. 232. Infants are bound by the decree of chat., but they are always allowed six months after they attain full age to throw out against them. If they may then set them wide either for fraud or error.
Contracts of Infants are in some instances void or others only voidable. It is not true however, that
the contracts are any of them void to all intents and purposes, for the other contracting party may not consider
them as absolutely void. This consider the influence

1. 1st. 10, *190.
1. 1st. 11.
2. 1st. 9, 28.
3. 1st. 10.
4. 1st. 9.
5. 1st. 12.
6. 1st. 13.
7. 1st. 6.
8. 1st. 1.
9. 1st. 8.
10. 1st. 2.
11. 1st. 10.
12. 1st. 12.

The authorities on this subject are entirely irreconcilable. Many rules have been laid down in the books
for distinguishing his void contracts from those which
are voidable, most of which however do not answer to
those here given. It has been said that the contract of
real property were void, those respecting personal things
only voidable. This rule is certainly not true. And the
law has been that if there is insufficiency of benefit by the
contract to the infant, it is voidable only, otherwise whole
and. This rule is at least very uncertain. It is exploded

2. 2nd. 1505. 1st. 1st. 11 as not law.

The following is adjudged to be a better rule than any of the above. Done coincident with most of
the authorities. Where there is an executory contract &

an actual transfer to the infant of the property to

which becomes thus transferred to the vendor, if it
has been that done by the infant, which in other cases
would be an actual transfer of the property, there the
contract is voidable only, and it refers either to real or
personal transfer. This rule, taken in connection with
the one that the infant is always to have the full
benefit of his privilege, that of by construing a
contract voidable only, the infant will be a loser. And if
the contract being out of his privilege, will convey clear ideas of the void-voidable contract of infants.

Thus, if an infant should sell property to a bankrupt
and actually deliver it over to him, still he might con
under the cont: as wholly void. Declare his goods, from the vendor, for if he could not do this, as the vendor is totally unable to pay, his possession of infant in this cont: would avail him nothing. He would wholly lose his property. - So where a young lady, an infant agreed to sell a certain number of ounces of hair from her head, which when taken off left it entirely bare, she was allowed to consider this cont: as entirely void. I maintained an action of debitor's against the one who cut off her hair. I - It is a general bond by an infant. Under the old rules, has been said to be void but I thought it thinks otherwise for an infant cannot seek a bond held over at action, which he certainly might do if it were void.

If an infant makes an illegal cont: which would subject him to a penalty or forfeiture it is void, he will not incur the penalty.

Where an infant sells goods does not deliver them as the cont: is void he may maintain treble prof. for them without any demand - But if he has delivered them it is only recoverable. The must make demand of them before any action will lie. If after demand he must bring lower treble prof. Not. I know that in both cases the vendor knows the same document. I can no more be due to the child; in either, than he is guilty of a serious law but who in any case looks an infant. -
When an adult contracts with an infant, the former is bound, the latter is not. And in this case, the adult has received the consideration and afterwards avoids the contract; it is held on the books that he is not bound to refund what he has received, so that both retain the property he got. The reason given for this is that the money can be recovered from the adult in no action but one founded on an implied contract. If the contract is not valid, on this account, then it is presumed that the adult ought to be obliged to refund by an action of trover or on an implied by law a delict of the adult. If the adult declines to obtain it, it is directly in accordance to the opinion of Bracquenot that the kindness of the owner of the thing, but the kindness of the owner of the thing, should be given them as a pledge of not as a bond. It shall protect them from fraud and deception, but they not to turn them into a means of deception implying upon others. And therefore, I think, that if an infant will render a bond, he must do it upon the terms of restoring things as before. Indeed in this case, it will sometimes interfere to oblige the infant to do justice.

In C. in a case, where an infant had imposed upon man by affirming himself to be of age, it had then purchased horses for which he gave a note which he had given to a third person. The owner having burned the horse, took the horse out of the hands of him to whom they had been sold. But he left another agreeable to him, it was held by the infant. It not to be a
According to the Eng. books, an infant is not liable to answer for frauds, so it is admitted that he is criminal. On principle, he ought to be liable in the form of instance as well as the latter, not, indeed, on the ground of his own, but of the test of which he was guilty in committing the fraud. See the decision of page 725.

12 C. 122. 6 C. 17. 356. 3. N. 220. 12 C. 157. 213.

An infant having made a conveyance of his real or personal estate, by sale or other judicial conveyance, it is bound by it, unless he be a minor at the time of it, or by reason of the nature and cause of the conveyance, the act is to be performed within the minority. The reason for this is given as this, that the infant in this case can be tried only by inspection of the act, or if the time for inspection be after the infant has attained full age, it might be supposed to take the act for the act of a man, and not enabling them to determine that a man of full age who comes before them, was or was not a certain number of years ago an infant.

C. 122. 356. 12 C. 125.

Testamentary by an infant is only voidable, the may make it either before or after he attains full age. The latter.

3. Bar. 142. 426. opinion, however, is, that he cannot avoid it during minority. At least by an infant is only voidable — Bargain made of land by an infant may be avoided by entry, if it is void why may he not bring the suit?
The void cont. of an infant, if it is evident, can never be confirmed; rendered valid by him, but the which are voidable, imply in their nature, that they are capable of being made valid by him. This consideration generally permits the validly of contracts made by an infant, until he reaches the age of majority, having his consent after the attainment of full age. It may be either expressly by a new express promise, or it may be implied, which is generally evidenced by any act, showing his intention not to rescind the contract, as if it be taken of land, or he main in the possession after full age, or if being a tenant he accepts rent paid.

1 John 2:28.

A just B. or a promise. A. leads in fancy B, to make a new promise, since D, B, assumes A B. leaves a new promise, it is not incumbent on him to show that B at the time was of full age, A must show that because.

In certain cases, in equity, an infant isMix to be bound where it is not at law, by

If an infant, when he marriage made a fair division of the settlement, where his wife she is bound by it. So a joint tenor is bound by a agreement to accept a jointure in lieu of dower. So she is bound by any agreement authorizing personal bond. She may have at the time of marriage.

2 Collin. 228.

Of a joint tenor, freed in the hands of lands. Should a marriage covenant to convey them to his intended lady, Q will enforce this contract.
10. if an infant, to discharge a debt of his personal use, by any money or other personal benefit, or by any hand, this considers this as a sale of all his debts, & the debt is bound to pay them all.

11. A contract made by another person in behalf of an infant may be confirmed in and by the infant after he attains full age.

A general power of attorney, made by an infant, as has been mentioned, is void, if it should give a special power of attorney, authorizing one to complete judgment. In that case, it will be void by the act upon appeal. Proof of infancy.

An infant cannot execute a general power to convey land. Where his discretion is in any way involved, he can execute, but a special power, where no discretion is involved, can be executed in the execution. If in that case he cannot execute it, whether general or special.

It is a general rule that an infant is not liable for his omissions, but for his negligence or for any acts of mere omission or nonfeasance. Thus, if he enters on an infant's land, and he commits waste, he may be considered as the infant, however, he may have acted as a factor, and in a trustee for the real estate. And if he does not, will not commit them to account.

But an infant is liable not only for voluntary fraud, but for misuse, waste, which is an act of nonfeasance. The term of limitations does not run against specially created.

If an infant, who is a trustee for an infant, does not
The right of entry upon lands, in Eq. is not Pithic or taken away from enfeoff of enfeoffed person. In C. it is taken away from another unless 18 years is of hind, when it is taken from both.

An infant may hold certain ministerial offices but he cannot hold judicial. The former may be granted in 18th year. In that case may descend to an infant. In this event, the infant is bound by all the conditions annexed to the office. He is able of his own free

A minor cannot be an Attorney because he cannot make a binding engagement for himself or another.
An Infant in ventre sa mere, is for many
Moor. 37. 127. causes here considered as in effect. By the Conv. Law such
35. Saite 325. an infant could not take real pro. By minor until it
was by way of executory dec. In that, 12. 41. 5a. 2. 6. 10. The
Conv. Law is altered. He may now take by a decree
1. Ed. 3. 153. 5. Nov
Hib. 383. 6
Fr. 2. 81. 1 Plin
245. 2. 5. 2. 23.
3. 1. 171.
2. 5. 4. 117.
Fr. 2. 5. 2. 29
740. 2. 74

Cases brought by or against an Infant.

1. Record 4. 41.
Cic. 4. 54. 4
4. 2. 5. 2. 29

When an inf. brings forward a suit, it must be
in his own name, but he must sue by his guardian,
or his heir anv relative. There are but three cases
in which he can sue by preceint amans. 1. When he brings
a suit ag. his guardian, as he may in certain cases.
2. If his guardian, the consenting to the suit, will not
and his name to carry it on, yet, if the guardian
will not consent to the suit, the infant can not sue at
all in this case. 3. If the inf. has no guardian, or
if he is so far elocuted from him, that his consent can
not be obtained.
In all cases the guardian or person acting in trust shall be liable for costs, even if the infant is under the age of 14 years.

If the infant is under the age of 14 years, the guardian shall be liable for costs when he fails to act in the best interest of the infant, including the appointment of a guardian ad litem.

When an infant is sued, he must always appear by a guardian ad litem, and if he has no guardian, the court will appoint one for him. If the infant is under the age of 14 years, the guardian ad litem shall be appointed.

All judgments against infants without guardians are erroneous in fact, and the court shall correct them on records, and in such case a suit of error is brought against the judgment of the court.

If an infant is sued with adults, and the judgment is erroneous, the court may be reheard on the motion for a new trial, if it is erroneous in part, and not as to that part which is erroneous.
Of Illegitimacy.

A child is illegitimate or a bastard who is begotten out of lawful wedlock, or not born within wedlock or a competent time afterwards. Children of born within wedlock the legitimation before marriage are legitimate.

Children born within wedlock of the father by any other person than the husband of the mother are illegitimate. But by the old common law the presumption in favor of legitimacy was so strong, that no children could ever be considered definite illegitimate until impossibility of access to the husband to his wife could be proved. The proof whatever of this was admissible, except proof of his absence out of the kingdom, or as it was called extra quatuor maeas.

Proof of absolute inaccessibility, impossibility of preservation in the husband, if he were but eight years old, would render the child illegitimate.

As the rule is now settled other evidence of the non-access, than absence extra quatuor maeas may be admitted, as that he was confined in a prison at a distance from his wife during the whole time of her gestation, and indeed, it is to be left to the jury who may be convinced that there was no access from those probabilities. And of late, the rule has been

4. Dying 335. So far extended as to admit other proof of the illegitimacy than non-access or impotency as the wife lived with another man.

The wife is not allowed in a civil suit to testify.

But in a treason to the non-access of her husband for it is alleged this no doubt may be known from other quarters. But she is admitted to ex necessitate, if she be willing to testify to her own

575. 240. c. incontinence. Connection with other men.

Carb. 571.

Parents may not by their testimony bastardize their issue born during wedlock. But the declara-
Parent and child. Illegitimacy.

Co. 3, § 31. 1. 2, 1. 3. 5. 8.

Of a bastard or as answer in Ch. 1 about being a child was born before marriage, when a bastard is known.

Rel. 355.

If a man marry a woman with child, the by another man. If the child is born during coverture, it is legitimate.

Salk. 123.

If a woman has children which are bastard

Salk. 123.

born after a divorce, as mentioned above, they are presumed to be bastards, but it may be proved that they are actually the children of the husband in that case, they will be legitimate.

I. Bl. Com. 10. 7.

After a voluntary separation they are known to be legitimate, but the contrary is known.

Co. 123, 123.

Co. 355.

A bastard child born after the death of the husband shall be allowed legitimate of both, according to some authorities within 9 months or 12 weeks after the death of the same, or is held legitimate after the expiration of a still longer time.

If the wife marries immediately on the death of her husband, the child is born by that it may be in course of nature belong to either husband, it is said to may choose her parent.

A bastard by the Dig. Law is considered as being

Bell. 85. 93.

fictitious mothers, and this idea is, in general, chiefly ad

But in questions of property, the law considers he as having no relations. Thus, he cannot inherit property.
Parent and Child: Legitimacy.

Co. 215. 3d. by descent from his parents or other ancestors, neither
may he be inherited to, but by the immediate descendants
of his body, for he can have no collateral relations.

He may acquire property, however by purchase,

in the most extensive sense of the word, but a grant

of the estate or limitation of an estate to him, by the term

"son" or "heir," is not good; it must be given to him

by his name of habitation.

A limit of a remainder to the eldest son of Jane

the 2d. 3d. 4th. 5th. 6th. 7th. 8th. 9th. 10th.

authorities shall secure to the benefit of an illegiti-

mate son; but others contrast, &c. of similar limits

to the son of the 1st. legitimate or illegitimate would

not be good. The reason of this distinction is now to

arise from the greater certainty of the mother, than

of the father of an illegitimate child.


a. Bastard, and who is the son of parents lie

Co. 215. 3d. before their intermarriage) enter when his father's

7. 15. 16. estate is heir. Note: For if that a descendant is cast

to his children, their title shall never be questioned
in the matter ensuing (who is the lawful heir, and to

him after marriage).
In C. the father and mother are equally charge-
able for the maintenance of an illegitimate child.

The method by which the father is ascertained to
contribute his part of the expense is this. The
mother, during her pregnancy, goes before a magis-
trate. She makes oath that a certain person is the
father. That person is immediately arrested
over to the next County Court, where, if he denies
that he is the father, a trial is had either by the Court
or jury at his pleasure. The oath of the mother of the
child, that she has remained faithful in her declarations
that he is the father, after charging it upon him at the time of
issue in another county, is for it is necessary that this should be done
in another county. If the trial can ever be had until after her delivery,
will be self-evidence to reject him, for probability or
even probability that he was not the father will
not exonerate him. If he is adjudged to be the fa-
thor, judgment goes against him for such sum as the
opinion of the Court sufficient to deproy one half of the
expenses of the child's maintenance during four years.

The sum being divided into 10 equal parts, 20 will
drive quarterly for one of those parts during that time.

But, if the child dies within that time, the remainder
of the sum will be apportioned. So if there should be any
extraordinary expense incurred by great looking to the

4th section will enhance the sum contained in the

The judgment also requires of the father that he
shall find surety for the fulfillment of the judgment;

4th section to the Town, that they shall in

our no expense in the maintenance of the child.

If the mother does not prosecute, or if she discontinues the suit when once begun, the Town (by the

section) may, in either case have recourse to their own

County. In these cases it has been laid that the Jef

son may oblige the mother to charge the child by suit

on the father. And, in other cases otherwise.
Parent and Child - Legitimacy

What the mother, during her pregnancy, swore before the justice, is good evidence after her death in favor of the true father, in any suit to recover the child or lands of the father, or to show that the child was legitimate. A diligent father may recover the suit of the child at his father's cost.

The proceeding agst. the father is in its form a criminal prosecution; but in its effects it resembles a civil suit entirely, except that if the father does not comply with the terms of the bond, the findings of justice, he is to be committed to jail. He is not allowed to take the bond prisoners oath. Thus it has lately been settled that this suit is not amenable to the ordinary forms of criminal procedure. The prosecution is not required on the part of the mother.

The proceedings are amenable to equity. There has been some doubt about it, notwithstanding the criminal form of an action of bastardy.

Of the liability of Parents & Children to support each other

Stat. 232.3.

Parents & grandparents are obliged to support their children & grandchildren when they become incapable of maintaining themselves. This obligation is enforced by application to the court of the county, the judge of the county. The judge may hear the complaint of the child or of the nearest relative or the nearest neighbor. Also, the complaint of the parent concerned or what is called before the court. The essence of maintenance is the subsistence and among them according to their ability, reference being had to no other considerations. If no subsistence has been advanced by the father or the other relative of the child.
Parents and Children.

1. Ste. 140
2. Ste. 141
3. Ste. 142

Sons in law are not obliged to support their
wives parents. Laid down in 4.

Of the liability of parents for the contracts of
their children.

1. Ste. 217. Id. 255.
2. Ste. 310.

Parents are in general liable for the contracts of their
children to the same extent to which masters are for
those of their servants. With respect to mechanisms
however they may be liable further for the parent is
bound in all cases where he neglects to know the mechani-

if. 255.

ste. 310.

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if. 255.

ste. 310.
Parent and Child.

But, he is also liable in some cases, where the
contract is not for necessaries, where the court is not him-
self liable. There are principally the following:

1. If a child is expressly employed to contract for
the parent, the latter is bound by the contract.

2. If the child has a general licence to transact
business for the parent.

3. If articles purchased by the child, came to
the parents use.

4. If the child has a general licence to transact
business for himself, or if it is usually called the
parent has given him his time.

5. If the parent has usually satisfied costs of a
certain kind made by the child, it shall be lawful
for the parent to exclude the child.

6. If the child is of such a nature, as shall
appear by the letter, that he can not be
protected in his character, or if he has
been adduced to the law of.

Whenever the parent is liable on his child's acts,
he may be charged in the declaration, as the con-
trolling party, although that his child made the contract.
Parent and Child:

The parent's liability for the torts of his child stands on the same ground as that of the master for those of the servant. If the child in performing his parents' business commit a tort, the parent is answerable. But if the child while employed in his parents' business commit a tort which is in no way connected with the performance of the business, the child must not the parent be liable.

1. N.C. 19, 126. Parent and child may justify an assault.

1. Bank. C. 19, 121. In defense of each other. But if either is the aggressor, has made an assault, the other will not be justified in resisting him, unless his interference was necessary for the personal safety of the one engaged in which case, the interference of anyone would be justified.

If the Education of Children.

The law has made it the duty of parents to give their children suitable education, but there are no regulations to enforce the performance of this duty.

By Stat. 12, parents are required to instruct their children to read in the schools, to teach them the laws and capital crimes; or if not able to do that, are to instruct them in some orthodox catechism. By another Stat. the Selectmen of the town are authorized to take children from such parents as neglect their education, and place them under a suitable instructor.
An infant may acquire property in any way but by his own services, what he thus acquires belongs to his parent, for as the parent is entitled to his services, he is entitled to the proceeds of them. No can his earnings be even given to him by his parent, anyone other than any other proof so a gift would tend to declare creditor.

If an infant has been beaten or sustains any other personal wrong he is himself entitled to the damages or indemnity, but his parent is also entitled to an action, being house arrest for the loss of service. Consequential damage that he has suffered. As if the parent has sustained any expense in curing the wounds of the child, he may recover it in this action, but it must be probable that

It is on this ground (being house arrest) that a parent is entitled to an action for the discharging of his daughter. Thus together with the expense incurred in his care, were originally the grounds of the action, and still continue, at least nominally, to be so, but damages to a vastly greater amount are always given in these suits for the disgrace incurred, due to the feelings of the parent. And which involves that as there are evidently the grounds of damage a suit ought to be sustained where no loss of service is stated, but it never has been done.

It is not necessary to explain this action to the parent, that the infant under a minor, but as loss of service is the nominal ground of recovery, the same being proved to have been the reason for her interest.

The action may be sustained by any person finding in loco parentis if there be no parent, as by an aunt.
In these actions the daughter herself is a good
witness.

This is in form an action on the case; but if the
has been an illegal entry of the left house in the de
first breach or of value dies, the entry may be
given in evidence to enhance damages, but in the ca
recovery can be had till the breach by illegal
entry is proved.

The parent may have an action on the case, first
witnesses of his death from his wrong. In England it is not in
by the action for homicide have on some of our
who enter his estate but cannot have his estate or
same? In this latter, & since his son. The con
would be good in one case as the other. If there
has never been determined.

If the Parent's right of correction,

According to the book the parent has a right to cor-
and the child moderate, that is very inexplicable, but the
may appear moderate to one man may not to another.
the right of correction to be secured in these cases is the de-
lication with which the happening was inflicted. If the
parent in the thought the correction for he & necessary
the other might not think so he is not correct. But if he allow to be influenced in malice or intent
the happening he is then certainly liable in an action by
that child that by his branch arm. So that there may
be both improper correction considering the nature of
the case, malice in order to render the Parent liable to

damages. The malice is to be inferred from the nature
of circumstances of the fact the make the child's correction
Guardian and Wards.

The kinds of guardianship known to the common law are the following, viz.:

1. Guardian in lunacy. This guardianship existed when the military service of knighthood, or that tenure was abolished by law. In this guardianship the ward was without it. It was now entirely abolished.

2. Guardian by nature. This may be father or mother, or any more remote lineal ancestor. 1 St. Com. says it was invariable only of the free tenures, but asBrowse the whole. It regards only the free

3. Guardian by adoption. The adoption of the ward. Each tells his attainment of full age. He then becomes a free

4. Guardian in foecere. The adoption above in effect was after 14 years of age. Issued by descent of land belongs to

5. Guardian to the ward. He is entitled to the ward.

6. Guardian to the ward. He is entitled to the ward.

7. Guardian to the ward. He is entitled to the ward.

8. Guardian to the ward. He is entitled to the ward.

9. Guardian to the ward. He is entitled to the ward.

10. Guardian to the ward. He is entitled to the ward.

11. Guardian to the ward. He is entitled to the ward.
Guardian & Waz. —

1. Testamentary guardians. These are admitted by Stat. 12. Car 2. They may be appointed by the father of the ward, by deed, or will attested by two witnesses. If the father was in this, he is himself an infant. The power of appointment extends over all his children under 16 of unmarried, even to infant in centre or more, and the appointment may be made to take effect immediately on the father's death, or it may be given in remembrance. — This guardianship may last till 21 or the father may limit it to any shorter period. It arises with the concurrence of the infant person. This whole estate, including all other realtionships. — In C. it is not known.

2. Guardians by election of the infant. When this infant has no guardian at all, he may elect one. But it is said that he must be of the age of 7 years before he can make this election. This is denied in C. & E. the age for making guardian established by Stat. 5. 14. in males. 11. in females.

7. The Chancellor in C. may, without a guardian for an infant, publish this record, and it is a very effective, as he may discharge any guardian at pleasure, or order grounds even a parent, himself, to have the general superintendence & control of all guardians.

8. The ecclesiastical courts in C. claim a right of appointing guardians in certain cases, but this right is denied to their jurisdiction in this, which is very well defined.
Guardian ad litem. Is a special guardian appointed to conduct a suit for an infant. He may be appointed by any court before whom the infant is sued, if he has no other guardian.

Our law (in the State of C.) knows nothing of the guardian in chivalry, or so-called testamentary guardian, or the appointment of the Chancellor or the ecclesiastical Courts. The only guardian here are natural guardians, then an appointment of the C. of Probate (with or without the election of the infant) in the case may be, as the case may be, a guardian ad litem.

In C. the father is the natural guardian of all his child 1/2 (not in the common law sense, however) for, as he is the guardian of their property as well as person, on his death the mother usually acts as guardian, the other person may be appointed by Probate. In this whether the child is over or under 18 years of age 1/2.

If the child is 1/4 of a male (1/2 if a female) he may choose his guardian, if this choice the generally regarded by the C. of Probate, is not conclusive, when it, if the father or mother are both dead, if the child, under 18 (or 12) the C. must appoint a guardian, without any choice by the infant if this guardian will continue until 21 unless at the age of election, the infant chooses another.
In C. Probate takes security of the guardian for the faithful performance of his duty. He obliges him to account when the ward attains full age, or sooner if an complaint is found to require it. In cases of danger to

the child estate, the guardian, or other person may be compelled in Chancery. Here the Probate is to account before the ward attains full age. In similar cases the may appoint another person in consultation of the parent, or require the parent to give bonds to secure the child estate, in case of refusal or abandonment. In other cases, however, can be added to guard

while the father is living, control he is also placed. Given displacing him, does not take away his right to the child.

The parent has no right to expenses and part of the child's property in his maintenance, the another part

must. But for any thing beyond necessary maintenance and education, the Parent may also charge the child estate, excepted the purpose in consideration. For the child's benefit,

the means around them for extraordinary education the

means out the child to an extensive trade &c. The case

3. Art 345, ty. In the absence of the father, the

property is held by accquest in misfortune, the

ward shall bear the loss. Even if any fault or misprefen-
dence is chargeable upon the guardian.
In Eq. in Ch. mortgagees may, himself, on behalf of the
money due, renew to the mgts. A. C. this house is
perpetually lodged by Sal in the hands of the guardian. The guar. has also the power to make partition of lands held
by the ward in common. He is also by Sal,
If a creditor of the ward has a debt of the guar.
drawn a 1/10, more than is actually due, the ward that the guar.
entitled to the benefit of this composition.

The guar. is considered in Eq. as a trustee of the
ward's estate, and if any person to whom title is
of the ward, he may be considered by the sureties or
trustees, or committed to account.

Guards must pay interest for wards money in his
hands, unless he can show that it could not be provided.

A guard having personal property of the ward,
must pay all debts, inscriptions upon the ward's
estate out of such property, not out of his own, thereby
making a charge against the ward.

The guar. has no legal right to vest the wards
money in lands. But if he does it takes effect in the ward's
name, till the latter, when he arrives at majority of
his estate, accepts the land or demands the money. If
however, he elects to have the money, he will be considered
in Ch. to convey the land to his guard. He will then
sell it as his own. If the ward dies before he attains
full age, transferred without having made an election,
his heirs cannot take this land, but the money must go
to his personal representatives.
In accounting with the ward, the guardian is not obliged to allow him more than lawful interest on the principal of his money in the guardian's hands, except in one case, that is where the ward's money has been directed by his or to be laid out in... Particulars may also, the guardian has used it in some other way, as in trade for instance. Has made larger profits in this case as the minor's money or invested it for the minor, and he shall be entitled to the interest or the share of the profits of the trade as the case may decree.

The usual method of compelling guard is, to account in ch, by action at account in ch, or to sell in ch. Here, if moved they may act with the ch of probate in ch. In any action, ch of probate may be cited.

If a guardian had negligently misused money which is redeemable to breach on his hands or to lose a great loss of its value, he is not liable if he has been guilty of negligence, for any thing more than its value at the time of accounting. Interest of guard, interest? And if in such case the guardian, from motives of benefit to the minor or the money in ch, or a like, will grant an injunction of a guard instituted by the ward for the money.

With regard to the marriage of wards, ch in ch, exercises a jurisdiction which has never been claimed by the ch of probate or any other ch in ch. It is the practice in ch to guard, to send out the wards, by and by the ward marriage. This is not the case law of ch, nor is it authorized by law that has been laid becomes one of the
Of the Settlement of Children

Generally, the settlement of the father or maintaining parent is the settlement of the child, and if such parent acquire a new settlement it immediately becomes the settlement of the child. By the acquisition of a new settlement, the old one is lost for a person can never have but one settlement at a time, the he may have a right to more, as if a person having a settlement in one place, owns real estate in another, upon which he can reside whenever he chooses without a possibility of removing here, he has a right to two, but he can never have but one of them at a time.

If the father or mother have no settlement for, they are both foreigners, the place of birth is the settlement of the child. A child may also acquire a settlement of his own by connubial rights, as by marriage, settlement, etc., of his parents, or by legal means. This amounts to an emancipation from his parents, i.e., he is no longer considered as belonging to his father's family.

1. 335. 336.

The attaining of full age also effect an emancipation and generally the contraction of any relation inconsistent with the subordinate position of a child in his father's family is an emancipation.

Before emancipation a child may take advantage of any settlement of his father attached, but not afterwards.

The father being dead, the settlement of the son is that of the child.

A widow by marriage gains a right of receiving an estate for herself, but acquires no settlement for her children. This rule however is questioned by some respectable writers, who at the time of their second marriage were able to support their children. So in this case the second husband is obliged to support them. It would seem that they ought in such a case to acquire a settlement.
On Settlements.

If a woman having a settlement marries a husband having none, it is said that her settlement is held during the coverture, but revives again when the death of the husband or dissolution of the coverture. This rule is contradicted in Barnew, where it is said that the husband has a right to her settlement even during coverture. There might be a question in such a case, where the settlement of the children shall be settled in the place of their birth, or in that of the wife's settlement.

The guardian's settlement is not that of the ward, for it is as convenient for the guardian to maintain the ward at one place as another.

A woman having a settlement
Married a man with none.

Blackstone
Of Master and Servant.

The different kinds of Servants in Law.
1. Llaves. 2. Apprentices. 3. Seminai Servants. 4. Day-laborers. 5. Agents, Factors, brokers, etc.

1. Llaves are unknown to the Common Law of England, and the legality of llavory therefore in C. must depend on Stat. or judicial decisions. 1. Ct. Stat. Sanction. There is no Stat. in England warranting the taking of llaves; therefore, the practice is not prohibited by Statute, but there are several which recognize its existence. It is

2. Ct. Judicial decisions. Our Courts have never made an express determination that llavory is lawful in C. yet many of their decisions imply the latter, when it is actually existing, implicitly acknowledge it to be lawful. But the llavee thus legalized is only a right in the matter to the temporal service of the llavee. All the decisions of the Ct. go on the ground, that they do not consider the master as entitled to the llavee as property, but only to his service, & the only difference between him & another servant in that the time of service lasts the life. Thus it has been held that an action of trover will not lie to recover a llavee detained from his master, as the action must be the same as for the recovery of an apprentice under similar circumstances. But a

llavee may be sold or taken in execution. He may acquire property in any way except by his llavee, or maintain a suit by his letter. An llavee must be treated as a slave, and his master for cruel treatment has been held liable, so that the master puts his llavee at a distance, and thus subjected him to his cruel treatment, a suit being brought against him for false imprisonment, where was no decision the Ct. breasted above the master to reimburse the llavee. The

In does not the master by consenting to the marriage of his llavee, emancipate him, on the ground that he refuses him to contract a relation, from which result duties inconsistent with the state of llavory?
2. If a master be bound to a servant generally for the service of learning some trade or profession, the bond is not necessary. But in apprenticeships, the bond is necessary. If this come to law, it becomes almost the only case in which a writing at common law was absolutely necessary. But there is no necessity for the apprentice's name to be inserted in the instrument. The bond is sufficient for all the covenants for law is bound.

Other servants may be bound by bond. Some on contract, to wages; &c. &c. are not.

By a Stat. 3. Eliz., minors are authorized to bind the said as apprentices, but as the minors' privilege of work is not inexorably taken away by the Stat. the said minor have determined that he may bind this contract and not.

10, (f. 104.)

8, 8th Eliz.

The master cannot by the law of this country assign over his apprenticeship to another master, because a personal personal right is involved in the master by the party. Personal rights are not transferable. On this ground the chief justice of the Court of Queen's Bench held that the master after the death of the master to the master after his death, cannot claim his services, &c. on principle ought not to be bound to perform the master's covenants respecting the apprentices. It has however, been held, in one case, that he was liable on the contract to teach and to instruct the apprentice after the master's death, but this decision has been since reversed on a number of cases, by the court's establishment. But the law of apprenticeship is to be that he is liable on the covenant to furnish and teaching to that he ought not to be bound to do as he is not entitled to the apprentices' services.
in the original contract were required as the consideration of the master's cost to furnish dress etc. Where a premium has been given to the master at the time of taking the apprentice, it may be more reasonable that the be bound on this covenant or be obliged to refund a part of such premium. And Ch. 16., 17., etc., in several cases inter se compell the to refund a part where the master died soon after receiving it, in one case where the parties agreed that in case of the master's death he should refund 20s. Ch. compell the to pay back 100 guineas, the master having died within three weeks after taking the apprentice.

An action that a master shall assign over an apprentice is void.

At the assignment of an apprentice it is void to some respects, yet the master is liable on an agreement to assign an apprentice, if he does not stipulate in the agreement that may go to the person to whom he is assigned of his choosing, by living with him, will gain a settlement.

The master is bound to feed the apprentice and in his own care, he may not put him under the direction of another person.

All that an apprentice earns belongs absolutely to the master; this even if he be only an apprentice de facto, not de jure. And if an apprentice runs away from his master, whether he has money, this money, or any goods purchased with it, belongs to the master. Finally, it is recovered by a proper action out of the hands of a third person.

The earnings of hired servants, while in actual service, belong also to their masters, but if a hired servant runs away, his earnings in the service of another are not recoverable.
Master and Servant.

If a servant does an unlawful act by the command of his master, both are liable, for the servant is able to obey his master in things lawful and unlawful; yet however, if the servant was ignorant of the unlawfulness of the act, the master only is liable.

Moneys gained from the servant belonging to the master, by an illegal contract, may be recovered back by the master; not if the servant has transferred it away, or probably intends it.

The authorities are contradictory, some of them reconcilable as to the master's liability for the torts negligence, flaws, mistakes of his servant.

1. 3 B. 26. 303. 12 B. Com. 50.
2. 3 B. 58. 3. 3 B. 503.

In a general rule, if a servant, in the execution of his master's business, commits a wrong in which an injury arises to a third person, the master is liable. In some cases, the servant alone, if he commit a tort, totally distinct from connected with the master's business, the he may lose it while performing the master's business; he is himself liable, not the master. In the master ever liable for a wilful tort of the slave committed with force, would he commanded her? 1. — When the master is liable for the act of the slave, which is immediately injurious, the slave is the principal, the master, in such cases, accessory.

1. 3 B. 528. 22 B. 725.
2. 3 B. 328. 3 B. 189. 236. 46. 210. 220.
3. 3 B. 528. 3 B. 100.
If a servant is guilty of fraud, in the season of his master's business, the master has sometimes been held liable, sometimes not. Some of the cases seem to go upon the ground that the master is never liable unless he was guilty of the fraud or was commanded to be done, as where the master sent his servant to sell horses having some diseases but gave no direction to sell them to particular individuals, as A. or B.; the master was held not to be liable. But this decision was certainly adopted to principle. It is that the master ought to be made liable in all cases, even where he was entirely ignorant of the servant's injury.

The servant himself is liable, as well as the master.

The servant is himself liable, as well as the master in all cases where he is commanded by the master, directly, intentionally, or if it should happen that he was thereupon employed, he was entirely ignorant of the servant's injury.

When the injury arises from the negligence of the servant, he is himself sometimes liable. Sometimes the master is liable, and the rule of discrimination appears to be this: If the servant's negligence was such as to be an act of the master.

The liability of the master to the servant injured in his service is, I believe, in all these cases, depends on an implied contract of service, and in all cases, on an implied agreement of his that the work should be done well. If the servant does not do it negligently, or that injury arises, the servant himself is not liable, as if this be a woman, should it be sold able than a horse, it to come known, he would not be liable, but the master only.

But if the injury were from the negligence of the servant, in a business in which he was not, or cannot, or is not, the part of the master could be upheld, the servant himself also liable, as in the case of the servant taking a horse of Jacob, by careless driving, his team of 20.
Master and Servant.

To this last rule there are some exceptions. A master of a ship, who is the servant of the owner, has been held to be liable for damages done to persons on board his ship as well as the owner. The law of an innkeeper has been held not liable for telling correct prices, but this last case is evidently contrary to principle.

If the law is quite so simple, truth is in the name of the master, because he is himself liable if he knows of the fault, otherwise if he is ignorant of it. It has however been held in the Eng. C. 4th that an attorney for prosecuting an action of debt, which he knew to be discharged, being himself a witness to the discharge, is not liable for it if it is in the way of his calling. Self-interest must have dictated this decision, for it is fairly opposed to principle.

If a servant employs another to do business for his master, this last one, that negligence commits an injury, the first one who employed him if he had authority to employ him, is not liable, but only the master who actually did the injury.

The Postmaster general has been held not to be liable for the default of his servants employed in his department. This is the ground of this exception to the general rule.
Master & Servant.

When the master not being in fault himself,

1. Bk. II. 105. is made liable to the party injured for the loss by

On. Dec. 255 12. of the servant, he has his remedy against the servant,

2. 2. 50. 10. 99. For there is in every contract of service an implied

promise on the part of the servant for fidelity, diligence, & whenever his master is made liable for the

want of either of those qualities in him, he is liable

over to the master. He however never engages for his

skill or strength. He is not liable to the master for

any injury arising from a defect of either of those qualities

of the master may have in action as to himself, or

for any injury arise from it.

Of the Master's liability on the contract of the Servant.

The contracts of the Servant when authorized

by the master, are binding upon him & considered as

his contracts, according to the maxim "good faith for

a loan, fraud for fe." -

His authority given by the master may be ex-

pressed or implied, general or special. - An express au-

thority needs no explanation. An implied one may be

gathered from various circumstances, as if the mas-

ter has usually entrusted the servant to make calls.
Master and Servant.

2. Case. P. 45. If a particular kind—fo. if a servant has annually purchased goods or other articles for the master upon credit, the master will be bound to pay for goods thus purchased tho. in a particular case, the serv. may have had no authority. So if the master should be absent while the serv. made a cont. in his name. He. not object, he would be bound by it.

27. May 22. Mol. If goods bought by the serv. came to the master's use, he is bound to pay for them on the ground of subsequent assent.

27. Mol. 22. May. If the serv. has usually purchased with one 72. Bow. 62. Then purchases when credit—master is not bound. 1. Bo. Com. 13. to say, unless the serv. had ex. high authority to do.

Also, the master by having usually entered contracts made by the serv. is bound to fulfill one future cont. made by him, yet it may prevent this liability by prohibiting such cont. to be made, but a mere prohibition to the serv. himself is not suff. it must be made to the persons contracting with him, or at least a public prohibition must be given. The cont. is not considered a dissolution of the relation of master and serv. until cont. not until it has become publicly known.

Case. 28. 63. If the serv. enters property belonging to others, the master warrants it to have certain qualities. 15. 5. 1. 7. the master is bound by the warrant, unless he has distinctly prohibited the serv. to make it.
Chapter 10

Page 12

The sheriff is now held to be liable for the acts of his under-sheriff and bailiff, in the same manner that any other master is for another servant, i.e., both he and the under-sheriff are liable for the acts of the latter in the performance of his business as under-sheriff, the sheriff being alone liable for being absent from duty. When the sheriff is thus made liable, his remedy is when the bond that is taken, the sheriff being then held liable for the acts of his under-sheriff and bailiff.

1. 4th. 130
2. 14th. 145
3. 15th. 155

A cor. law a servant voluntarily enticed with

The sheriff, of necessity, intended it was a mere case of

right of general supervision of the sheriff, such as a

bailiff has over a clerk, or a master over the services

of his master, was not guilty of theft, if he furnished

The late decisions have established it that if the butler

of goods to an master by force with an intent to steal,
Master and Servant.

of the Master's Right of Correction.

It is laid down in the books, that a master may correct a servant moderately in the same manner that a parent may. He is not to be understood in the same sense, of the master, in correcting acts from upright motives. Without motives, he is not to be made liable even to the boilers may think the correction misplaced. Perhaps immoderate considering the offense committed.

A master may correct a servient, for or day labor, for unfaithfulness, or abusive language. He may also correct an apprentice for any viciousness, turpitude of morals, bad practice, etc. as he has the duty, in advance of his education, morals.

A master cannot delegate his right of correct to another.

A servant may justify an assault or battery in defense of his master, and he may not in defense of his master's son, or his master's goods. Whether a master may justify in defense of his son's seems not to be settled. The authorities are contradictory, the reason given why he should not is that he has no right, and that is a shift's remedy, but it would be better for this master to be permitted to prevent an injury than to receive recompence for it by action.

I would then that the right of master, if servant in that respect, should be used wisely.
Of the duty of Executors & Administrators
and the disposition of the property of deceased persons.

In the death of a man without a will his real
property descends to his heirs immediately in the
heri, that has had a defeasible estate is it, as it may be taken
from him by a certain kind of creditor. The personal
property descends to the Administrators, if there is a will to the
Executor, who however are only trustees for certain
purposes. In Eng, the C. or Testator, as such, have no power
over the real estate of the deceased since they may have
over the like any other person have the disposal of the
by the express appointment of the testator.

The personal property is charged by law with
all the debts of the Testator or intestate, the real
property only with debts by Statute other than of
record. The Testator, therefore, if they have any
over the debts of the Testator, out of the personal
property of the Testator, if not, it is insufficient to
discharge all debts, the executor ly in his own
must also be liable to the his

In case this

by letting them in what the

T. 50a.

Ist. 17, 211.

3. Homer. 322.

This relief is afforded by assigning a fifth of the real
property in the hands of the heir to the amount of the
creditor or creditors. If the sum
is not sufficient to discharge all the debts or the debt
it is to be averaged among them equally.
The E. may prefer any creditor he chooses to another of equal degree; unless some one by instituting a suit has obtained for himself a before hand. If two or more have instituted suits he who first obtains judgment is to be preferred before the rest.

In this case, the E. charges his debts upon the real estate, the E. cannot be sued at law to sell the lands to pay these debts, but the court will order him to sell the books & if it fails to obey the court, its officers will do it. And if the E. itself under the title of the E. under an order from the court the proceeds of the sale are equitable assets, i.e. to be averaged if insufficient among the creditors. But if in this case the E. voluntarily sell the land without the intervention of the court, the money raised by the sale is legal assets, i.e., distributable according to rank & priority of claims. In 13 B. & C. 335. 339.
In subject of legal & equitable assets see 2 Pomek 102.

In Fig. as the land amounts to the heirs he is said to be liable for special debts. But he is not personally liable. If not having himself be taken in execution, the creditors claim is on the land only in his hands, and at common law this idea was & indeed known that if the heir did only invested himself by sale or otherwise of the lands he was wholly exempt from liability. For the land in the hands of the original purchaser, could not become a the creditors were without
In Coram in Aug. the real est accords to the heir: the personal book goes to the heir, & is to be applied to the payment of debts &c. If the personal est is insuff. it is the duty of the Co. of Probate to refer the claim to the Co. of Probate, who will then grant the Co. an order to sell so much of the real est as may seem to discharge the debt &c. and if in this case the Co. will not sell he is personally liable to the demandors creditors. Before such sale is made of the land the title is in the her Cury. If for such debt when it must be brought by him, but he must account with the Co. for the damages recovered.

In C. no priority is allowed in the payment of debts except to those due to government for general charges that followed the decease. If the whole estate is insufficient, it is averaged among all the creditors.
EXECUTORS, ADMINISTRATORS &C.

At Com. Law, the E. is considered as residuary legatee in all cases, i.e. after the payment of all debts & legacies his entailed to the residue of his property.

The law in the case of a testator or a testator by will to an heir apparent, who is entitled to the residuary shares of the property, if there be any. The law in the case of a testator, who is entitled to the residuary shares of the property.

2. (a) 1. 152.
2. (a) 3. 220.
2. (b) 3. 183.
3. (b) 3. 228.
4. (b) 3. 240.
5. (b) 3. 135.
6. (b) 2. 160.
7. (b) 3. 300.

But in this case, where he is not entitled to the residuary share of the property, it is not considered as evidence of the intestation.

2. (b) 3. 35.
2. (a) 3. 220.
3. (b) 3. 183.
3. (b) 3. 228.
3. (b) 3. 240.
5. (b) 3. 135.
6. (b) 2. 160.
6. (b) 3. 300.

Be the old Eq. Law of a debtor was made E., his debt was discharged. But the reason advance in the case is that he cannot sue himself for it, but this reason might as well apply to the debtor as to E.

2. (b) 3. 35.
degree for each generation. This rule applies in Eng. to the distribution of personal property only, in Civ. it applies equally to all kinds of property.

Thus, the estate is to go, but to the children; their legal representatives in succession, i.e., if any brothers or sisters of children claiming, or dead descendants, their last survivor, their known, father, what they would, and the intestate left at his death one son, two grandsons, or of a deceased for their grandchild, take by presenting their father; what he would have taken had he been alive, or one half. But if all the descendants claiming are in equal degree as to their all children, or all grandchildren, they then take no longer for the night, but each in his own for capitate. Some con-

Tent that the distribution is in this case for stakes, but the better authorities are the other way. P. W. P. thinks that whenever there is no ascendant or in this case, the distribution cannot be for stakes.

If there be no issue of the deceased, the land is to go to the next of kin in the ascending or collateral line, their legal representatives. If one born in the ascending? another in the collateral line are in equal degree, they are to share equally neither of these lines being preferred to the other.

In the Corn. law quantity of blood is regarded.

Sec. 2. 146.
20st. 217245. rel. law progeny only — under the Stat. of a rel. to rel. relations of the half blood take equally

with those of the whole.
It is an express provision of the Stat. that representation shall not extend beyond brothers & sisters, &c. If the deceased left no children, but nephews or nieces, all the children of a deceased nephew, or niece, could not, by representing their parent, take what he would have taken. And the Ct. have decided that the statute extends to all relatives in the same degree as well as those mentioned in the statute, thus if the relatives of an uncle to the children of a deceased uncle, these too can take nothing, for they are not admitted to receive their deceased parent.

By a Stat. 8 Ch. 25. the mother is placed in the same degree as brothers & sisters, so that all the legitimate children, she would exclude them, being in the first degree. She is by this Stat. made to have equality with them. She is even made a constituent part of the old stock of brothers & sisters, that if all the brothers & sisters are dead, leaving children, she is alive, those children shall if known, their parents take what they would have done.

If the father of the deceased is living, the mother takes nothing, because whatever she might take, would immediately become her husband's. It must all be given directly to the husband.

If the father & mother have been divorced by Parliament, a subsequent marriage for advancement causes it is doubtful whether the mother would be entitled to any thing or not. But as her husband's right to her personal property has ceased in this case, it would seem, on principle, she has a good claim. If the divorce was
only a mere at three she would be entitled to nothing for the half* right to her knight tell continues—

Brothers according to Do. nature is wholly ex- clude grand parents tho in equal degree. This does not refer to be wholly applies to be principle—

Posthumous children are entitled to a distribution have equally with others & it is considered as vesting in them while on ventor to more. As distribution does not take place till a year after the death of the in- ter-tate, such child must always be born before that time.

Of the distribution of personal goods—
under the Stat of C.

Real goods required by because in the limi- ted case of the words personal goods are both distrib- uted alike under our Stat. They are first to go to brothers sisters of the whole blood and their legal representatives for want of these to the parents, then to brothers sisters of the half blood and as the Stat now stand for want of these to the next of kin their legal representatives—The position of the words
To their legal representatives. A. D. held laws to be

In the trial, this ought to have been brought

immediately after "Brothers, Sisters of the half-blood,

because, in all other parts of the Act, whenever bro-

sist are provided for, their representatives are also included

in all such parts of the Act as the relations of

the rest of the line is first introduced. But what makes

it tolerable certain that he is right is that by the

next clause it is enacted that no representation has

therein beyond the first children. If this last clause is to be understood as it now stands, it is evident to

position it for no instance, unless the line, the

representatives of the next of kin, be within the

first degree, or the third degree, all others within

that degree having been specifically provided for.

In distinguishing both under this Stat, the whole blood

are advanced to be enrolled in the half-blood in equal degree,

or if there are relations of the half-blood nearer than

those of the whole, the former will take — The con-

tribution of next of kin under this Stat, as under that

of Can. 23, is by the civil-law method.

The only difference therefore between the Stat. 22

that of Can. 22 consists in this: That brothers and

sisters of the whole blood are preferred to parents, if the

whole blood is preferred to the half-blood it excludes it,

or every degree of kindred. And this applies not only to

personal property but to all kinds of real property except

that which came to the intestates by descent, devise, or gift

from some ancestor or testator.
The distributive shares under these Acts vest in the persons entitled to them immediately on the death of the intestate, and therefore, if such person should die before distribution were made, yet his share being transmissible to his representatives, it must be distributed to them.

Of the advancement of children. By a Stat. 27 Geo. 2, 2nd every child except the heir at law, who has received an advancement from the father in his lifetime, shall in order to be entitled to a distributive share of his father's estate equal to the other children, bring what he has thus received into kith and kin, throw it back into the mass of the estate so that he may receive out an equal portion with the rest.

This, however, is at his election; he cannot be compelled to do this. This rule operates, however, only in those cases, in which the father dies intestate, as to the whole of his property, and an advancement to any other person than the father himself, even to the mother, he must be lost into kith and kin to entitle the child to a full share of the father's estate.

If a child who has been thus advanced and whose personal representatives may bring into kith and kin in the same manner that their parent might.

Many extensions on the education of a child or in binding him out as an apprentice has not been considered in the Stat. 27 Geo. 2, as an advance, although it may be a provision for getting a living. Mr. P. thinks it might be different in England, where a good education is...
frequently as much as a parent in moderate circumstances can afford to give each of his children.


But any thing which yields a present subsistence as a commercial in the army is an advancement.

2. Plow. 415.

A legacy given in a will to one child, where there is other property left not disposed of, is not an advancement. In a child who has received anything by way of advancement is not requisite to bring it into stock, but to entitle himself to a distributive share; but such advancement is considered in the distribution return to the child or a part of the whole of his share, as the case may be.


A Domistic causa mortis is a specific gift of property made by a person in contemplation of his death. It must be made while he is sick. In his last sick-bed, for, it is always a condition tacked to a gift of this kind, that it is to vest in the donee only upon the death of the donor, if, therefore, he recovers, it belongs again to him. When the donor's death the donee is vested in the donee without the intervention of the Co. or any other person.

To give effect to a domistic causa mortis there must be manual tradition of the thing given by the donor, or some act amounting to it.
SUCH a gift of lands, if not good at creditors, if being made in the light of a fraudulent conveyance, as to them, but no action at all; the deed in this case the party never coming into his hands, thro', shows that the creditor who claims as the donee must bring his action agt. him as to in his own wrong.

It seems that a chose in action of a negotiable nature may be as a donee, sue, merit; but if it is not negotiable a common bond it is said that it will not pass the as the authorities are contradictory.

Why may it not? To Cts. may protect the assignee, as in other cases.

Of Legacy.  

The Law of Limitations relative to legacies, they may be demanded of the H. by the legatee at any time. The length of time, however, may be 1 year, or when taken into consideration with other circumstances, to afford a reasonable length of the term of the legacy.

At the death of the testator the equitable right of the legatee commences, but the legal interest of the legacy still remains in the H. This agent is necessary to vest the legal property in the legatee.

In particular words an necessary in a will to give a legacy, no thing more, which the testator's intention can be collected sufficient, that here the legacy which is to guide in these cases.
With respect to the description of the hizon of the legatee, it has been decided that if a testator gives a legacy to the children of A., those children, during the testator's life. But in this case if A. has no child at the time of making the will, al the other children who came to age, for this it is presumed was the intention of the testator.

If the legacy is to the children of A., if A. has two children, if A. three, they are all to take equally. I, the child of A., on one side, those of B., the other side.

If it is given to the children of A., if he has no child, either at the time of making the will or after the legatee is to take all, to the other, it would be impossible to effectuate the testator's intent.

A legacy or provision for younger children means those other than the heir who they may be other than her.

Where property is given "to my relations" or to my poor relations or, if it has been held that it is to be divided according to the law of distribution, it being impossible to set in all the testator's remote relations, if they might amount to hundreds.

Personal property acquired after the making of the will, were both to the legatee, if the words of the will embrace it as all my personal property. The rule as to real property is the reverse, as far as that barsing except that the testor, had at the time of making the will, unless there was a reparation.

A bequest of all a man's test, profit, in a particular place, comprehends all that is there at the time of his death.
A few of money was held not to be under a
beguish of all my goods, chattels, furniture, dother thing
at such a time. As a library of books was held not to be comprehefore in the term "furniture." But all
these cases go upon the ground of following the testa-
tor's intention. In other cases it might be different.

It is a general rule, it is said, reasonable that the
same words which would hold articles in a dwelling house
would not hold them in a livery stable.

"Material,咆 under this description of household goods," or not ac-
cepted in the rank quality, or fortune of the testator, made it, actually, an
article of household only a mere article of consumption; in
personal real estate, will remain to under a
vest of real "furniture," but this is only in those cas-
se where there has been an agreement to convert
one piece of the property into another. If we con-
side this agreement as actual, it is performed.

In determining what property, held for a livery, is to be considered
as included in the term "furniture," at the time the testator death, in the
liquidation of the estate, furnishing by its nature, is a place to use
by a collective term as a library, in which case the property is free from at
the time of the testator's death.

It was formerly a rule, that if a man give
a legacy to a executor, it should be considered as a
satisfaction of the debt of it was equal or inferior en
value to the debt, but not altogether. But the
particular
Chancellor, in court late held 9 reasons for taking care
out of the rule, & it was said 1. That the legacy in
order to operate as an extinction of the debt, should
not be given in gross with the debt. Z. That it should
take the form of the same time or at least as con-
stant. 3. That there should be no clause in the will "after
all my just debts are paid." 4. Let the rule should
not apply to an illegitimate child. 5. And at last
That it should not be a separate union in the will, in how-
mant of the debt, or it should not be constructed
so that the old rule is practically altered, and res-
sults immutable, but not voluntarily, the old
Leaves may be vested or contingent.

A vested legacy is one that vests in the legatee on the death of the testator. A contingent legacy is one that does not vest, never vests in the legatee but becomes void on the death of the testator or the legatee, or the passing of some other event. If there is a revocatory legatee given, and none of the legatees die, the estate goes to the revocatory legatee.

If the legatee dies before the testator or the legatee, the legacy lapses. In this case it has been decided that it shall not go to the revocatory legatee, but to the next of kin.

If the legatee survives the testator, then the legatee is entitled to the legacy he or she was given, even if the legacy is contingent. If the legacy is part of a condition precedent to the testator, then the legatee may or may not receive it, depending on whether the condition is fulfilled.
Legacies given when conditions are made of the
condition to a tenant one, if it is illegal or impos
be performed the legatee takes the legacy
without performing the condition.

Conditions inserted in legacies in restraint of
marriage are generally void, because contrary to
laws prior, and a legacy is given to a woman on
condition that she do not marry a mechanic or a
merchant. But there are exceptions to this
rule. If a husband having children, give a legacy
to his wife upon condition that she do not marry
again after his death, the court is good for. It may
be necessary for the good education or the child
that the remainder is a widow. In conditions relati-
1073. 2. & 3. live of marriage, before a certain age, if it be reasonable or not to marry at a particular time, these were among good statute restrictions on marriage (Regula).

A condition to a legacy that the legacy shall marry with the consent of a particular heir.

1. 2. 4. & 5. He shall marry with the consent of a particular heir.

1. 2. 3. & 4. All is considered as being merely in default, but no foot until given over to another in case the legacy does not comply with the condition. In the latter case the legacy must complete or lose the legacy.

A legacy given to several will go entire to the survivors, if either of them dies before marriage or before the age of 28, but not otherwise.

2. 3. & 4. 2. 3. & 4. 3. & 4. & 5. Those money it is given to the heir or other person as trustee to distribute among others or other legateses, at his discretion. All of this will compel such trustee to make the distribution without bias. So that above the confidence placed in him.

If a legacy is given to an infant, the €.

1. 2. 3. & 4. As it is given to the father of the infant it is at his expense; for if the father gives it away or lends it the € will be liable to pay it a second time.

So is the same if paid to a guardian until it be a testamentary guardian appointed by the testator himself for his children.

The € in this case must retain it in his own hands till the legatee attains full age, or he may sell it and have an order from them to pay it. Then he could be respectfully secure.
A legacy to a joint covent must be paid to her husband until given to her for separate use.

If no time is appropriated by the testator for the payment of a legacy, it is payable at the end of a year from his death.

The person entitled to a limited legacy may demand immediately after its testator. Interest is payable on a legacy after a year of demand of the legatee. If the legatee is an infant, it carries interest after the time it is paid. If the legacy is absolutely be the testator himself, it is payable at a certain time.

Of a legacy is made payable to a child of the testator, even at a future time. No provision is made for its maintenance, it will bear interest from the testator's death. This rule does not extend to an illegitimate child. The legatee states that the legacy carries interest from the time of the testator's death or the time it is paid.
If the testator charges debts upon the personal estate, it is first to be exhausted in their payment over to the executors or legatees. But in such case, the will not in the legates when the land to the amount of debts this charge which have been satisfied out of the personal funds.

General legates are not to reside in the land not as fastastic revenues, but they are secured in all cases. If the devisee of a mortgaged estate, if the mortgage has been paid out of the personal funds.

2 Vent. 205.
2 Vent. 358.
2 Vent. 205.
2 Vent. 205.
2 Vent. 205.
2 Vent. 205.
2 Vent. 205.
2 Vent. 205.
2 Vent. 205.
2 Vent. 205.
can pursue the effects in the hands of legateses devices. It seems reasonable however that he should.

It has been thought in C. that in these cases the director ought by bill in Ch to call in all the legates to

determine that his remain may be taken from them all

in proportion to their respective shares.

Specific and Boundary Legacies

Specific legacies are bequests of particular things distinguished from the testamentary in general. Boundary legacies are bequests of items of money made in general terms. If a particular bundle of money is identified as

pointed out as being in a particular bag or drawer it is

a specific legacy. The burden is on the legatee to prove

Specific legacies are liable to creditors besides

boundary legacies but the latter are also liable at the other of

setts are insufficient. If a specific legacy is made

use of for the benefit of debts. If there is another book

left after death of all debts the C. must recant more

such legacies out of this book. So if it is taken by a

creditor or on an ex parte in the account. For specific

legates must be remembered at any rate if there is

influence of assets for that purpose. This too at

the expense of necessary legacies.

If a specific legacy is lost or destroyed this unusual

not accident the legatee must bear the loss as whole

this to no remembrance.
of the whole horial estate has been given out in specific legacies, then a reversionary legacy is given to be paid out of the rest, and what is already disposed of the specific legacies are charged with this legacy. And not the whole in this case.

If there is not a sufficiency of a legacy to pay all the specific legacies, they must proportionably abide among themselves. This rule has been so frequently understood to be sometimes incorrect to contravene the intention of the testator. If one legatee has received his whole legacy, and there is not enough to pay all the rest, the estate is absolutely liable, but may obey suchLegacy to...
cannot be accounted for but when the inscription
that the test. intended to give away the legacy, and
the legacy is an amanuus. But if the legacy is
a lost or destroyed of that no such intention can be
serves it is no amanuus. As if the thing beannulled
is bequeathed to the testator or his own necessity, there is no
amnuation. If a debt which is bequeathed away is called
the testator for no discoverable reason than to
take it away from the legatee, it is an amnuation.
But if the bequest is antedated to the testator, or if it
is contended to enforce it for the failure circumstances
of the debtor or if he is in want of money or the receipt
of the debt is no amnuation, but the E. is answerable
for the value of it.

S. See n. 139. 2d. 74.

2d. 203.

A bequest in a will has been longitudinally given to an eldest son
of a child where a legacy in a will has been previously given to an eldest son
of the legacy. The testator is always open to be blamed by evidence showing a
different intention in the testator.

2d. 203. 1d. 37.

2d. 113. 2d. 74.

5d. 168. 3d. 118. 176.

5d. 168. 3d. 118. 176.

2d. 203. 1d. 37.
Of the Appointment of Ex'rs or Admin. of the person entitled to Administration

The Ex'rs or Admin. of the estate are ordered by the law to give bonds for the faithful performance of their duty.

2 Pet. 2:13

The Ex'rs or Admin. should be chosen from men of trust, prudence, and integrity.

3 Brief. 325

The Ex'rs or Admin. should be trusted with the management of the estate.

1 Pet. 3:3

The Ex'rs or Admin. should be chosen from among the children of the deceased.

2 Bl. Com. 500

If the testator appoints the Ex'rs or Admin. of the estate, the Ex'rs or Admin. shall be chosen from among the children of the deceased.

1 Bl. Com. 100

The Ex'rs or Admin. should be chosen from among the children of the deceased.

13 Bl. Com. 138

The Ex'rs or Admin. should be chosen from among the children of the deceased.

2 Bl. Com. 500-8

The Ex'rs or Admin. should be chosen from among the children of the deceased.

1 Bl. Com. 298

The Ex'rs or Admin. should be chosen from among the children of the deceased.

1 Bl. Com. 325

The Ex'rs or Admin. should be chosen from among the children of the deceased.

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The Ex'rs or Admin. should be chosen from among the children of the deceased.

13 Bl. Com. 138

The Ex'rs or Admin. should be chosen from among the children of the deceased.
If the rest of E is deficient in understanding, or a bankrupt, the C. may appoint another. If no one of the aforementioned creditors is willing to accept the estate, the creditors are considered as entitled to it next, and if they refuse, or are incompetent, the C. may appoint any competent person.

If the estate belongs to an infant, the C. must appoint an agent, or someone in whose hands the estate will be safe.

If an action is before the estate is sold, another action on the same must be attended by the next of kin.

If an executor in some circumstances leaves an E. open to the trust, the trustee may claim the estate, but if the E. dies intestate, it will not go to his heir, but another heir may be entitled to some one.

If two or more E. or heir one suits the other, the suit being considered joint.

If several E. are appointed, and one refuses to accept the trust, the others may go in fact as E. if the refusal is no objection to the one who refuses, common writing is the only form of a bond.

If a trustee refuses to accept, he must be joined in suit by the E. with the rest, this is a just as if they need not. In C. the acting E. alone, has the benefit.

If, after having done anything, C. makes him an offer, and he accepts, he acquires the estate.

An E. or A. on E.'s, after being notified of his appointment, must appear. If neither accedes or refuses, if he neglects, he is in the comm. or he is to accept 1/20th of the estate, until he does it.

A.E. may be suitably for the time occasion in which they would not have been previously appointed.
If an ad\textsuperscript{m} is appointed for \textsc{a} afterward ab\textsuperscript{h} to a duty, \textsc{ad} \textsuperscript{m} must be released. The duty\textsuperscript{m} then belongs to the \textsc{a}, whatever he has of the testator's right is in his hands. And if it is doubtful whether in \textsc{a} the whole proceedings of the \textsc{ad}\textsuperscript{m} in this case are not absolute or void, \textsc{a} by of the \textsc{ad}\textsuperscript{m} may have been acted on which the \textsc{a} would have been obliged to pay, the \textsc{ad}\textsuperscript{m} allowed them. If, of ad\textsuperscript{m} was obtained dishonestly, that he mistake. As in \textsc{a}\textsuperscript{m} 129, the distinction between the forged will of a dead person and the forged will of a living person, there is 1 to 2 the dead.

It is a question in \textsc{a} whether an infant \textsc{a} is liable on the bond, which he is obliged to give, and if he is, he must be in contradiction to the several principles of the common law; for if he is not, the act requiring him to give bonds is entirely nugatory.

If there are two or more \textsc{ad}\textsuperscript{m} accepting a discharge, each must be bond by all. But the act of one \textsc{ad}\textsuperscript{m} being the act of all, his signature is one sufficient, this distinction is not to hold in \textsc{a}.

Who may be an executor.

An infant may be an \textsc{a}: but he cannot act as such.

In other cases, but does not apply that age all acts which in other cases must be 2 before he can act.

An exe\textsuperscript{c} will exclude a man from being an \textsc{a} to be an excommunicated person cannot be one of the \textsc{a} line.

An alien may be an \textsc{a}: but it is even said to be an alien enemy may act any action as he pleases in the night of another, but the authorities on the point are contradictory.
Executors & Administrators.

Of those actions which will survive in favor of "agt. Ex." & "Debtor."

There are certain actions which the testator or intestate might have maintained which his Ex. or Debtor cannot. There are also actions which might have been maintained agt. him that will not be agt. his Ex. or Debtor.

With respect to those in which the Ex. or Debtor is liable, it has been laid down as a rule in the book, that on all contracts of the deceased they were liable, what for all acts they were not. Neither part of this rule is strictly true, still respects itself of actions to be now established. That of a lost committed by a testator or intestate, has benefited his estate, the Ex. or Debtor is liable, otherwise not, let the damage to the injured party be what it may. Thus if the deceased has cut down the timber trees of another & carried them away, his Ex. is liable on the ground that his estate has been benefited, but if he had only cut them down & left them, without carrying them away, no action would lie agt. the Ex., so with respect to all personal acts agst. another's land & the maxim applies "actus personalis, mensa est personae." This maxim is extended to all acts whatever, it is under the equity of the act. Equit. & estates asbother. That the present rule is established.

Yet, when a right of recovery for the acts of the testator or intestate does survive agt. the Ex. or Debtor, the action but agt. the latter must not sound in tort, but in contract, therefore, an action of troth & debt will not in any of these cases lie agt. the Ex. if it must be an act of assumption.

In the contracts of the testator the Ex. is generally liable, but there is one case which is an exception: These are where, according to the contract, the testator would be liable.
was not to receive any consider and growing from the other party, but in consideration arising solely from his performance of the contract in which the other party is not interested, nor if the facts this more negligence his E, is not liable. And an officer who is to receive legal fees from the execution of a process fails this negligence to execute it. So the E, is not liable for an escape on the same ground. The the E, of a common carrier is liable, because he can demand compensation for his services from the person for whom he transacts his business, and indeed generally looks to him for it; whereas the sheriff cannot, so readily. Deeds, any agent of the company for whom he gives the bonner himself, when he can escape or be wholly lost all remone. — This exemption from liability of the E, of grain, has been extended in C, to the case of a lawyer who receives an order to collect. It failed to do the same in the case of the council.

In B, when such as such cannot be held to have

By Sec. 359, etc., etc. in case of break lost by an E, or substitute as to the ex, in the first judge, without any burden.

In some instances, e., the E, or adm, cannot maintain an action until the test or intestate acts. The rule is, that of the test committing act, the test or intestate, has injured his agent, the E, or adm, may maintain an action for recovery of damages, whereas he may maintain an action on all contracts.

An E, cannot join in one suit for cause of action not accruing to him as E, with which he has in his own right.
If an adn. dies after judg. obtained in favor of his intestate the adn. debts are not entitled to a free use of the estate in this case the Sr. of the adn. cannot sue on an ex. on the judg. because he is not subject to the payment of the debts of the intestate one other than such person can have ex. on that judg.

It is a rule of the Eng. law that an Ee. is not liable to pay costs when he brings forward an action in right of the defeated of a recovery. These cases are not those where the right of recovery accurred in the title of the intestate. But if the right originated in a suit completed in the time of the Ee. the Ee. is liable to the highest of the tert. he may sue in supreme court when he is liable to cost. And in these cases when the tert. may sue in his own right if he can not, but even as Ee. still be is liable to cost.

In C. Ee. there is decided when the farm, lodging as to the debt of costs as other persons the Ee. however, always allowed them out of the estate if they have conducted reasonably in the business.

J. J. Sellers.

Generally, all improb. of the deceased that comes into the hands of the Ee. or adn. is held for the benefit of sellers &

Subtenants descend to the Ee. vice likewise of Sett in cases of expense it was assigned for expenses and for expenses others in all cases considered as belonging to the estate.
3. 3d 13

This rule is now much relaxed as between the heir and
heir for they are considered as being bound hand
and foot, belonging to the latter, with so adhering to
the wise rule that their generation would materially
affect it. Between heir & E. however, the old rule
obtains. They are not affected.

Sez 5th 6th 7th.

Eleventh.

Sec. 25 26 27.

Sec. 78 79.

Sec. 38.

Sec. 79 80.

Sec. 38.

Sec. 79 80.

Sec. 38.

Sec. 79 80.

Sec. 38.

Sec. 79 80.

Sec. 38.

Sec. 79 80.

Sec. 38.

Sec. 79 80.

Sec. 38.

Sec. 79 80.

Sec. 38.
Debts due by the dec. are ranked and payable in the following order: 1. Trust or adm. must pay the funeral expenses. 2. Debts due to the dec. 3. Adjudgment debts or those due by record. 4. Debts due to extinguishment or confession. 5. Specifically debts. 6. Debts on simple contracts.

True debts must be paid in this order by the "Ct." If he does one of an inferior rank, having notice that a superior debt is due, he must pay this last at all costs whether there are assets or not. If debts are equal in degree he may pay which he believes best until one and has obtained a priority by legal diligence. But he may not have a debt which is not yet due to the exclusion of one that is now due.

If he may retain his own debt in preference to all others, creditors in an equal degree.

If the Ct is liable to a judgment, debt he has assets in his hand to the amount of a specifically debt, unpaid, he pays this specifically. If he has not a debt equal, if he has paid the specifically debt he heads his administration.

Arts. 242 and 245. A remainder may be taken by all debts, but preference is given to legacies.

An executor objects to the heir of a bond over as a trustees at the sound of the ground of its being invalid.
[Text not legible]
Excusers and Administrators.

now the there is no decision is found to the contract. If the E. takes a bond to himself for a debt due to the testator it is a decast, or of at least, it renders him liable to creditors to that amount.

4. Any wanting or destruction of the bond's or giving to it by the fraud negligence or mismanagement of the E. is a decast. So is the embrugion of it by him or the selling it a great univalence. If he sells it for more than is approved at he is not entitled to this sum, but must account for it.

2. E. 46. 342. 318. 362. 3120. Where there are several E. no decast is caused to one, the others are not liable for it. The action must be brought at them alone. On.

If both of have found receipts for goods.

Sack. 318.

If the two are only, has in fact received it, both are liable to creditors, but the receiver only, it is paid to legates.

When an worthless, an E. as long for the debt of the testator it is as is in the goods of the testator in his hands. If he fails to discharge the.

a free house may be brought ag. himself. As

the above he can make no defence to it, which because have used himself in the first that it had been paid to.

A decast by E. occurs in the possession of the E. or adm. of bond.

In the first business of an Esq.'s, there is to make an inventory of all the estate which can be settled on that account. To become in a great number of cases, by judicious devises and the like. Enter this, that the Esq. must account, with the Ch. of Probate for the property inventoried, but is not liable to any loss to be paid to the next of the administror. If the estate is less for less than the advanced value, the Esq. is not liable to the loss, unless it was incurred by this own negligence. In that case, he is liable on his bond.

If the estate is solvent, the Esq. goes on to buy debts. If the personal part is not sold to settle them all, he becomes an order from the Ch. of Probate to sell the real estate. With the advances are sold from such sale, he continues to buy debts and they are discharged.

But the Esq. may always represent the case to the Ch. as insolvent, if the Ch. of Tax. is content with him to do so if there is the least probability of not being the case. Upon this representation, the Ch. appoints Commissioners to examine about the estate. The decision of these Commissioner is formerly considered as absolute binding, when it was against the admission of the estate. On the admitted a claim, the Ch. might afterwards contest it before Ch. But it has lately been decided by the Ch. of Tax. (Nov. 30th, 1811) that an actual Yes to the said Ch. from the Ch. of Probate of the latter acts as a release of the claim made according to law, this as well in the case of Creditors an Esq.
is necessary. With regard to a bond by which is discov-
ered to be a voluntary one, some difficulty may arise;
if it is admitted by the Commis. with the other debts
it may render the estate insufficient. If it is rejected,
the claim is forever barred even if the est. should be paid.
Mr. R. thinks it ought to be admitted by the Commis.
the est. afterwards preferred to contest it as Relative.
the creditors. for, he cannot contest it as est. of being
good ag. the obligor or his representatives, the est. not as
his creditors.

After the Commis. have decided upon all
the claims of those which they have admitted exceed
the value of the estate, the Ct. of Probate, to whom
return is made of these proceedings, finds an average
among all the creditors, giving them such a proportion
of their debts as the estate will allow. This
average are exclusive creditors of all kinds, there being
no preference shown to any class of debts except those
for General charges, &c. Taxes due to the govern-
ment, legal and
rightful creditors, whose claims have been legally
allowed by the Commis. being considered as good
indebtedness.

This average among
the creditors other creditors as the prominent feature
of this part of our Law, none which ought to be
carefully preserved in all decisions on this subject.

A creditor who has neglected to exhibit his claim
to the commissioners within the time limited for that
purpose can never afterwards recover his debt unless
he discovers some new fact of the debt not entered
in the inventories. In such cases the Ct. have
rendered judgment according to the average made to the
other creditors, but the judgment was reversed in the Ct.
of Errors. It was said that the Ct. of Error can not
be authorized to give judgment for an average sum in these cases,
but that the whole belongs to Probate. Mr. J. then
said that the Ct. does not contemplate any such in the
person making the discovery of the new estate, but that as new property is by any means discovered it must be inventoried by the E., that a new average must be made, that the new creditor's share is allowed by consent, &c. to examine it, after receiving the average before said to other creditors to take an average. There of the remainder.

But in this case, a creditor whose claim was beyond within the time limited objected cannot bring his claim again, nor to share in the new average. If the E. is admin. refused to inventory new discovery, &c. knowing it to be the creditor's interest to tell him of his bond. But if the E. has doubt with regard to the ownership of the subject it would seem reasonable that the creditor claiming should indemnify him in making the inventory.

In short, not the credit in this case, in the actual gift to inventories, he having forfeited the whole estate before discovered. take out arm. &c. done non?

As C. a creditor attaches book of the debtor, before or after judgment, and if a question arises whether the creditor has such a lien on the book of attached as to hold it in preference to other creditors. This would clearly have a preference of the debt. Had an exception passed that judgment debts should not be preferred to others. And notwithstanding this move it seems invidious that the debt was intended to defeat such a lien, but was designed to refer oneself to judgment debts where there was no lien obtained in any particular articles of debt. A mortgage in such a case is allowed to hold the land mortgage, in exclusion of all other creditors, &c. if the profit thus attached had been limited. But by an &c. there is no doubt that the lien is good, but it appears reasonable that it should lie in the case just stated.
If the Ex. or adm. does not inventory, or if he makes a false account, or does not account, he forfeits his bond, but the non-payment of a debt is no forfeiture in Eng. or C. A confession of a debt by an Ex. in C. is no forfeiture if he has appeared to the cause. If the bond be null & void, it is a forfeiture.

In C. an Ex. or adm. can never stand before an American court a creditor unless in cases in which the efforts are merely theft, for amount of funeral charges & other privileged debts, because if there was any thing more an average must have been made among the creditors. The Ex. must have paid this average. If he has done this he is bound as a creditor he must stand to show all the receipts of the Ex. of Probate. It will be a sufficient defense.
Executors and Administrators.

Of an Est. for Corp.

In order to render the estate of the deceased, as he divided it between himself and creditors, he is liable, not on the ground of being the legal sole proprietor, but because he had the actual possession to give creditors just cause to presume that he is legal.

Be it so far true, or in any other way, even the position, without further intermeddling with the body of the deceased, as to render himself liable to creditors. He is liable not on the ground of being the legal sole proprietor, but because he had the actual possession to give creditors just cause to presume that he is legal.

In the words which render one an Est, it is to be noted that he claims the management of the estate as if he cannot be reconciled on any other ground, he is to be so considered, but not otherwise.

This character cannot exist where there is a rightful Est, or acting as such, which he claims to be a rightful Est, or acting as such, he has to keep his property belonging to the Est, liable to the acts of creditors, yet not liable to this Est, or action.

For reasons where the Est has in his life time, made a fraudulent conveyance of his body to one or where he has made a voluntary gift, which will operate to defeat creditors. In the life time of the grantor, his creditors might have sued him, and in this Est, but after his death, the Est, must have, because he never had made any, have this Est, in his hands, the conveyance, of the Est, being good as between the only method therefore for the creditors to satisfy their claims is to sue this grantor as Est, in his own wrong, through they may do.

Sec. 24.

For 24. as the last Est is liable to creditors no further than to the amount of debts which he has to them, or after they are extinguished he may clear his creditors, and if he clears them, he is entitled as if he is liable for the whole claim at all events, because it has to be to him upon securing the estate.
Exonumia and Executors.

In this action to recover for the use of any person named in the will as right who acts under the last will, testament &c., whether the form of the deed died intestate or not.

In this action to recover for the use of any person named in the will as right who acts under the last will, testament &c., whether the form of the deed died intestate or not.

He is liable to the rightful, &c., in any action of trover or detinue, for introducing with the goods. It is he, pray, that he has paid all the goods that are accused to satisfy debts. This will only go on unless it is accepted.

In this action to recover for the use of any person named in the will as right who acts under the last will, testament &c., whether the form of the deed died intestate or not.
Executors & Administrators.

Of Wills.

In particular, mere and substantial of the testator intention sufficient of that can be gathered from the world made use of it is to be followed in the construction of the will.

To every will in erg, there must be an Er. Testamentary instrument and a covenante, and Er, or called a testament.

Generally, every person not under disability may dispose of all his personal by a will. But a husband cannot dispose of his wife's clothes in action, chattels real, or chattels personal. For can a person by will dispose of his wife's clothes in portentancy in Erg. because the personal's inure to a son at the death of the testator. What of the devise or legacy? But as that is not known in Erg. the reason is, that the device of those clothes in portentancy does not exist.


By the ancient Com. law, an estate for life with a remainder over could not be created in personal. But now, the direct reverse of this rule obtains. A tenant for life of personal, though may be created in Erg. to make an inventory of such goods, Judge in these cases to give security for the careful use of all.


Of there is any danger of it being embezzled or wasting destroyed.

An est. for life with remainder over may now be created even in a chattel interest, and a lease for years, but the interest of the remainder is given must be in of at the testator's death, or within 21 years afterwards.


But an estate tail cannot be created in personal.


33. 27. 2 Br. Com. 118.

book. So that if personal est is given in Erg to a man "the heir of this book," the absolute ownership vests in the first taker. The reason assigned for this rule is that an est. tail in Erg. cannot be barred by
Erectors and Administrators

five or recovery, I therefore think, that if it should to exist, it must be a defective which the law will not suffer. But, as in a Stat. 23. the immediate issue of the last since in tinct take an absolute fee simple in real goods, this given, the big reason for vesting an absolute estate in the last to be found not a little sooner since he giving the same effect to the words, viz. of the body, in suit of personal as in those of real goods, no separate act is required.

Sec. 335.

A will contains a clause in which the heir-apparent has, in his will; to be saved, the enjoyment to be saved from the, in the Act of Limitations.

Sec. 336.

1. The age at which a minor may make a will is the age at 18. For, as it is uncertain.

2. The lunatics and the insane, were deprived of reason by age intemperance or otherwise are incapable of making valid wills. With respect to the degree of capacity requisite in this case, no definite rule is established. The general rule is, if the testamentary desires to determine whether the testator was in the soundness of his mental faculties or not.

3. If the testator was unable this ignorance or blindness to read the will, it must have been read to him. Such reading must be proved.

4. Any prudent bequest may make a will if it can be proved that they could in any way make themselves understood by others.

Wills must be in writing. And must be in the last, but it is not indispensable requirement that this latter be signed. The act in its letter; more literal way. The party name written by himself in any part of the will is a sufficing signing. There is one instance given by Joseph
Executors and Administrators,

in which the testator's name is written be another letter, yet being acknowledged by the testator was held to be valid. It is not necessary that there be subscribing witnesses to a will of less than $500; and if a will be made containing a clause of both real and personal estate, it is not necessary that either witness the former or the latter will be valid. This will in almost every instance exist when the latter intention is effectuated, the latter will be valid or void in toto.

At common law, a nuncupative will is not to be made to any amount. But the restrictions in force when this provision was made in 1892 (Rev. Stat.) have almost abolished them. In practice, a nuncupative will has occurred in England; there is no doubt on the subject; it is usual not to form the vague to admit of any will to admit of it.
Of Contract and

4. Bailment.

Bailment under the English law is divided into three kinds:

1. Delivery of goods for hire, being without any reward or naked bailment, called in this description, 2. Bailment greater or commodation. 3. Looking for hire or contract for consideration. 4. Goods delivered or as a bailee or pledge. 5. Goods delivered to one who is to carry them for the owner or to do some act respecting them for wages. This whether the bailor is a common carrier or one finally employed for that particular occasion. 6. Goods delivered to be carried greater. Note: make a different division of the subject. He included them under these heads. 1. The naked bailment which comprehends the 1st, 2d, 3d, 4th, 5th part under the Bag Law. 2. The common bailment which comprehends the 1st, 2d, 3d, 4th, 5th part of the 3d kind, viz. the social carrier or agent of the Bag Law. 3. The bailment at all events which includes only the other part of the 3d kind, viz. common carriers. 4.

Of the property which the bailor (in general) acquires in the thing bailed.

If the property is given to another, a bailee of the latter will have title to the property. If the bailor is the bailee, as in the terms of the bailment, he has no right to sell it. Sometimes he will not. The law when this subject is one made, that the principal is able to do pretty well follow the application of them to different cases is very different.

A sovereign principle in this benefit is this, that all the bailor is of such a kind that from its nature it might reasonably be supposed that a sale made to be upon the bailer. If it was of such a nature that it would probably have consequences of that kind and it were such as to affect third persons ignorant of the bailor's good reason for believing that the bailor were the actual owner of the goods, a bond for purchaser will be borne, these are the bailor may acquire. The bond thus made shall. Thus a person sold be one to whom the lease had been to ride a few miles only may be taken by the original owner in, maiden hand, but it is found. As if the bond
been left to perform a journey of some hundreds of miles.

If the case were to have been different, the result would have been much different. In some cases the

the state would be, in whose custody they had been taken, for if they

may be reclaimed by the original owner. But, in

particular place, then, another place. This may also be reclaimed.

As if by force of this, the note of the creditor is

the hands of the present holder. The holder holds them, the

fact shall bind not only the actual owner, but also the

creditors. There is an additional reason for this, the

creditor has first a confidence in the bankrupt, which

has been given the creditors in the hand of the

purchaser has done nothing of this, it therefore has a

equity to the original owner.

If a bond is held by the original owner, the

claim. These have in the hands of the purchaser, and

he has been paid in market value, for there is equal

value, between them, neither having been sold by

agreement, &c., and where there is the case, the bond

held is preferable. But if the bond was secured to

the owner by force, then, the bond is held to be

secure, for the owner is chargeable with the degree

of negligence or incumbrance in making the bond.

It is thus taken. If the bond, therefore, is not

equal between them. If there has been any

negligence, incumbrance, or any other confidence in both

of the parties, which will render the claim left, as

that of the other, or very little, in many of the

cases will be different, that party shall not recover.

Another idea to be taken into consideration is this,

whether the bond is not in its nature a transferable

transferable to a large class of the holders. Whether

it is not in its nature a transferable to a large class of the

holders and that it is the claim of the original

owner will be preferred to that of a subsequent buyer.

meals of the bond, always be regarded with an eye of

negligence, incumbrance to the utmost limits

that policy will allow. When this point, it has been

decided in the case of a bond to a poor man to hold

the bond's title shall not be devoted to a title made to
The bailor, for the act of a neighbor's bankruptcy, is, in some cases, but of little value. But if ten cases had been this bailor, the case would be otherwise; for it was in no means necessary or proper, that he should be entangled with many. If he has been secured in debt, it is, in that, if proper, the law in its case, the risk, and caution for fear of rethons, known or not, on his marriage with the creditor's daughter, to the keep for in law, the debt of the father in law of both divorced. The advice is that it's not commensurate to the gen. rules.

As to the right of creditors to possess this bailor, the law seems to be this: That if any person not knowing the transaction gives credit to the bailor, while such fact remains in his hands, upon the receipt of this bond, of which he is the indorser under the trust or endorsement, the trust or endorsement, being the bond, for bond of this demand, the reason is that the bailor, being the maker of the trust or endorsement, has the power or right to give the promise of the bond. The holder, therefore, has in full cases has contributive to the satisfaction of those who have trusted with it. A bond or endorsement the transaction shows he has no right to pay on the bond in the cases. But if without knowledge of the trust, it is proper that the debt in justice to be paid, because the maker of the bond, to make a bond by the decease arising from the debt. It is not to be endured. Held in Cotes v. Warren, 220, 237, that general debt, connected in a marriage, settlement, Bond remaining in the trust of a person who is not the member of any who were his creditors at the time this marriage
Of the naked bailee. There is a difference in the law between the naked bailee to keep, the naked bailee to sell, something with the bailee in hand. The latter, although he is to have no reward for what he does, is liable for any injury that arises from his negligence, if he does not take ordinary care, he is liable. But the naked bailee is merely to keep [handwritten] without any reward, he is liable for no loss except that which arises from the goods depredation, it must be to only induce it to carry the goods.

Of a bailee who is merely to keep [handwritten], what it cannot with the bailee be acted upon. If the bailee keeps the goods in this case as safely as he was his own, he will never be liable in a trial of this kind; therefore, the character of the bailee for care and diligence would be a bar to his suit as a malicious.

There seems to be no good reason for this distinction between the two cases of the naked bailee, but the books clearly support it.

Where one in behalf of right but not the right party sends it, he dies at another, the bailee must deliver to the terms of the case deliverer to the bailee, not to the true owner. Thus, if he has at the time of the delivery, that it belongs to another, he holds as would be bound to deliver it to the right-hand owner.

It is that, that if A, delivers it to B, for the use of C, B is answerable to C. This is true in case of a gift from A to C, which A was not consent to deliver, for A may reclaim the right, B may demand it, B must deliver it to him who last made demand. But if the right had been lost to A, B, C, D could not be answerable to C, only because the right being transferred from a valuable come, part in C, or the delivery to B, which is only a中级man or agent to C.

If the right of a bailee becomes lost, B to D, by B, which was handed to his tenant by the not repealing it, the fact that at the C. came to the hands of the D, by the law, he must deliver it to the legal owner.
2. Of the Common bailor. This bailor is responsible for the cause loading boat while loading it for hire, if the bower neglects to carry it for hire, in consequence of his negligence. Negligence in this case implies a want of ordinary care and diligence, so that which is usually taken under similar circumstances. The law does not require the utmost possible care in this instance, but only that which is ordinarily made use of for the preservation of the goods.

The above rule applies to all the different species of the common bailor while they remain within the bounds of the bailee. If the bailee exceeds those, he is liable for all accidents and injuries that may happen to the goods, not excepting those arising from the act of God or the other causes of the land. But even in this case he is not a bailee until he has taken the bailor in hand, or the bailor was originaly furnished with a writing to carry the goods of the bailor. If the bailer, after having exceedd, should return within the bounds of the bailee, would he be liable for accidents not arising from negligence?

Of Bailees.

They are subject to the same general rules as other men of common bailor. But there are some more peculiar to this time of cases. A bailee is a hedge of several kinds, as

He is liable for no bad or injury that happens to the bailee while he retains it, unless it arise from his negligence. But if he delivers the bailee to the hands of another, he is liable at all events for an injury to the bailor, if also liable in an action of tenement, a tenant is an insurable officer of law.

After transfer of bailee, the bailee is not liable to meet the debt, nor affect the rest of the goods, unless the bailor assigns the rest of the goods. In this case he is discharged from all other. But if the bailor is not discharged that rank it the same place with any other debt after the same.

C. 52. S. 22.

22. Title. 1. 17.

C. 53.

C. 225. 5th. 6th.

23. Title. 17.

C. 53.

C. 522. 23d. 177.

C. 522. Cert. 177.

C. 558.
3. Let 205.

After the sae of saewn' has elapsed, the saeoun is held to have an equity of遗址. The time of the saeoun is out, and the sale is committed to him.

263.

If no time is set for the saewn', it is held the saewn' may redeem at any time during his life but that his 264 cannot redeem after his death. This seems to be no good reason for this. It is time to fix the saewn' definitely would have a right to redeem at this time, the time is no better fixed than to this.

265. T. 203. 204. 305.

If the saewn' has not paid the saewn', but is paid the saewn', nor may 266 times to the saewn' after the agreement.

267. T. 203.

175. I. 204. 205.

If the saewn' has no tenancy at all, and the saewn' has tenure as a tenant for life or estate, the saewn' may redeem in peace for it all out paying what the saewn' has advance, then it is in the above case, saewn' was not entitled to the benefits of the 268 bond.
Of actions V. A conclusion to which common bailor, &c.

If bailor are entitled.

When goods bailed are wrongfully taken, from the bailor, he may have an action at the wrong doer, to recover not only the value of the goods thus taken, but also the special injury he has sustained by being deprived of them. But after paying such recovery of the wrong doer, he is likewise liable to the bailor for the value of the goods. But such a breach of the bailor's trust by, as it were, the ground of this action, that he may recover at the wrong doer, for the value of the goods, as well as for the own special damages; as if he did not, thus liable to the bailor, he would be entitled to recover as for his own special damages.

The bailor may himself sue the wrong doer for the value of the goods. By suing, he discharges the liability of the bailor, but that does not discharge the wrong doer from his liability to a suit by the bailor for his special damages.

So that the wrong doer is liable for the failing of the right to the bailor or baillee the not to be, the bailor liable to the latter for the special injury he has done him.

And if the baillee first brings the action, as he suits the bailor of his right to the wrong doer, he subjects himself, admitting to the bailor for the value of the goods.
Bailment

A Taylor by the bye, law, in addition to the action which he may have for his labor in making clothes, may if he finds it convenient and return a garment till he is paid for the making. For this reason in what cases he may return a not in convenient. But it seems that younger Woollen in whose hands it is able to be the owner to convenience he may return but not as he25.

3 of the Bailment at all events. The debtors can throw all tendants to persons in the way of their occupations, the bailor always receiving a reward for his trouble. Such a common carrier who receive goods to carry deliver to another person, because he receive goods only by his own accord. Thus the inheritance of the bailor of all like carrying goods in different whatever one of the act of God or the other event of the bond. And as by letting himself up in the hand which he performs he is obliged to take profit or contrary to him the law gives him a lien in all cases. Upon the bond he tells his fees are paid.

3 of Common Carrying

A common carrier is one whose business it is to carry goods by land or water for hire. In the course of transporting letters, packages &c. on transportation to one who is particularly employed for whom a special confidence is due. In the smaller of packet boats, ferry boats, stage-coaches are all considered as common carriers. As such, we are liable at all events except the act of God, for the injury which they undertake to be carried. It is in their power to give to the utmost care to the goods. That in course of the defense the common carrier all events renders no account of it.
The owner of a vessel, bound to load it, are liable for all
injury that takes place consequent on the dishonest or non-
conformity of the master or crew. It is the duty of the
master to give the vessel the smallest amount of
stowage in which it will load, and if the master has
failed either in the negligence or knowledge of the
stowage, he is answerable for all consequences.

No. 2, 2d. Sect.
If a voyage is taken from the common carrier, or otherwise to
his order, or lost without any fault in him, the seller's goods
are his, and an action on the case founded in the
custum of the sea, or a common action of the statute.
But if the common carrier is himself the wrong doer, he
was taken or converted the goods over to.

A com. carrier is misinformed as to the value of the
goods, however, he carries a legal bill of lading. The law authorities are
that he is liable only to the amount of what he was told
the value was. The latter authorities are that he is not
liable at all in such cases.

The law of a common carrier are liable after the death for
lessee for which he would have been liable had he lived—In
this it differs from shippers, as the latter receive their loss more
from the execution of their office. The common carriers may not only
retain the goods for his use, but may also resort to his
private action, which the latter cannot sue.
By the Edw. law one person may at pleasure cause an innkeeper to keep any thing for the entertainment of bachelors. But if the house be kept in town or in a place in which small quantities must be licensed, if a tenant keeps a disorderly house, he may be indicted. Men may become so numerous as to be a nuisance, how to the law, engaged in the business may be said for a nuisance.

His tenant.ற

In a tavern, licensed, the oncoming of both at house. When his tenant must always be licensed.

And [this] art, to entertain all persons, if he desire it. In such a case, if he refuses without good reason, he is liable to an action in favor of the person refused to be served.

An innkeeper is obliged to keep anything for which he receives a deposit, without the owner, as a house. But he is under no obligation to keep without the owner any thing from which he, as an innkeeper, receives no he is liable to a tenant. But if he actually receives a tenant, or to which he is paid by the owner, he is liable for it as a common bailee. And if he receives no benefit, he is liable as a master bailee.

Generally, an innkeeper is liable for all losses that he is to the host of the guest, while he is at the inn, in any suit as are occasioned by the act of God or of other men, but the host must be in no fault. If the host be a guest is stolen from the stable, or from a pasture. But which he was put without the owner’s direction, the innkeeper is liable. But if the horse is put to pasture by the owner’s direction, and the host is not liable. But if the horse, in case the barn gate, or fence of the pasture were a breach, the horse escapes, the innkeeper is answerable as a common bailee, on the score of negligence.
Bailment - Innskeepers

1. If a traveller in an inn is robbed by his friend or companion, the host is not answerable. But if he is robbed by a person whom the innkeeper, without his consent, puts into the same room, the innkeeper is answerable.

2. The innkeeper enquires the value of goods entrusted to him. If the owner declines to inform, or if he requests the owner to lock the door of his chamber, he neglects the innkeeper, it is hidden, is still liable. But if he refuses the guest to deliver the keys into his hands, even though the guest values it as one would, whether he would be answerable.

3. The innkeeper's liability in these cases extends only to goods or traveilees or persons actually living at the time usually charged to travellers. Nor shall it be the point that determines the innkeeper's liability. If therefore, a neighbour lodges at an inn, or if a person lives goods there for a short space, or if a person boards at the common price given to boarders at private houses, the innkeeper is not liable at all events. If one being told that the怎麼做, says he will make a stiff thing of them, the innkeeper is not liable.

4. If a tenant at an inn loses his master's books, the liability of the host to the master is the same as if the latter had himself been there.

An innkeeper is not obliged to furnish entertainment to a stranger. 2 Pet. guest till be is paid. 3 Pet. man, as the roast is either by an action for the remainder of the empty coat or by detaining him or his horse till he has paid the lodging. But, when a loss occurs, he may not recover the loss for the expense of the owner from the innkeeper.

By the common law an innkeeper has no right to furnish accommodation to a guest who is a guest or retained the expense of keeping him there, while his value, by custom of livery, he may have it preserved off.

If a traveller not having paid for his entertainment departs without leave, the host may make both baskets to settle him. But if the innkeeper consents to let him go, he can never afterwards require him without legal process.
...Police.  Anbekew. 4.

I ask the house. At an inn, he cannot make him without paying for the keeping for the car. keepere knew not that he was taken.

If a third person promises an innkeeper, that he will release a horse that he has retained to the promiser, will say for the keeping, this, this to prose, is not with the house of France, for the inn, be releasing there, giving up a inn which he before purchased.

In an act in an inn, it is unsafe to stake in the declar. that will be an inn, this house is a safe one. There may frequently, be much difficulty for the last to know the value of the bond, he that lost for it is not probable if anyone сторын himself can know the exact contents of a promissory bond. Right not the last in this case to testify himself? in analogous to the case of an ill-ast. hundred for a robbery, as that of an act. for escape in which the escapers is a witness.

Of Sheriff's. The order of executions.

When the body of a debtor is taken when legal, the Lord becomes liable of all the debts leading to him. He is answerable for it at all events except the act of Bos t the Ten enemies of the state.

No right of action exists at common law. There is a section in 13th, which for the debts of a debtor taken in execution. But the order 13th, which gives an order of debt, in an escape from the first, has been constructed a a judge to extend to all persons in the house. But this on the case of the act of 13th, 27th general rule be used in case of escape.
Bailment: Escapes.

If a broker there are two kinds: voluntary, and negligent.

1. Voluntary escapes are such as to the place to the consent or connivance of the sheriff or his deputy, or his servant.

2. Others escapes those which are done by the act of God or other enemies except those denominated negligent.

In case of a voluntary escape, the sheriff can never set the prisoner free, nor may set the borrower, the the credit may retain him at any time for any time, nor maintain any action against him, even if at the time of the escape, the sheriff took a bond to indemnify himself against the consequences of the escape, the bond is illegal. Since the sheriff is bound to pay the debt for which the escaper was imprisoned without any legal method of obtaining recourse. If in this case the party attempts to take the prisoner, the latter may have a recovery ag. him.

But in case of a negligent escape the real may retain the prisoner, but may not have his action against him for the amount of the debt, or if a bond as a negligent escape has been taken, the sheriff may be sued. He may also have an action against any one for aiding or abetting in the escape.

It is laid down in many of the books that a non in order to secure the debt, upon a step is made by the sheriff to the surety. The main rule is: when the debt is not secured. The true ground of which is this, if the escape is return within the debt or is returned by the sheriff, before an action is brought, none by the court, for the escape, the ship is discharged. But if before the return or reclamation of the vessel, the debt, has been his action at the ship, he shall not be deprived of a recovery. For having attached to himself a right of recovery, he shall not be cut off by any failing action of the ship.

But, if, however, even after action brought, none by the court may relate to the escape for his own recovery, for all that does not prevent him from his liability to the extent of both the lender to his hands, as a substitute for the debt which both that time became his own.
Pacquet, 120.

To make by a brieve having the liberty of the yard is a neglect escape. For if it were not a bond of indemnity taken by the Ship upon giving a bond the liberty of the yard, would be illegal. And the consideration of it being that the Ship would suffer a voluntary escape. This has been decided to be a neglect escape by Act 53. Edw. I. Edw. I. 652. 427. 427.

on the subject of indemnity both in Eng. & C. The Ship is not obliged to grant the liberty of the yard to a brieve who offers bond of indemnity after granting it, he may at any time remonstrate the person indemnified. And indeed it appears his only to do if the person has indemnated once again, from the yard, and after such escape of the ship, if a negligent one, if the Ship suffers him to remain in the yard it escapes again, this second escape is a voluntary one. This bears an analogy to the case in the box where one being in bonds made a hole escaped, but being re-escapage, he was shut into the same person the hold not being opened, he escaped a 2nd time. it this was held to be a voluntary escape.

An escape from the yard after the brieve indemnity returns so that the Ship cannot be made liable to the yard, if the bond is perfect. The condition is broken if the ship, maid for no reason that it would be merely nominal, that is not the case. And upon such an escape the creditor should have vindicated is that the ship is discharged that the bond is perfected if nominal damages must be recovered.

Upon any escape, either voluntary or neglectful, the ship, if he does that the Ship does that upon a voluntary escape, the ship is discharged must receive the brieve again into custody. However, neglectful having such exception as the creditor he may have an action at the ship, for the expenses he has been put to in retaining the escape, or other special damage. So the crew may sue any one aiding or assisting in the escape.

A ship the crew in order to relitigate must have an escape warrant. As if it is usual for him to take the ship of the crew left with the gardian.
A person wrongfully escaping from the custody of the court may be retained on Sunday. An original arrest on Sunday is void.

It has been done by the Sec. in the 1st case as follows: his debtor to escape or release him from prison. He cannot afterwards declare him not recovered his debt. The decision in the 1st case to be set aside was made by the Court: for the 2nd case at any time, not a new suit to declare him. I'll not do your duty. He should not be permitted to release him without taking such security, it is difficult to determine—That he knows that the 2nd case that he into those cases by removing a voluntary escape on the part of the creditor to a former one on the one hand is hard but not more hard than another. But it is remarkable that the case in Dyer to which they all refer, is not a decision in the year books which be as firm. Can't aid the decision in direct opposition to it.

So in a release of one indent to another, however a release to both, the others must of course be declared. The latter, like the former, is a case to be instituted of any national foundation. In the former, might have discovered the whole debt of one, if the debt had been to do if the debts of the debt so not released, are not infringed by the release of the other. In order as it applies to cases in which a release is given in consequence of payment is reasonable, but when the release is given for motives of humanity, the rule is evidently absurdly unjust.

Self and liable to an escape on a new person without a recovery in person. In the first case, the original breach being full, facts were, all proceedings under it are completed, neglect. That in the latter case, the bonds being made, probable, if there is, until it occurs in a legal manner and is not in effect, the less you.

In an action for an escape, the whole history of the bond must be stated with legal precision. There is no

arrest here, however, to give in the decision. If the act was not voluntary or unavoidable, this must be made to appear in the declaration which is the to state it in the decision, is not necessary. It is as self-evident.
2. Gor. 111.

Of Proissor. more S. B. If a debtor is quartered to person or persons present, the sheriff's liability is the same as in the former case. But if a debtor to whom no person present, is quartered before he reaches the person the officer may excuse himself by returning the same. When later, or even if no excuse for the sheriff, that he was present, he is as much liable for an escape of the debtor escaped before he arrive at said, as he is afterwards.

2. Gor. 93.

If the sheriff is quartered a debtor taken over some person to go at large till judgment, if the officer has been liable to restore the judgment, he is also liable. But if he is not in custody at the time of the judgment given the officer is liable. But if he is sentenced during the life of the court.

2. Gor. 111.

In an action for an escape before judgment, which must be an action on the case, not 1211 the damages are always uncertain. But if he is not liable unless it can be shown by the person escaping. But when the Co. 126, 153. escape is when on the court may mean case or track. In 127, 153, 127, the latter his recovery will be for the amount of the case, on which the escape was committed, but, in the case of the damages are uncertain. In 127, then, as the numbers are concurrent, the recovery ought to be the same in both. The 12 escape after his death is not liable for an escape.
The law in Celeste respecting the right of the accused, in general, the same as in Eng. There are, however, some differences made by that, in Eng by adjudication of Th., by a Th. if the accused is in case of an escape, than the insufficiency of the gaol, the county is made liable, because the county builds the gaol. If not the Sheriff. If the Sheriff is liable in such a case, as he builds the gaol, as the expense of the County. If, however, the party escaping from the insufficiency of the gaol is himself of sufficient ability to pay the cost, must according to the opinion of the Law, 4th of Errors in C. The law that the county. Again, if the party escaping is a bankrupt, it is not possible to pay any thing, the Sheriff can recover only nominal damages of the County, to pay the Sheriff's full right to recover only a proportion to the real money. But, this is but paying for the bankruptcy, and not escaping the convict, courts never have yet any thing, with respect to, as least as to convenient for the County as the County escaped them from all liable court order, the person escaping is able to say at the time of the escape, the person becomes unable afterward etc. in which case they may be obliged to pay the whole debt.

Six days after the court order been allowed in C. for making a return, the Sheriff may, if the plaintiff demand the debtor to go at large during that time. And even if the has been taken him, it permitted him afterwards to go at large, he is not liable to any action, provided the debtor was outside at the order of the 10 days. But if the the last case, the debtor is not in custody at the order of the term limits the escape is not voluntary but negligent. This can be applicable only to small breaches.

In C. the county is nominally liable for escape than the insufficiency of the gaol, the Sheriff is also liable if he has been guilty of actual negligence or by not ordering or being when the gaol is broken or destroyed in any particular place.
Bailment - Escapes.

If any law a stuff is punishable for a voluntary escape to escape the forfeiture of the staff and in case of an escape the actual negligence he is punishable by fine.

A civil action for an escape is to be brought against the high sheriff, that is, the gaoler or immediate keeper. But if the action is commenced on it must be brought against the immediate keeper only.

By civil law the honours actually being the houses was punishable in case of a voluntary escape in the same manner in which the houses if converted would have been punishable. The stuff was also, in such cases punishable in the same manner as the revenue of the same location; the houses was committed did not exceed of fine. 1318, 1321. The houses extended beyond a fence. The houses only was liable to suffer: 2. C. a voluntary escape of prisoners is considered only as a high misdemeanour. Seaward in such cases imprisonment.

2. Dallm. 134. 135.

As to all civil breaches the acts of staffs lawful or unlawful are the acts of the staff himself, and the latter are liable as if he were the actual agent.
Of Contracts —

Of the Consideration to Contracts. — No. 3, 1252.

Both at law and equity, it is essential to the validity of a contract, that there be a consideration, or, as it is sometimes expressed, an object in contemplation, that no harm can be done to them; that there was no consideration, and a man cannot be compelled either at law or in equity, to fulfill a contract entered into without consideration. Yet, the nature of the contract precludes all enquiry respecting a consideration.

The quantity of the consideration, however, is not regarded. Though in the thing specified as the consideration, there is no value, or a rich, the contract will not be void; yet it is not easy to discover how a valuable consideration, which is a sufficient consideration, is more valuable than a rich. Indeed, the goodness of the whole of the doctrine respecting the necessity of a consider, may very justly be questioned. The difference between a valuable thing, in a contract of any magnitude, is a very trifling, and, that it might be considered as almost beneath the dignity of the law to look to an enquiry whether there was actually a valuable thing given as a consider, or not. The law merchant has abolished this rule of a consider being necessary to the validity of a contract, and the common law still maintains it.

Section of landlords tenant, is "a" consider. —

Consideration of a tenant, if a tenant is to be considered as a good cause, or a thing to be done, because of the performance must be total of the whole.
It is a common opinion that a written contract under hand, seal, acknowledgment, or seal, is valid. But a written contract in itself is no more binding without a consider than a handshake contract would be. To, if from the face of the writing it appears that there was no consider, it is void; or, as not only nominal damages can be recovered upon it, but if does not appear from the face of the writing that there was no consider, the contract by reason of a specialty will be binding, as to the parties, hands and being indispensable to prove the want of a consider in a specialty, unless the rights of that person are affected by the contract.

On note, where there are three or more bonds or recognizances not with bonds, if the note, and nominal damages are recovered, the consider being thus completely, can want of consider be hence of the express obligation, acknowledgment consider?
Contracts.

If forced by law desirous to contract

Sec. 1. (1) The reason of non-execution may be not capable of making contracts, is that one should be incapable of assenting to them.

Sec. 2. (1) The law, however, a man is not permitted to make this exception as a defense ag. a court for the rule is that no one shall be permitted in a court to hold himself free. The method is by an act of writing, or by the Act of the court in which the transaction is held, by a decree declaring it to be void.

The order of such persons are generally considered as with what is not made valuable, as not to make in the same manner during the life of the person may be revocable by his heirs after his death.

Sec. 3. (1) The maxim that a man shall not be allowed to hold himself is wholly disregarded. An act it is held like any other contract to a contract.

Sec. 4. (1) On bonds is sometimes a remount for relief in the act. a contract, made to be in the situation.

Sec. 5. (1) But this is only in those cases where the person concerned was so that that is the act or convenience of the person who has made the bargain with him. Such contract must be an unreasonable one or it will not be enforced. — Some such another demand it takes advantage of this to make an unfair contract with him. There is no case which warrants the intendment of this to relieve him, yet it. P. thinks that it might offer relief up on the ground that an unfair advantage was taken of the situation.
Contracts.

1. If however money is taken from a drunk person without any consent, he can't recover it back.

1. Chelsea. 35. 63 25

2. 1 Pounds. 126.

3. Price of writing.

4. Price of making.

5. Price of a man's mind. This will relieve as it will be the case in those cases where they can enter fraud, but the very circumstances of a case where unreasonable when made under such circumstances is sufficient evidence of fraud.

6. It's an unreasonable act to make with a person of a weak mind. This will relieve as it will be the case in those cases where they can enter fraud, but the very circumstances of a case where unreasonable when made under such circumstances is sufficient evidence of fraud.

7. Points are in many cases privileged as to take control. See bag 39 12.

it may have rendered the contract more binding to one party, induced him more readily to concur to it. If it must be rejected, the party refusing must take his consequences in damages in a suit of Law.

1. Tott. 122. 9. 
2. 10. 82.

E. G. W "I contend to be helpless to be responsible in such a case. A man is held to induce a breach of contract, if it may be reduced back to an act of indebreach. But if the indebreach arises merely from the peculiar circumstances of the party, the declaratory action cannot harm him to recover damages from non-performance."

2. Plow. 104. 6. Without a sufficient knowledge, he is ignorant of the value of what he promises for where the purchaser
Contracts. In general.

Of a horse agreed to have a bazy corn for the first nail in the horns (does double it for every one). Or if the horse made the value of the article, the rule of damages. But the inconvenience which occurs may probably be avoided. For the establishing such a rule of damages the transaction on the subject which they never intended. And being as hard or under disadvantage as one at present 2. It must be that the case ought not to be established at all.

If an indubitable precedent condition is annexed to the grant of an estate the estate never can vest, as such condition is a subsequent one the estate absolutely is not divested by non-performance.

1. Cor. or Case 119.

If the performance of a contract becomes impossible by the act of God, of the law or of the obligor, the obligor is discharged. If by the act of the obligor himself, it is not excused.

S.B. Nov. 21v.

If A. contracts to sell to B. C.'s farm which is impossible for him to do, because C. will not let it to him. A. tells he is liable to B. in an action of law for damages, but B. could never recover the specific object of his contract. But if A. has himself contributed to this impossibility the case is different as if he had contracted to sell to B. a farm which A. owns but which he afterwards sold to C. he in an action of law wants the for damages which would occur a specific object of the contract.
Contracts.

A promise which the party making it has not power to make either in fact or law is void.

Contracts may be unlawful, if therefore void. 1st. Tending to encourage the commission of offences as the case of murder, theft, &c. made in &c. 2d. Those that are not encouraged make prohibitory, or offences not voluntarily made by particular parties. 3d. Those contracts which are considered as not sound policy or contrary to laws more.

All engagements to do an unlawful act or to say,

is committed to afterwards, a very simple rule because it essentially has a tendency to induce the man who has received the money to be quick in the performance of the unlawful act, but the money should be retained from him before he has tended it by performance.

A security given or a promise made in consequence of a transaction made illegal by statute, is void of course, notwithstanding a promise or act, for instance, of his who is bound by this, is an illegal undertaking. It is a rule, which requires of the other for a breach of contract, if no such security or takes that party who has paid the money have no remedy at the day.

The law of 1840.

3d. 1433, 353, 391.

16. 1455, 1461, 1483.

Sec. 56, 66.
Contracts. Unlawful.

2. Sect. 3. 111.

The receiving an illegal oath to the form of a specially makes no difference in its obligation, it is the need for the turpitude or illegality of the consider of any instrum may always be enquired into.

Where the illegality of a cont. was not known to the parties at the time of entering into it, it may be binding: it is upon this ground that it has been held Co. V. 103, that an indemnity to a creditor to an officer for taking bribes not belonging to the debtor is good.

10. Sect. 154.

2. Sect. 100.

A cont. tending to encourage the unlawful opion of duty is illegal. 1026. 21. the rule applies to even a foreigner, if they collude with a justi nities in violating these laws.

2. Sect. 323. 5.


If about indifferent matters have been conspired under the law as binding conts, they may be determined whether they are not as to a rote. But a wager wanting affecting the feelings of third persons, or tending to introduce indecent evidence, or if made of as a cover to a Bible & co. 39.

2. Sect. 53.

1. Sect. 57.

20. Sect. 29.

25. Sect. 9.

A contract in restraint of the exercise of a man's trade or calling is void as being ag. Sound hol. A cont. however by which a man engages not to pursue his trade in a particular place is good. But such cont. must have a competent consider. The same broad will be admitted even if the cont. is in form of a pecuniary to show whether there was a consider or not.
Contracts.  Tantamount

If a landlord takes a bond from a hirer or tenant that he will remain in part a faithful tenant till he has paid all rents. If the bond is not paid, the tenant has no right to retain him as a tenant for the bond.

2. Decm. 132. 48.

Marriage, estate, bonds, debts, with less for 5. 3d. 2. Decm. 133. their expectations the good of law are void in Oct.


If an unlawful contract which was not binding, act. 11. 2. the bond, if it has been actually performed, no relief can be had at law or in equity. Provided both parties are equally

guilty, an infant, however, does not come within the

rule as he may recover back in interest, if money

which he has lost at law, the idea is 

enunciative. But, if one party has been induced to

accept it, he may recover back both parties not being in pari

octavo.

2. Decm. 102.

It is a general rule that when a contract is entered

into in a foreign country, it is not subject to the laws of the

country where it was made.

But if the contract is made to be performed at home,

it is contrary to the laws there existing, it will not

subject to the laws of the country the clause to the laws of the
country where it was made.
Contracts.

By the Eno. Stat. of 1843, any contract by which more than 5 per cent. is reserved for the loan of money absolutely void. And in addition to the loss of the loan of more than 5 per cent. is received, the true value is forfeited and may be recovered in an action for usury.

An illegal receiving subjects the person incurring the same to the penalty of the Stat.: an illegal reservation in the contract renders the contract void. But an illegal reservation does not incur the penalties, nor does an illegal receiving affect the contract. True rules have been adopted in the construction of the Stat. in C.

The offence of usury is determined to be complete at the time of receiving too much. But before this is important to be known or account of the Stat. limiting prosecutions for this offence.

If upon a contract for the loan of 500. 36 per cent. at the time, as a premium for loaning the money, an obligation given for 500 with legal interest, too much is reserved, the contract is void; for the lender in fact loaned but 357. 54 has taken an obligation for 500. But this is not taking too much, the true interest at the end of the year upon 500. with the lawful int., he has then received too much. As liable to the penalties of the Stat.

In C. only the true value of the loan that is for, ject to conviction of an illegal receiving.
Contracts. Asuy.

3d. 21. 235.

Courts of Equity, considering various cases, arise from the rules of positive law. Acting on principles of strict equity, when a plea to them by the borrower, will be heard from his ability to pay any the more than legal interest, but considering that he actually had the principal sum lent, it is in common sense, bound to pay the legal interest, will compel him to do as

Stat. of C.

In C. v. A., if the borrower when sued, made up this when a cause he does not choose to hear the suit, to throw the bill out of his whole claim. He has bill in C. O. bill must be done on the second day of the sitting of the court, as a plea in bar to the pl. declaration, in the court as a C. of Equity, in such case must exchange all interest renders in suit, for the bill to recover his somewhat pay. E. O. B. S. the fact that this is actually erroneous. But for the purpose of making this discovery, the fact has enabled them to examine all parties concerned as a C. of Equity does. This has been construed to extend to the examination of the C. only, as when the bill is filed, the writ who files the bill cannot be examined unless the bill requests it. The bill "Upon the C. as a C. of Court," "4. 1 says the C. or a C. of C. to intrench on great relief as by a certain lot entitled to they own." This C. have thought themselves bound to the cause of this State to give suit for the bill such as the whole principal of the note was money which has accrued or another cause. In such a case, unless they were given only nominal damages, but their legal costs.
Contracts.  

A separate note is given to secure recovery in a note not only void itself, but also renders void the principal cont. — A separate agreement to take more than legal int. made at the same time with a note reserving only legal int. has been held in C. to render the bond usurious. Therefore void. The Clark doubles the interest of the section, since such a promise is of itself corrobative y vice when the face of it, ought not therefore to be sufficient enough to destroy the bond. —

Attempts have been made by a great variety of contrivances to avoid this Stat. in by way of conveying a loan of money under a bargain or sale of collateral articles. But it is now settled that if the sale be mere colorable & the real object of the parties be a loan, any consideration of price or an or obstructive claim allowed, or forbearance will render the court usurious, as much as if there had been a direct loan in the first instance. Yet, if the object be a sale, merely, or loan of collateral articles as except of price will render the transaction usurious. —

A loan of stock or of money produced by the sale of stock or an accord, that the borrower shall return the stock or repay the money with such int. as the stock w'ld have produced, is not usurious, the int. except the usual rate. If the the money was to be repaid on the stock not being reduced, or by subsequent to that in which the stock was to be settled, if at all, unless the stockmen made the stock be mere colorable. Intended to cover an actual loan of money made.

The law now comes to be settled the one is, that any attempt to evade the Stat. by inelegant artifice, be it will bring a person within it, if there be actually more than legal int. obtained.
Contracts. Usage.

To make a cont. necessary it is necessary that it be correct that the legal interest contained in it should be accorded with design; for if it was included, there would be mistake of any kind, it is not necessary. And whenever there is a mistake, which goes with the interest of the party to the contract, or with the interest of the other party to the contract, it is necessary to know that there was no int. to take more than legal interest.

The word "cont." is essentially necessary in a case of mere error in the words of a law to which they refer.

The continuance of interest by a method different from that adopted by the Acts of law, with no intention to evade the Act, does not constitute interest. The method adopted by the continuance of interest in 1 C. is always to "keep," in the first place, to the interest that has accrued, if there was that then added, then added, to the taking of the homestead, but if there do not amount to as much as the interest, all after deduction from the homestead 1 interest, there may remain more actual due than there are in fact, yet interest must never be cast on any greater than that for if that were allowed, it would be excess interest when interest.

It is now called that the receiving of interest before the end of the year is not necessary, so somewhat more than last part is in this way obtained.

Compound interest is not considered as necessary.
circumstances of the borrower, liable to be found out as the condition of forbearance, &c., of Ch. 4, will grant which. 

If a sum greater than simple but not exceeding compound int., is received not as interest, but for forbearance, the cont. is usurious.

An increase of int. in nature of a penalty for non-payment of the principal, at the time due, and interest thereon, not considered as usurious, the obligee having in his power to avoid the hundread or the additional interest, without interest, being given.

But would not relieve it, as a penalty, if for the ground that the credit price of merchants is not usurious.

When according to the terms of the cont., there

3d. 3½. 3½. 3½. or an actual, bona fide, hazard of the principal

4d. 3½. 3½. or a reservation of more than legal int. Be it over

9. 2. 3. 2. or much more) is not usurious. As in the cases of

bottomry, securantia, annuitas for lives, &c., but a

more hazard of the interest, will not justify the

taking of more than legal int.

The hazard in these cases must be real not color.

On the ground of an actual exercise of the principal, the lending of cattle in C. to be returned whole at the end of 3d. yeares, is not usurous; the mere in case of accidents happening when the loaner.

But there must be an actual lending it a real negociation or

the cont. will be usurious.
of the Sec. 1st. it was said. Generally, contracts to bear the interest of the country where it is made, but if it is relating to a transaction or business that has occurred in another country, it may many times in the end of the latter. It is presumed that if a contract were made in one country, the security for it executed in another, the int of the country in which the contract was made might be received in the country to. If it was to be performed in the latter country?

if both parties reside in the same State, or in a different State, there execute a contract for the loan of money, the contract would be governed by the laws of that State to which the parties belonged. If it were not there?

1. cont. original, here, is not affected by a last request express agreement.

2. If the original contract is made the condition of another the latter is void. But in such case it has been said of course.

3. The original agreement of the innocuous bond, defined the security to an innocent third person in whose hands the obliger renewed it, not disclosing the same. It was here that the ruin was begun, & thus far, security good. The Sec. 2d. int. have decided the same point except that the 3d person was a lessee of the obligation.
Contracts. Usury.

If two costs, one good & another usurious are mortgaged in one security. If the security is afterwards avoided, it has been a question whether the good cost receives. When principal, it would seem that it does receive. For such security when avoided, is considered as void to all intents & purposes at first; it cannot even be given in evidence. It would seem absurd then to ascribe to such security so much efficacy as to merge it & annihilate a cost which was originally good.

Doug. 708.

Bills of Exchange & other negotiable instruments which are usurious, are void in the hands of innocent indorsees, otherwise the flat might be wholly useless.

In reasoning upon it is necessary to state that there was by corrupt agreement received more than at the rate of 3 3/4 per cent, or lawful interest viz. 10 per cent. Stating how much more, but it is not necessary that the proof should tally with this statement, if any more is proved, it is sufficient.

2. donor 33
Contracts.

A contract, fully, as in negotio in vento, is money has been paid for a such contract, it may be recovered back as having been paid without consent.

CP 1825

Fraud in Contracts.


e. Avent 1825.

Fraud in the execution of a contract eviden or intently, to make a contract or novation, or to induce a breach of contract. But if the fraud is in the consider, the contract is good, as well as reduced to writing, the in such case, it will not have any in force of the person imposed upon.

The reason assigned for this distinction between fraud in the execution or fraud in the consider, is that in the former case the last imposed upon, does not in any of the law, affect to the contract, but that in the latter he does. And if such contract, nothing in both cases?

The real ground of distinction is, that that where the fraud is connected to the consider, it would be inadmissible in many. To determine from the terms of the contract whether fraud has been breathed or not, but as to fraud in the case here is obvious.

The rule of C in C, has in cases in which the fraud in the consider was not partial but total, in any where the last cheated has received nothing considered the contract, as utterly void. The law in Eng. however, seems no, since it is not to the contrary.
In cases of the last kind, when one has paid money, he may in discharge of the cont. recover what he paid, or he may compensate himself, by an action for damages in appearance of the cont. But if the goods be handed over in this case, and other than money, the latter coming only can be recovered. For the latter for money had to be paid once for money itself.

When this relates as to cont. to partial injury in the contract, it is always upon the terms of settl- ing the parties to the situation in which they lose, before making the cont. of therefore, the party embroiled who has received goods of any value, he must restore it to the other, before he can have his relief.

Of the Action of Tragedy.

This action lies:

1. Upon the warranty, when one falsely warrants goods sold, as being better, or as being good in its kind.
2. On the false affirmation, when the vendor of goods affirms that it is known, or that it has higher qualities, which it was not.
3. When the vendor of his own goods conceals private defects known to himself.

In actions on the policy warranty, it is not necessary in order to entitle the vendees to damages to show that the vendor knew the warranty to be false; it is sufficient that it proves to.
Contracts. Action of Fraud.

Co. Sec. 102.

An action may be maintained on the warranty, it is necessary that it be made at the time of the sale, if it be made before it may amount to a false affirmative. An action to maintain when that is.

2. Sec. 110.

An action will be when a warranty, when the vendor warrants quality which it is apparent to every one the party has not to lose for there has been no fraud or deception.

Co. Sec. 114.

An action lies as soon as the fraud or falsity of the warranty is discovered.

2. The false affirmative or declaration made by the vendor, relating to the article sold which has induced the sale of it is a fraud for an action.

A false affirmative or declaration made by the vendor, relating to the article sold which has induced the sale of it is a fraud for an action.

But this affirmative must be relating to fact, not to mere matter of opinion, as if the vendor should say that the horse was worth $100 or that it would fetch so much, no action would lie, for this was merely his opinion. But if he should say that he had offered him $100, then in fact it had agreed that $150 or because nothing at all this would not lead to an action as it is does the false affirmative of a fact.

Co. Sec. 116.

According to the authorities in Co. Sec. it seems that a false affirmative, if qualities which the article sold does not which is no ground for an action for damages, but this authority is now overruled. It is evident from this that according to the old rules, a warranty was in all cases necessary.

3. Dumf. 52.

An affirmative is a warranty in law as it intended.

3. Dumf. 53.

A false affirmative by a person not entitled in the co will lay a found for an action ag. them.
Contracts. Action of Fraud.

3. If there is neither equivocation or an affirmative

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tion of equity, or a breach of trust, will have a foun-

dation for an action even if the vendor had

nothing to conceal from the vendor, or if he conceals

any fact. Such an action, in good faith, ought to have

its due. A which concealment induced the contes-

ting party to act, the damages have been fully recov-

ered by our Sub. 6.

If one acts in good faith (which is of no value at all)

If one acts in good faith (which is of no value at all)

If one acts in good faith (which is of no value at all)

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3. Vict. 203. We have here, that on principle such an action might

3. Vict. 203. We have here, that on principle such an action might

3. Vict. 203. We have here, that on principle such an action might

be sustained.
Contracts. 

Action of Fraud.

Whenever one sells to another, the law raises an implied warranty on the part of the vendor that the goods belong to him. If it does not, an action lies against the vendor, under which he actually affirmed it was his or not; and, then whether he was in possession of the goods at the time of sale or not. Then an action is laid on this implied warranty.

Surety. 123. The authorities are contradictory as to the question whether a surety must be styled in the vendor; i.e. that he knew that the goods did not belong to him. The author of the surety must be styled in the vendor; the surety must be styled in the surety; and it was not his name. In these authorities, 124. 125. 126. 127. 128. 129. which make the surety meet in the surety, the goods have been said not to be necessary to be taken out of the action, he then by surety. 130. 131. 132. 133.

1. Decr. 31.
2. 1. N. 32.
3. 1. N. 33.
4. 1. N. 34.
5. 1. N. 35.
6. 1. N. 36.
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135. 1. N. 165.
136. 1. N. 166.
137. 1. N. 167.
138. 1. N. 168.
139. 1. N. 169.
140. 1. N. 170.
141. 1. N. 171.
142. 1. N. 172.
Contracts.

Contracts arising as frauds or imprisonments on

153. 135. 345. 125. These concerns the there is no cause between the imme-
168. 103. 42. 145. 193.
118. 187.

402.


Fraudulent contracts not affecting the interest of third


2. 168. 135.

persons may be revoked by a tile suit. an agreement in the

the bond original estated will be retracted as will be required

his rights when executed contracts a disadvantage

ous contract it must be charged to his own fault.

4. 100. e.

245. 233.

and no validity to assignment. how is the "how is to

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unwittingly, it was bound with the bond to

enquire into the it was bound with the bond to


6. 14. 23. 24. 23. suit as intrinsically. correct can now

10. 310.

3. 242. 4.

116. 59. 1. 125.

115. 59. 1. 125.

unless at the time of reliving the orig. cont. this

3. 320. 302.

her did not act truly, was ignorant of his rights. so.
Contracts

of Trusts

All suits or levies for costs, obtained by
this statute, shall only be payable, grants, if
soeks may be avoided. But, the duty must be
beat. Accrue to an action on such cost, or security,
it cannot be given in evidence under non est factum.

Where a security for a fine, bond, etc. is taken
by duress, then avoided. The original cost, reserved


Duress is of two kinds: 1. Duress of an owner
ment. 2. Duress by means.

Duress of intimidation. is an illegal return
of another's liberty. If a cost is induced by the
means it may be avoided. In any ill treatment of
a person when in court, in order to obtain a cost
under it void. But, if one is arrested without
by the course of law. He can have a bond to secure
his discharge, at the time, there was no ground of action
whatever, yet as the breach was in form legal, the
bond it cannot be avoided on the ground of duress.

2. Rob. Com. 23.

Trusts to constitute legal duress, must be a meas-
202. Rob. Com. 6. 317. of the life, limb, or liberty of the person
who
any extent of threat, or violence. A threat to destroy property, or to commit
a battery, if it do not amount to a mayor, or less,
but amount to legal duress, the title author-
ted on the point are somewhat contradictory.


It has been considered as a rule, that the duty
to avoid a cost must be in hands of the person
himself making the cost, i.e. duress on a stranger
will not avoid the cost. But, costs obtained on
a sale, may or may be always pleaded in avoidance of a
cost entered only on the basis of a consecon of that
duress.
Contracts. Surety.

In some cases, the debt is incurred after a will, or other near relation of father, or brother, but no further, has been adjudged to avoid a cont. But as to this point, the authorities are directly contradictory.

In pleading surety, the manner of the incumbrance must be so stated as that it may appear to the ct. to have been done falsely.

Ch. will relieve up: cont. obtained by undue influence, if it does not come strictly or to legal surety, because the cont. was not freely or voluntarily made but in order to entitle to such relief the cont. must be unreasonable, for, if it is a reasonable cont. they will not interfere: so if the influence be such only as arose from due reverence & respect, as to a parent & they will not relieve.

Cont. obtained under surety may be confirmed.

1. Pl. C. 130. 
2. Pl. 130. 
3. Pl. 127. 
4. Pl. 130. 
5. Pl. 315-40. 
6. Pl. 130. 
7. Pl. 127. 
8. Pl. 130. 
10. Pl. 130. 
11. Pl. 127.

But such confirmation must be made freely without any undue influence to obtain it, or with no more knowledge of the legal rights to the hurt making it.
Contracts

Contracts require to be written.

At common law no contract was required to be written, but by
a Stat. 23, 24 Geo. 2, c. 2, called the Stat. of Frauds, 2
which we have no parallel in C. V. because the Statute did not
operate until that had received a construction by the tria. As
the authorities upon this subject are well authenticated, it
is made necessary that the following should be mentioned.

1. Any contract to buy a clock of the testator or intestate in order to be binding when the testator

2. Any contract to sell the land to pay this duty or to answer for the default or miscarriage of another.

3. Promises in consideration of marriage.

4. All contracts which relate to land, except in cases where 3 years

5. All contracts not to be performed within one year from the
time of making them.

But as for certain reasons have taken many cases out
of the Stat which fall literally within it, it is to
be considered with some qualifications.

1. As to the first rule, it is the case of an executor,
has sufficient funds in fee simple, will not bend
an oath to dissolve the Stat. But if the funds of sufficient a debt
shall not raise an implied promise.

2. Where cases are taken out of this clause of the Stat.

3. Where cases have been entertained as to the ground
when it is true, some have considered that a promise
in a third person for the testator or another for which
there is no consideration is binding. A complete once into
this section, but afterward acknowledging it to be erroneous
of this case to be established... the ground for taking cases
out of the Stat. It would reach nearly every case, if the
provisions of this part of the Stat. be almost entirely be
stated. The law has been that if there is a
promise by the 3 person to the executor that it was
the part of the Stat. but this is not the case. In the

5. Nov. 26th, 1725.

6. Nov. 26th, 1725. That if the cost of making the 3 person bear

7. May 1755 015. That... the execution of provisions of the same.Davis

8. 035 2 035. 3. Pers. 8. 035 035 035. 035 035 035 035.
bound, nor written. But of the new promise, it is of no force unless it is written. In the former case the promise is written in the latter collateral. E.g. If C agrees with A to lend him B, then B is bound to pay the promise is by parol. But if A says I will pay the debt of B, a third party, if B have goods, I will pay you of the goods, the promise is not binding under no written.
3. The third rule contemplates not promises to marry, but costs for marriage settlements. Sir. Parole promises to marry are binding.

4. Notwithstanding the words of the Stat. Parole bore an respecting coat, are sometimes binding.

1. Where there is a purchase at auction, which auction was sold under the decree of a Ct or by judicial authority, the better by Parole is bound. And there seems to be no reason why the rule should not also extend to auction, which are not held under the direction of a Ct, for the danger of perjury is no greater in those cases than in the former, the nature of the transaction being such as to prejudice almost the possibility of.

2. A parole promise respecting the purchase of land will bind the promise if it can be shown there are other than Parole evidence. Even that may be admitted when it is not for the purchase of the land but for the improvement of the lands the cost in a Deed.

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3. Costs: declaring that if executed or partly executed on one part will be enforced in C.C.; continuation of the maintenance or full cost in a C. of Law, either for non-performance or a breach of the contract for the damage sustained by the party who has in fact paid: (t)

The law provides also for the execution of some contract where one party has sustained a benefit to himself or occasioned an injury to another by means of a contract partly executed; he shall not be at liberty to rescind unless the latter is in the hands of the party which he might rescind after the other has executed on his part the whole contract. This will make a sufficient reason for the contract, in the way of maintenance, for which the party is entitled to rescind, which is the design of the statute, has once more

...unanimous in which the party refusing to perform a bond, amounting to a breach amounting to a greater advantage of the party, this would necessarily follow a more breach of promise, which will perhaps always be the case where the contract is partly executed on the other side, and will induce the adoption. A man is allowed by that rule to rescind his interest, as to breach his promise, so as to avoid that he is about to derive a benefit from the breach. And will not suffer him to do it.

Payment of money by one party will be considered but a part performance as to take the case out of the statute. (t)

...of the case here to declare the contract.

Actually, marriages are not such an execution of an agreement, so much a marriage settlement as will take it out of the statute, for the act of marriage avoids no breach of the existence of any agreement. It considers it as such a breach would defeat the provisions of the statute.
Contracts. Sale, Purchase, Assigns.

5. As to the clause of the statute which enacts that "no verbal promise to be performed within a year" shall be legally binding if not in writing, it has been said: That when the term of the contract cannot be performed within a year it is within the statute.

But if the promise can be performed within a year, or the act performed within a year, then the contract is not out of the statute.

On that part of the statute which requires that the contract or promise to be binding must be in writing and signed by the party to be charged therewith, it has been determined that the name of the party written in any part of the instrument, with a view of giving it effect, is a sufficient signature. Thus, the signing of the name as a writing has been adjudged sufficient, but merely writing the name without such intention, amounts to nothing.

2. Ibid. 373.

Even where there was no signing, but one party having signed, and the other being present, showing an entire acquiescence, it was held that it was binding.

1. Ibid. 240. 2 H. 322.
2. Con. 6. 257. 2 Litt. 618.
3. Ibid. 2 Plow. 139. 4 Litt. 618.
4. Be. 620. 1 W. man. 17.

A. 620.

B. 533.

I. Sheding the Statute, &c. It is necessary to state that the contract was not in writing.
A debt of a lower nature may be merged in one of a higher nature. But one debt cannot be merged in another of equal degree. To make a debt a bar to another, however, must not in all cases merge the original debt. But if a bond or other security which contains the condition of non-interest is given, the bond or security is merged. To a written contract, when the contract is merged in the same manner. And this is the mode by which to determine whether the one debt is merged or not. For in this case, when the debt is totaled, the contract: at least, if it does not merge, the one, could, but a debt may be lost when that debt is merged, in order to be paid. No debt which is due, in future, or annually payable, by instalments, merged by a bond given to secure it? The bond acknowledges a present debt.
Contracts.

Page 322. Sect. 122.

1. A person who is to be benefited by a contract will become by agreement a party thereto, and will have the benefit of its provisions.

2. If a person shall be ordered to execute a contract, and shall offer to discharge it by a legislative act, the contract, if it be not absolutely performed by the obligee, shall be ordered to be enforced in Chancery.

3. If Contracts executed for executors.

4. Costs, executed, are those by which the parties may transfer their rights to each other, by which any estate or interest is transferred to another immediately on the happening of some event, which does not depend on either of the parties.

5. Costs, executory conveyances, vest no present interest; but they vest in, and vest immediately in the grantee, and vest in the grantee, if the grantee is executory.

6. A grant executory of a thing of which the grantor has not the actual or potential possession, and if such possession has been in use, it may be recovered back, if the grantor wants what is to be done with the thing granted, he has the equitable ownership of it.

7. But in this case applies only to executory conveyances, where the grantor is blind to fulfill, or has damaged.

8. But in this case, if the above rule is in a man's title a particular part, he does not own it at the time of the grant, if his knowledge, or what of the part he is about not only because the vendor is able to deny the same, but unless, because of the sale was made, the grantor might use the cost of conveying immediately unless the landman accordingly. It should be that there is no need to record to bind the landman against the same, but there is no case.
The maxim that to every cause there must be a cause
obtains in its full extent to executory contracts only. And
the want of consideration is a valid defense to such a contract.
If an exec. cont. is invalid by reason of non-consideration, it
will be necessary for the owner to prove a valid consideration
in order to make the contract effective.

A deed of land delivered is considered as a deed
executed, but a contract not being necessary to render an
executed con. the fact of the delivery is the only touch
central to the validity of such a deed. Whether there was
or was not accorded is in many cases totally immaterial.

A verbal bond for the payment of money is usually
delivered good without a consider. Such a bond usually being
in contemplation of law the same as if it were a bond for
money. Therefore a cont. executory is binding even if the
years that the bond was in contest, the delay
that the cont. arose in this case all executory con.
the only material enquiry.

A single bill was not formerly considered as a cont.
executed, but a mere promise under seal, the consid. of
which might be enquired into. It is now, however, in the
same footing as a verbal bond.

A release is also a cont. executory.

If a cont. executory is under seal, the consid. cannot
be enquired into unless by written documents a sealed in
stam. according to the Gen. law carrying with it the
very evid. of a consid. to be attacked by parole proof.
But if it appears from the face of the instrument it has
written proof that the cont. was made without any
consideration nothing more than nominal damages can be
recov. on the cont. the consider. to go, to answer
under seal to execute a release if made without consid.
will entitle to nominal damages only. This a more
actual. made without seal, is void without consid.
A will the said 3dly described cannot take effect in a cont. because it does not
pass to the heir after the death of the executors, etc.

Letting in C. since no additional element to a
written instrument. If the cont. is written a consid. is
presumed. But it without parole proof is not a reason
that there was no consid. the 3dly of execors was sued
to judge that not even nominal damages shall be recoverd.
The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by the legislature. The law of 3d of March 1823, which is now in force, has in part been much abused. It has, however, been in general, very beneficial to the public, and has very much been improved by th
when, which, such an action might be instituted would extend as well to any other person as to a relation, for it must be upon the idea, that, in the promissory note of this kind, is convertible in case to bar the money owed to the assignee are ever recovered from the promisor in an action at law, the relief of the law which is to avoid the multitude of suits would require that the person intended to be benefited by the promise should bring the action in the last instance.

It is an acknowledged principle that a contract of sale by A to B, to return to C, or to negotiate or refund to third parties, D. or E. may be the action. Of this principle, by a well-considered man who availed himself of attempting to prove that notes were negotiable at common law, it does not happen that an action may be maintained immediately, but the certainty must be introduced, and the last instance without the intervention of the promissor.
A promise made in consideration of an act to be done is not binding till the act is done. A promise to do an act, and in a suit on the promise, the party liable to the promise, has offered to do it, is not a breach of the promise, and in a suit on the promise, after at least an offer of perform" must be averred. But when an promise is on account of another promise, perform" must not be averred by either party. In Eq. We have learn of late as "constructing promises independent. But is it in Equity, when the agree to are thus understood? 1. Suit, 1792, 201, 600. 2. 1864. 383. 3. Suit, 1864. 383. 4. Suit, 1864. 383.

In case of conditional promise as if I agree to pay a debt to B on the 10th of Dec. A saying 1000 A agrees to pay 100 to B on the same day or making such debt. The case is inchoate only but either party may on the due time, that party afterwards close it by performing the debt. If neither party performs his part at the due time, the case is at an end. Suit, 383, 2. And if on promises of this kind a suit is took by one party perform" must be averred 600.
Of the Action of Assumpsit.

This is an action laid for the recovery of damages occasioned by the breach of any contract or promise.

Promises are of two kinds, 1. express & 2. implied. Either an express promise lies an action of contract at law. An implied promise an action of indebitatus assumpsit.

When a contract is detailed at length, whether in writing or not, sealed or written and sealed, the action for breach may be brought upon the promise. It is when the instrument containing it, that may be used as evidence of the promise; and if in contracts of this kind a debt is created by the agreement, a special ass. indeb. ass. The action of debt is concurrent with debt, and the defendant may have either at his election.

When a breach of contract for the performance of some collateral act, as to limit or house to pay the debt not inter.

Ass. indeb. ass. for recovery of damages, they are uncertain. But if the damages for non-performance are arrested by the parties in the contract, indeb. ass. may be had. In the latter case the party, the promisee may, at his election, bring indeb. or ass. to the same as a debt, or a special ass. for damages by the party who违约. It appears that the remedy was in nature of a security for performance, to make the promisee stronger. But if it appears that the promisee was to have it in his election to desert the promisee, and have the benefit of the contract, in case of non-performance, can he for the penalty only.

A special ass. based on a promise to perform the act, the party who breaches it, shall not recover the debt.

In the creditor of the promise must show in evidence,
Incumbent acts. They in some cases in which a spec-
cial act does not lie. For the breach of goods sold or a quantum
venditum, where no express contract was made, and for services
done or a grant made, no action having been fixed on by
the parties. And it is not necessary for the debt to decline
for the brecaion occurs. If for money loaned or for mo-
ney expended for that which it was the duty of the def-
claim to do, no debt lies. In these cases, debt also lies. In
such cases, debt also lies. In de-
4, 125.

Bart. 303.
4th. 27.

3d. 27.

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17.1.


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tual, as it is in its nature an equitable action.

It is, therefore, a general description of the case in which it lies to show that it may be that, where the debt is obli-
gated by a decree of natural justice & equity to refund money
that he has acquired of the self, or to buy, of the self, has
a legal right to demand the same. When the same be-
collected, any equitable defense as to the debt is good and
thus

that the debt is not bound in conscience to buy the self

This to recover back money obtained of the self

by composition, forced a marriage, extortion &c. If a per

son, by some fraud or trick, has obtained of him, he may not only recover it

out of the hands of the person who defrauded him, but

due from a third resource, if the third person came by

the property which gives the right to the one

who

Conn. 147.

In cases of obtaining from the right owner

by force. It is where a greater sum of money is deman-

24th, 27th.

ded for a reason than it was intended for it shall, under such
circumstances, be indeed, if it must be such a case that the

maxim "volenti non fit injuria" will reasonably apply.

Money laid on a consideration which belongs to the

may be recovered back in the action. Where the vendor

has no title to the property he has sold, which at may be

lost, for the consideration of an action on the implied warranty

of money laid on a consideration which belongs to the

for an act not to be done. The act or done, under the law,

for the money laid, in discharge of the debt, in an

seen for the damage in accordance of it.
For money paid under a void authority, in some cases for money obtained by judge of at involve of the. 

But in the last case the action lies not on the ground; that the judge was incorrect; but by reason of some circumstances attending the judge's act, some subsequent relief consisting in equitable relief to recover the money, or of course, be made upon a bill which is assumed to be last. It is not so: it is an error to recover that if the judge afterwards consents to recover, an action of which all will be by the

(22) 104. 1332. A. 2. 2. 122.

This is laid down as a general rule, that the act cannot be

not sue in one form of actions when he has a remedy of a

higher nature. This rule holds good only when the remedy

will be lost in the lower remedy.

In act of requisite will not lie when the question is

the money obtained belongs to the defendant cannot be

faults tried in the form of actions.

(22) 24. 72. 24. 2. 254.

That species of writ, as called the action for mo-

ey that is received which is the most general kind of writ-

ah, it is fact; for money only. It will not lie to re-

cover; and as of the public kind, but it is fair, will not

be, even for bank-notes, if transferred, expire is himself the

strength to have brought suits for them. A rate of

if money has been actually received to the deft.

use, an action for money laid and received. That is generally

is good in C. as well as in Eng. But in other cases in this

such as, if there is no express as. C 24 in C. require

the deft. to state in his declaration the manner in which he

debt became indebted, in order that he may be prepared

to make his defence as to that particular claim of the
A mere acknowledgment of the existence of a debt, if it be accompanied with a refusal to pay, may be considered as a foundation for an action of ass.
Of the action of Book-Debt.

The action of book-debt is in G, a Substitute in some cases, for the action of G.

In the action of book-debt, all parties interested are allowed to be witnesses; even a wife is allowed to testify for or against her husband. The parties are not however permitted to testify to all facts, nor indeed to any except the truth of charges on book. As to the quantity, quality, delivery of the articles charged, as also to the price agreed to be given.

Any special agreement between the parties, or any collateral fact having no immediate connection with the delivery of the articles charged, is a sufficient ground of complaint of the amount of payment must be proved by common law evidence.

In this action, the jury may be different from that in an action of assumpsit, for, upon trial, a balance is found in favor of the defendant, and must be rendered in his favor for the amount of such balance. If the defendant does not exhibit his demand, he cannot afterwards maintain his action of book-debt, if the right entitled be assigned to another person for non-payment of the claim at a former trial. If he does not exhibit the demand, he may bring his action of book-debt afterward, and the plaintiff will recover his costs. He may not be allowed his costs unless he gives some good reason for not appearing before.

The mode of trial may also be different for the plaintiff is empowered to exhibit and show to the account. It is required to exhibit and show the balance. This mode is frequently adopted when the accounts are lengthy.

This action of book-debt seems to have been extended much beyond the original design of the legislation. It now lies in all cases where an indebtedness is proved, and that or quantum meruit will lie at law. A person who has paid in some cases may be charged upon book. This rule which determines the liability of charges of this kind is established by the debt: it is this rule concerning the three circumstances of the parties that form charged on book.
Book Debt.

A sheet to be struck on one, as might in the common course of business have probably been done. The security taken for the charge shall be allowed; otherwise it will be rejected.

If the note is a bond or note signed by the parties, and a security for the debt shall be allowed, the security for the debt shall be allowed. If it is a note signed by the parties, the security taken for the charge shall be allowed; otherwise it will be rejected.

A bond or note signed by the parties, and a security for the debt shall be allowed. If it is a note signed by the parties, the security taken for the charge shall be allowed; otherwise it will be rejected.

The rule is, in substance, the same as to recover a debt. A debtor to swear directly to have made or to have paid the debt, in effect, the same, for it occasions the debt instead of one.

When, in cases of book debt, there has been a settlement made, signed by the parties, the debt will not suffer an enquiry into the items, unless some mistake in connection is thereby suggested, and in that case the parties themselves cannot testify.

When articles have been lost, not or stolen by the borrower, the debt will suffer them to be charged in the books, but, in no case, ever to change the other articles.

The debt does not lie for any loss nor is allowed in any of these cases in which either of the parties, unless a contract to which the parties are implicated, or, in case of money, he is the mistake.

If a party in this action has a book containing the original entries, it must be produced. If he has no book, he charges made from memory are allowed.

In an action of a b. on a quiet chat, or quiet title, the same rules of evidence obtain. In an action of book debt, the parties themselves may be witnesses.

A running debt is not affected by the Statute of Limitations.
Of Plans to Confirm

Of the Plans to
an Action of

And 1. Of defence occurr with the contract.

It is a general rule in Eq. That in an action of
Stay also thing which goes to defeat the right of recov
ery in the Eq. may be given in evidence under the
general issue. That is the uniform practice to plead
many of them. Similarly. To O be held that every
thing may be given in evidence under the general issue except it
be the act of the defendant which defeats his right
of recovery as a release.

1. Insanity may be pleaded or given in evidence
under the general issue.

2. Covenants. 3. Baby. In an action but a
covenant running with the land, agt. the heir of the life

Infancy is no plea in bar.

1d. 3d. a. 1d. 3d.

The impossibility of performance pleads in the
face of the statute is a good defense when admitted.
But if the possibility can not thereby be shown, it must
be judicially decided.

3. That the contract is void and
negatory. 4. That the contract is illegal and void.

To this action.

5. Death may be pleaded in bar, or given
in evidence under the general issue.

6. The want of a consider. or that the consid.
was not made as given in evidence under the gen. is the
contract. Until the consideration is given under the executed con-
tract, it in the form of a specialty, and bond &c. But
if the want of consider. or given in the form of the Eq.
The contract is an executory one, a Demurrer will heard.
2. Of matters arising subsequent to the contract.

I. By a Stat. of Civ. l., c. 15. The Stat. of Limitations "Prescribes, that no simple contract, shall be binding, in law, after six years standing." The Stat. of Limitations limits actions of

2 Dec. 215

6 Dec. 225

under the gen. clause, in the former it cannot. The rule as to the latter is the same, in this -

It is a question much debated in C. of H. &c. in C.

In the 2d, 3d, & 4th, in which the Stat. of Limitations was in

192. 292, 302, 320, &c. 598.

Rules in Pands., C. 15. Can't be recovered, for a subsequent promise of reform. In this. In the 3d, the statute, at the 1st instance, as to be foundation for an action - in whether

193. 194. 303.

110. 115. 120. 125. 130. 100. 105. 110. 115.

105. 110. 115.

The subsequent promise, in cases of this kind, always

130. 125.


one of the parties, may, to control his action on the new promise of the


545. 550. 560.


For the subsequent promise, in cases of this kind, always

130. 125.


I cannot decide, in the case of one of several joint defn. of the act of the defendant, whether the contract is rescinded. For, by 2d. rule, answer, since such an act amounts to a


of Pleas to a Sharehold - Stat. Sin. 3d

A payment of part of the debt &c. But a mere promise by one is not such an act as will entitle the dept to recover ag't. such.

The Stat. Sin. 3d begins to operate on such contracts from the time at which the right of recovery accrues, once from the makers of the contract. Contracts, the performance of which depends on contingencies, are not within the Stat. 4th. Indeed, the Stat. 6th, which begins to run on liens, would from the time of making, extended to these, it would in its operation totally defeat a considerable proportion of them.

There a promise in the Stat in favor of some court, expires persons beyond ten yrs. But the Stat. allows that the rights of the parties, that accepted, would not be affected by the Stat. if there were no promise.

(cod. 134.)
Of Place to At - Stat. of Lien 17th

But notwithstanding the power of the State
has once began to run under a contract, it cannot afterwards be taken out of the State in favor of the person
accepted in the process.

If one of several joint creditors is within the realm
the State attaches, the the other are about?

There is some contradiction in the authorities, as to
the question, whether the State affects an indeb. apn. 17
The rule, however, appears to be this: If the indeb.
also is founded on a cont. the State relates to the other
wise, it does not.

If the indeb. apn. be for a length, imposed by the
law, taxes, of a corporal, it is not affected by the State.
The State does not abate, where the cont. is an
unpaid trust. The same principle prevails one case.

A promise, an acknowledgement within 6 years takes

But an acknowl. 
egement accompanied with a refusal to pay, does not.

Yet if there was an offer to pay a part of the debt, a
recovery to the debt, a


This Stat. does not affect a running act - when
St. 13o. 152.

The demand was matutine, doubts 40., have been given.

Within the time limited -

In C. all title to lands may be lost by the right
ful owner by an acquittance of 13 years, in an adverse
possession. By ven. that the right of entry, the right of
start, or lost together. And he who has the latter,
has the former also. The Stat. does not extend to
with consolidated lands.

A title to lands cannot be acquired by the
length of quiet possession, if such possession was founded
or a mistake of the parties in making partitions.
II. A second defense arising from matters subsequent to the Assumpsit is Accord and Satisfaction.

Accord and Satisfaction, is where the obligee to a contract, agrees to receive of the obligor, something other than the contract in satisfaction thereof, or something more or less than the contract agreed when sued for in satisfaction of a wrong.

It is a defense, that may be pleaded in bar of all actions on simple contract, and all personal actions, for damages.

Second Satisfaction cannot be pleaded in bar of an action on a bond, when the right of recovery grows out of the bond itself, independently of any collateral matter, for the reason that Payment in England cannot be pleaded to a bond, because these defenses are not of as high a nature as the bond. "Satisfaction and Bargain go together." If however a good defense against an action that to recover damages for non-performance of the condition—According to this rule, it would seem to be a good defense to all bonds other than single bonds or those without condition.

But it is said that the Debt may plead accord and Satisfaction of the money due, and bond. This not to the bond itself.

If the accord and Satisfaction is made before a right of recovery has attached that is before the happening of the bond has become perfected, it is a good plea to granting an action on the bond itself.

But suppose that in accord Satisfaction is accorded, in an action on a bond, or to any thing else, for accord Relief is merely a substitute for payment, and
and payment without a release, may be pleaded in bar of a recovery on a bond without specially-

2. A bond in Expr, be given for the performance of collateral acts, accord and satisfaction, is no defense to an action upon the bond.

Requisites of a good Accord and Satisfaction.

1. The satisfaction must appear to be full & complete.

2. At least the contrary must not appear. The true, payment of a less sum of the same species of property, in satisfaction of a greater, is no accord & satisfaction which can bar an action, unless, the time, place or other circumstance is altered in favor of the creditor. The reason assigned is, that without such alteration, there is no consideration for the creditor relinquishing, that part of the debt, which remains unpaid.

Any compensation of which the value is not self-evidently less than the sum due, may be a full & complete satisfaction, if a consent of given & received, as a fact. But when the thing due, that which is given in satisfaction, if it are the same in species, a difference in the value, may always be entirely evident, as if a man agrees to receive 23 in full\footnote{2.0} of $10, the difference, immediately apparent. But where they are different in species, certainty in value is not necessary, and the agreement Should be to accept a pint of wine in satisfaction, for 10.

The good sense of the above rules is needed of almost all the law where accord & satisfaction may very easily be abused. A creditor is willing to receive 23 practically, even receive 23 in the
to the 4th. Occure Watergate

[Text continues]...
III. An Award of Arbitrators, is a good defence

When by principles, a title to lands can never
pass by an award of arbitrators: even if a deed is deli-
vered or an ejectment to arbitrators, to be given up to the pre-
nending party; no title will rest by their delivery, since
very of such, is indispensably necessary to convey lands; and
this cannot be given by Arbitrators.

But arbitrators in Eng. may award the conveyance
of lands; and if the person to whom the award is made,
does not convey his arbitration bond is imperfect.

in a deed, kept into the hands of arbitrators or
on escrow, to be delivered to one or the other party, ac-
cording to the award; may convey a title to lands. For the
title here rests not from the delivery of the deed, nor
from the conveyance of lands; but from the recording of
the deed, that to whom it is delivered, may have it recorded
immediately. Therefore as the perfecting act (viz. the record)
in Eng. depends on the person in whose favor the award is
made, the same objections do not arise to the idea of an
Award, creating a title, as in Eng. where the executing
act (viz. the delivery of the deed) depends upon the person
of whom the award is made.

If the old right of recovery belonging to one of the
parties, is superseded by the award, it is not so in Eng. it is
generally the case, that no action can afterwards be laid
on the original claim. Yet, in cases of this kind, the old
right of action, is not in every instance, so completely ex-
tinguished as to be incapable of being revived. For there,
a new duty is created by an award, if no obligations have
have been given to abide by it, if the parties have
nothing in which to rely, except the award itself; and may
be had to the orig. cause of action - unless the award be
performed, or a performance tendered, at the day appointed.

But if the award itself creates no right of recovery
as of contract, the making, rescission, release, &c. result
may be had to the orig. cause of action, even before the de
due for performance.

Because no quittance to abide the Award no

With regard to Bonds. Submitted to arbitrament the
some rules are adopted: as have already been mentioned
under the head of accordance. According to Eu. benign.
Bandeau. in no case can be admitted. To prove payment of a Bond
unless the evidence be of as high a nature as the deed itself, and the maxim: Solvitur co legamine qua legis-
justicia to all cases where the debt grows to, or accrues from
the deed or instrument itself - also, therefore an Award
would be necessary.

The following truncates reflecting bonds are not
advisable in Co.
Arbitrators have all the judicial powers of a Court of Law, as a Court of Chancery. They give damages or award as a specific performance of contracts. A Court of Chancery does not, except in very special cases, decree the specific restitution of personal chattels. But it is not uncommon for arbitrators to award such a restitution. And the award will bind the parties to completely, that they may not be held to the person refusing to restore them. This, however, applies to those cases where no bond is given to abide the award: for where that is the case, the remedy for non-performance is on the Bond.

Arbitrators have also the power of a Court of Chancery in requiring evidence except that they cannot compel the production of books. Their authority may extend further than that of any Court, or if it be agreeable to the parties, or if it be annexed to the award, they may admit the parties and all other interested persons.

Criminal or matrimonial causes cannot be settled by arbitrators; neither can the settle title to lands, or a dispute growing out of a bond alone.

But if there are a number of controversies submitted, among which is a bond or specialty, an award is made respecting them all, the award is good. The Bond held to it.

1. Of the Submission.

The principles of the civil law have been gradually interwoven with the old common law, respecting Arbitrations. So that this title of the law has undergone an almost total change. Hence, the ancient & modern authorities are extremely contradictory on the whole subject of Awards.
A subscription to a testament may be

1. By parole; in which case, an action of Debt may be brought on the Subscription, or an action of tort on the promise contained in the Subscription—provided the award is for a sum of money, but if the award is not for a sum of money, an action lies on the promise to recover damages for non-performance. When a Subscription to subscribe is by parole, the Subscription may be with or without a promise to abide. And if there is a promise to abide, it may be with or without a consideration. In all these cases if a sum of money was awarded, debt always lies to recover it.

But if the award enjoined a collateral act, as the delivery over of an house, or a horse, or other property, no remedy to enforce the award was at first due to the breaching party—unless it was in writing, and could not be so enforced.

Afterwards it was established, that if there was a promise to abide, the award reflecting a collateral act might be enforced, but that if there was no promise to abide, the award could not be enforced.

At a latter point, the rule was that if there was a promise to abide, the award reflecting a collateral act might be enforced; otherwise, if there was only a promise to abide, the award reflecting a collateral act might be enforced; otherwise, if there was only a promise to abide, but none to abide, the award could be enforced.
2. Bonds may be given at the time of the submission to abide the awards, in which case, an action lies on the bond for non-performance but it is to be remembered that a lesser of performance by the obligor of the bond, if the refusal by the obligee, completely operates the obligor from all liability.

When bonds are given, the submission in itself, may be either written or by heralds.

3. The submission may be by a written agreement, in which case an action may be had upon the covenant. If a sum certain is awarded, an action of debt lies to recover it. In this written agreement, it is not necessary that there should be an express promise to abide, within it, necessary that it should be expressed to be so. But contrary to the latter part of section 6, particular cases of agreements to abide, or any consideration, the parties involved to abide, or not to abide. For a collateral bond was awardees to the above, no recovery could be had; but this is not found now.

4. The parties may make their scheme in a rule of Court, but this can be done only where a suit has been instituted. The cause is before the CC. The method of enforcing a performance of such an award is this, it is for the Court to issue an Attachment and commit the parties refusing to abide in an action may be had on the award. In Ca. Ant. if the award is for money the CC may issue execution to the same awarded as that executed in the same case.

The second rule as a condition of any, if the award be of collateral articles, it is lodged in the files of the CC a standing rule of the rights of the parties.

These (Art. 7) whether an award cannot not be on the implied art contained in the words of Refining.
It was formerly a practice on both sides, to give rates of hands to each Judge, to take out or deliver the cases into the hands of the arbitrators, which were to be given up to the prevailing party. This method was adapted to prevent all future disputes; but as it came to be adopted among the arbitrators, destroy the second law, the foundation for an imbical quittance, it was impossible to order their decision final in all cases. And our C. have now declared, the practice utterly void, as being intended to prevent in cases of corruption, that redress which the law provides.
Arb. 8.

Comb. 100.

Sub. 98.

Vid. 114.

Vid. 57.

Bonds are sometimes given to an arbitrator in his own name. They may also be given to third persons. Where merchants whom entering into partnership, made an agreement that if any differences arose between them, they should not go before a Ct. of law, but refer it to arbitrators, the Chancellor, whose petition granted an injunction to the Ct. of law to prevent their proceeding in a suit that had been brought contrary to this agreement:

A debtor cannot obligate a Legatee to submit his claims to arbitration. For even a third person in any case may not be under such restrictions.

The submission contains the directions to the arbitrators & is the commission which gives them authority. They must therefore confine themselves to it in their award and that contains the mode the time, the kind of award that it to be made. Place must always be specified in which the award is to be made. The parties may restrain the arbitrators within what limits they please, as according to law, according to law, equity. So, but when the submission is general, I unqualified, the arbitrators have

Vid. 138. the extensive powers before mentioned.

If the submission be of all controversies, the award is good if the arbitrators decide all that are brought before them; at the time may be others that are kept back.
Of Claims to Arrears. — Awards.

§ 52. If the revocation of a Subscription —

§ 52. A Subscription to a Debtor is revocable by either party at any time before the Award is pronounced. There is no party revoking knows what the Award is. A Sub is not revocable after the same is known.

If the Subscription is by Deed the revocation may be by Deed also. If the Subscription is in writing the said the revocation must also be written.

The party revoking perfects his bonds if any is given. Does, in the whole, how far, or reasonable damages only be recovered if the case? In the practice is to give liberal damages. In one instance the debts of changed from the bonds gave actual (not legal) costs, allowing the obligee all his expenses and an allowance for his time, proportioned to the lucrative of his business.

It seems that by the Eng. Law, the whole penalty of the bond is forfeited by revocation.

In case of a Deed Subscription, the Deed revocation, there being no bond given, nothing could be recovered according to the site of authorities. So, by the ex muda Sub- missions non victus acta. But the unreasonable of this rule has caused its own destruction. In some cases, it has been determined, that no action on the case will lie to recover damages for the breach of promise.

If the Subscription is by Covenant, at the there is no bond; there is no doubt but an action lie upon it, after revocation. Surely the reason of the case, ought to extend to Deed Subscription which are covenants not reducible to writing.
Of Pleas to HM Court Awards.

I. 1. If the submission is by order of Court, there is a revocation. It is a contempt, punishable as such. This
said 329a question whether there is any other remedy.

Revocation may be revoked, provided it is done with
in a reasonable time—this is done in benediction. The
right of the submission was not to set aside the auth-

ority of the arbitrator, but that it may be restored to them
again without any new submission if the revocation is rev-

2. of persons

capable of submitting to arbitration.

Vic 101b. Those persons who cannot contract, cannot submit
to arbitration; as lunatics, infants, some convicts.  

When a person submits for an infant, the infant is

date 20a. not bound to perform, but if the person submitting gives

Comb. 316b. a bond that the infant shall perform, if the infant does not

3. dec 17. perform, the bond is enforceable. The the ancient authorities

are the other way.  

date 29. The submission by the Executor of the estate of

Comb. 316b. the Executor of the estate, said: It is new good. But if the

18. Dec. 27. Q. W. O.

w. 99b. It obtains the award, as a case a case a greater sum, than

he would have obtained in the former or lost in the latter

case at law he shall be restrained for the deficiency in

on instance for the succour in the other.
An Eng. Stat. enables the assignees of a bankrupt, with the consent of a majority of the creditors present at a meeting duly warned, to submit to arbitration.

The submission of one partner in trade does not bind the other. If he does not abide the Award, the bond is perfected.

If a number of persons agree to submit, it imposes on each to abide the Award, or to be bound by the Award.

If in a Submission, one is bound for another, the principal must, as in other cases, answer for the act of the agent.

With regard to an Attorney, the rule is this: he may submit by rule of law, or the client is in all cases bound, but if he submits in pais, without special authority, as himself bound, the client is not. If he has special authority, the client is bound. The is not.

Finally, all actions in which the party was allowed to wage his law suits with the party himself, but an action is not liable to debt or an Award, nor upon a parole submission by the testator or intestate.

The bond in Eng. is not arbitrable, yet a bond is.

To be void, by an Award, made respecting a bond, is for the bond, not arbitrable; even if the submission of the bond to arbitrator is by parole, yet an action on the case lies for non-compliance.

When a right of action arises from some injury, or acts of fault subsequent to failure with the bond, the controversy may be settled by arbitration.
When there is a joint defendant in one suit, at the suit gives each bonds to abide, yet if the answer is joint as that they sue the other party sum of money to each is bound for the whole sum, but if the answer is separate, so that one, shall be one third, the other another, they are neither able for each other, but only each one liable for his own performance.

The State of a man cannot be submitted to arbitrary as whether to be legitimate or illegitimate.

2. Who may be Arbitrators.

All persons, except those who want their reason, as idiots, lunatics, those who want direction, as infants, those who want, 2 Do. 13, are under the control of another person as fees court, places (usually called lord). Those who have committed some notorious crimes are declared in integrity, as persons disqualified to reason or feeling, may be arbitrators.

4. Form of relationship is no objection. Persons included 22 on each side of the controversy, or even a party himself may arbitrate if appointed.

An umpire is a person appointed to make an award, if the arbitrators cannot make an award, a neglect to act. A single arbitrator is called an umpire.

Formerly, if the same given to arbitrators. At the 1. M. 15, 205. Where one is so employed as to confer jurisdiction, sitting in both at the same time, as if the Sub had a 2. Law. 124. That the award should be made by A. B. by Vinent of 2. M. 255. Any of them did not make it by that time, then that E. should make it by 3d day of May, then the whole proceedings was void, unless the apparent intention of the parties might be for said that the arbitrators have to the 3d day of May to make their award, as long as they
Of the Process of Awards.

...have authority, the Temple has not an or as the Temples authority expires at the same time. Be we make no award. 

Or, 2. Oct. 293.

A day. If the appointment of the Temple is refused to the


V. 3. 3. 431.

The appointment was made a moment before their authority expired, the consequence was the same. They would have concurrent authority. Therefore the whole wording.

2. Nov. 15.

But now that the Arbitrators are vested with the power

...of choosing the Temple. You may make the choice at any time during the period fixed for their award.

2. Mod. 17.

Ex. 52. 56. may after such time, invite to make an award. Then the

...any of the Temple who are there or are not there, having been an express choice. So the

2. Mod. 15.

Arbitrators may at any time put an end to their power by declaring themselves unable to make an award. After which

...declaration an Award by the Temple is void, at the end of the time originally prescribed for the Arbitrators.


The nomination of an Temple by the Arbitrators must be

...made effective, otherwise if they refuse to make an Award. After which declaration an Award by the Temple is void, at the end of the time originally prescribed for the Arbitrators.

2. Nov. 11.

The Arbitrators cannot decide a part of the contract.


...vory 8. permit the Temple to decide the rest.

2. Nov. 5.

An Award made by the majority of the Arbitrators

...is not good, unless the parties specially agree that a majority

...may make the Award. If they are content or having a joint written

2. Nov. 5.

And even if the parties empower a majority to make an

...Award. All of them must be present; a majority cannot act

...unless those who are not present, willfully absent themselves.

2. Nov. 9.

In O. A majority are to govern without any reference

...provision of the parties, provided that all the Arbitrators are present or have an opportunity of being present.

2. Nov. 315.

The Award respecting all the matters referred to are

2. Nov. 7.

tration must be pronounced at once.
 Arbitrators cannot exercise their own authority to do any future acts, or rather to make any future decisions, after the award is pronounced. It was formerly a question what effect such a reserve of authority would have; but it now appears that if the subject matter of the reservation is within the inducement, the award is valid. But if it is not within the inducement, the reservation is void, and the award good.

The ordering of an act merely ministerial, to be done, by the Arbitrators themselves or by any other, for the benefit of the parties after the Award is pronounced, does not invalidate the Award. It must therefore be the reservation of some judicial act that is bad.

It is also a rule nearly connected with this last that an Award cannot delegate their authority, but the meaning of this is, their judicial authority, for the committing of the thing merely ministerial to the parties is not such a delegation of their authority as is bad, as the ordering costs to be taxed, and to be measured.

If the Award that one party shall pay costs, without defining the nature of the costs, they will be understood to have incurred legal, not equitable costs.

And if they determine the substance, please only, the form to another it is good; as if they award a conveyance of land, the form deed is enough. Shall advise.

Where Arbitrators in E. awarded that one party should pay costs, without fixing one more or describing any one to tax them, the Supreme Court held, that the award was good, that the costs might be taxed to any C. E. A. E. may award costs without any express authority in the Inducement.

If one of the parties, after having been notified, does not appear, the Arbitrator may proceed ex parte, & make the best award, he can.
The arbitrators may make their Award & pro-
ounce it on the day of the Submissions: So, they may
pronounce it on the last day at any time before midnight.

3. Of the Award.

The Award must be conformable to the Submis-
sion. There has been much dispute in determining what is
without what within the Submission. It was formerly held
that if 4.25. Should submit "all facts, or all actions," or
acts of action were not to be included. So, complaints were
held to enucleate personal things only. But now what
may be the general woke of the Submission, of the facts
by agreement being before the arbitrators, in fact, seemed to
them, any controversy be, an award exhibiting them as good.

If a controversy respecting lands, be submitted to
arbitration, the arbitrators may award money, or any thing
else in satisfaction. The formerly in such a case, an award
not immediately affecting the lands was void.

So, in case of personal disputes, it is now settled.

3. Nov. 20th. That any collateral thing may be awarded in satisfaction,

whether, nothing except money, could be awarded in the de-

debt, whether the award of a collateral thing not mention-

in the "Award," would be good.

An award that one party "could give a bond to
secure the sum awarded," has been adjudged good, for the
"awards" were understood to award satisfaction, money.
A decision that the parties should, in their suits to the court, have been held good.

If partners in trade settle all matters in dispute to arbitrate, the arbitrators have, of course, power to decide the partnership. Their authority to dispose of matters and matters is the same.

The words in the submission all matters in dispute in the cause between the parties, comprise only the disputes arising out of the cause. Proceed to the words all matters in dispute between the parties in the cause, comprise all disputes whatsoever between the parties. Case is, therefore, necessary, in making a submission.

An award that one party shall defray the expense of measuring land is good, it being, in fact, part of the case.

An award ordering the payment of a bond given at a time subsequent to the time of the submission, is good, if being, virtually, the same as an order that any particular thing should be delivered or paid.

Formerly, an award directing a release of all demands to the time of the award was adjudged void, on account of the possibility that some demand might have arisen between the time of the submission and the award, too.

An award ordering "releases" to be given generally within the 158 value to what time, was considered by the Court as intending, to the time of the award and was therefore held to be void. The an Award ordering in specific terms a release to be given to the time of the submission, was good. Afterwards the idea was adopted that an award ordering releases up to the time of the award was good, unless it was actually shown that there were controversies that had arisen between the submission and the award. But now, a release
to the time of the Submission, is a good performance of such an Award, and if in obedience to an award it had a release of all demands to the time of the Award should actually be given. But the release would operate on those controversies only, which subsisted at the time of the Submission. (Sure)

An Award directing any thing to be done by or to a Stranger to the Award, was formerly said in all cases, if the act awarded to be done to a Stranger is Beneficial to the party in whose favor the Award is made, then the award is good as where the dehvide was between A & B, which A now should pay a Bond, this bond both over to C & the Award was, that B should pay C the Bond. Here, although there was a Stranger to the award, yet as the payment of the Bond to C would be Beneficial to B, by taking away his liability to pay it, the Award was held to be good. But that now an Award is always to be taken prima facie, as being Beneficial, so that to avoid it it is necessary for the handizing party to show, that it is of no Benefit to him. The unsuccessful party in this case has no reason to complain, it is immaterial as to him, whether he performs the act awarded to the immediate party in the arbitration as to any other. If the act directed to be done by a Stranger one of which the party got them the award otherwise, can complete the performance by the Stranger the award is good otherwise it is bad.

An Award that one shall make a payment to such a person as the other shall appoint is good.
If a controversy in which several are interested in the respective sides is submitted to an arbitrament, the arbiters may, according to the rule laid down, decide disputes between any two or more of them. Prud'homme.

If an award over a release of all claims by one who is trustee of a bond for the use of another, this bond is not included in the award unless it was itself the subject of the controversy.

It is usual in a submission, after stating what controversies are submitted, to go on thus, "the goods to that, an award be made upon the premises &c. A great distinction is made, where the 'stipendiary' is used & where it is not. The submission may be general of all controversies, disputes &c., or it may be particular, pointing out especially what particular disputes actions or controversies are submitted. If the submission is general of all controversies, &c., with an et seq., one controversy only is decided; it is notwithstanding a good award, even tho' there were other controversies actually submitted, provided no others were brought before the arbiters. The fact that one only was heard may not affect on the face of the award. If it does not, it may be proved by facts. Such an award at the same when a submission of all controversies is made to an action that others that were submitted at the time of the submission of that were not actually decided upon by the arbiters.

But if in case of such a general submission, more controversies than one are actually brought up before the arbiters & one only decided, the award would be void. For the reason why a decision of only one controversy is good when all controversies are presented is that—this assumption of law that this was no more than one
Controversy between the Parties, when therefore it is in fact a matter there was more that were submitted to the arbitrators and decided. The last mentioned is taken away. The award is not good. But it seems the clogging to reason that if the submission is without the controversy, the party may neglect to decide also controversy actually but after them and the award be good.

When certain controversies specifically described as in the 200.35. An award made without the controversy must be recorded as in the 200. The award is good.

If in each case any other than those specifically described over the same of those specified are omitted, should be awarded, but the award would be bad as to those not included in the submission, but it would be good as to those specified unless there was an offset awarded. Those which were specifically mentioned in the submission, those which were not.

Of specific controversies submitted without an award made, an award deciding only a part of the controversy submitted is good. (Read Section.) Then it would never occur, the other controversies those awarded are actually not before the arbitrator. The rule is applied in (Bernard 318).

If there are more reasons that submit to arbitral rule the submission is with an order good, the award may be concerning them. e.g. A. B. on one part and C. on the other. Submit the arbitration. If the submission is with an order good, the award should be concerning a dispute between A. B. against C. The award would be bad even though the agreement of the parties was not before the arbitrator. But if the had been no order good, the award would have been good.
Propositions of a good Award.

1. An Award must not bring "law" i.e. an Award devoting one uncompelled to be done, is etc.

2. An Award giving a remedy for that for which the law apprehends none, was formerly void. Such an Award is now good.

3. An Award must be capable of being performed. In the legal context of the term "capacity", the contract to 10s. was void. An Award that is sure to pay a sum of money is good, but it may be impossible to prove the debt. For this in the alternative, the parties have fixed a sum to be paid, and in case the Award is not complied with, the Award in the alternative, a tender of performance of either of the things required is enough. It is at the discretion of the donee which to perform.

4. An Award must be reasonable. Therefore, an Award that one party shall pay the other is void. For it is unreasonable as a matter on personal benefit to an Award covering one of the parties to a contract thing that would inevitably subject him to a lawsuit. An unreasonable Award. When the strength of this rule, it was formerly held that an Award covering 10s. has money should go into the hands of the donee, the money he would receive, hence to an action of forced. This Award an Award void as unknown to be good at the present time.

5. An Award must be certain. Yet an Award is now good the no time or place is fixed for performance. The time in the case being associated to enforcement of some reasonable time. In the present that contract the question of successful remedy in is case of contract.
The old rule on this subject was this, if the award did not contain within itself the certainty of it and not upon but precisely, perfectly, the act to be done. This method of performance, it was said, was well, and the award was that it should be done half on the one half on the other half of certain land and it was held to be valid for uncertain, because the amount of the said land was a dispute. Plunkett's Award:

But now the rule is reduced to this, if an award is certain in itself, incapable of being rendered certain by

it certain est, quod est certum in certa sit? Or, if by refer to something out of the Award itself, as to the circumstances, to any other certain thing, the Ct. or any reasonable person cannot conclude the intention of the arbitrators, they will give it the Award.

The former Courts seem to have generally laid

ground that if the award does not contain a construction by which the land might be made uncertain, they would determine it. Later Courts are entitled to discover any rational construction by which to render it good.

But still if the award cannot be made out to contain by averments or by a reference to other things in void for uncertainty, as an award of four estates in uncertainty is due.
5. An award must be final. By this rule is meant, that an end must be put to the identical controversy submitted, i.e., no action can be had on the single issue unless the actions may arise out of the award itself. Therefore an award that the Petitioner entered a protest in the cause submitted was held not good because that was no bar to another action. But an order to enter an order would be good on the Petitioner's bar to another action.

Formerly when several controversies were submitted to one award was made that all controversies should cease as the words were sufficiently broad yet the award was void, because there might be other controversies submitted. Such an award in such a case is now good for the award is understood to contemplate no other controversies than those submitted, if no others are affected by it notwithstanding the generality of the expression.

6. An award must be mutual. Formerly an award was not good unless something beneficial was awarded to both parties. At a later period the omission of this rule was relaxed, yet it was held that justice did not require that anything should be awarded to both sides, but it was held sufficient that if any thing were awarded to one party, the particular thing for which the award was intended, an action, should be expressly specified. The former of these rules is now entirely discarded; as to the latter, it is now preserved that an award made on the submission of a controversy is intended as a final decision for that particular only out of which the controversy arose—And if you will better understand your book—
Of Plans to Avert the Awards

In some cases, if a part of the award is void, the whole is consequently void, in others this consequence does not follow. One rule under this head is,

12, 12th, 13th.
27th, 172.
12, 12th, 557.
90.

If there is mutuality in the award, what back which gives satisfaction to one, gives for what is awarded to the other is void, the whole award is all, enjoin according to the law. 1st, if mutuality is void, if it were awarded to pay costs to B. in concert to each of this part of the award, B. were ordered to pay A. to B. the whole would be paid, because mutuality, arbitrators would not award the payment of costs; costs in this case constitutes AR's satisfaction.

The direct rule upon this subject was that if any part of the award was void, the whole was void. At

12, 12th, 557.
90.

Some cases, when the award is on, favor of

12, 12th, 557.
90.

... and only, the validity of a fact, makes the whole as, if arbitrators declare matters not submitted, there an aggregate given in favor of one party, the award is invalid, for, there must have been no damages given, if they had decided only these controversies which were submitted. Not if in this case, the particular sum awarded for each injury has been kept distinct from the rest, the award would be good as to the controversies actually submitted, void as to the others... A governing rule laid down by M. D. under this head is this,

If the justice of the case is, or may be affected by the award make up the controversies not submitted.
or by that part of the clause which is said, the whole clause is to be understood. But if the justice of the case can not be thus affected, the award as to the controversy submitted may be good; as to the rest it only, if what is awarded in favor of one party is not what which is awarded of him is good; in this case, if the party mentioned can receive the full benefit of what is awarded to him, without its being actually performed, the award as to him remains good. E.g., if the award be that B makes a release to A, that A in consider of the release pays B a certain sum. The same is the release he voids, but the award as to the sum to be paid by A is good, for the award itself is as good as a security to A, as a release.

If one party has actually received what was awarded to him, he is bound to perform his part, even as that part of the award which was in his favor was in itself void.

If one is required by an award to give a bond. An award, with frights a bond in his name, only is said to be a sufficient performance, he cannot be compelled to do, for he can compel no person to be his surety.
The evidence. That of the Talmud is in many cases, is not supported by authority.

Ps. 109. If, however, the Talmudic requirement is taken to mean, that he, who gives 2 days' worth of money, must always be a native where the Talmud says it in connection, is by no means true.

Now for an award must conform to all the minute requirements pointed out, in the Talmudic case, is not perhaps capable of being precisely determined in every possible case. The general rule seems to be, that if any formality which adds any solemnity or even the semblance of solemnity to the transaction, be required to attend the award, the requisition ought to be observed; but if the requisite formality be perfectly neglected, it may be dispensed with.

I. Of Performance of the Award.

Bar. 151b. If an Award is substantially not literally complied with, it is good performance.

Yoma 109. If it be awarded that a release be given to one party, and payment be afterward made by the other, the money awarded to be paid is of course receipts out of the release.

Ezra 152. 197. If, according to the terms of the award, there is to be any pecuniary in the performance, the party心血 to perform first must, on filing an action, prove performance of his part thereof, or, in absence thereof, may sue without such performance.

Phyl. 153. If a person in whose favor an award is made, accepts a non-pecuniary, variant from that awarded, he cannot require any other performance.
For its payment at a time been prescribed to that fixed in the award was no bar to an action for non-performance. It has since been allowed to operate as a good bar, as the debt placed, in the i

Formally a tenant of payment after the time fixed by the award, was no bar to an action for breach of the award. Such a tenant of make before a right of recovery has attached by the commencement of a suit is now a good bar.

If it be awarded that A owes to B, that there be reserved on the lease £20, B owes to A to pay at the end of the year. Such failure is no breach of the award. For the original debt here is at an end. If B does not pay, he is liable for a breach of covenant on the lease, but not for breach of the award. The same would be the consequence if A had been awarded a being given, were not paid according to the condition.

If the terms made use of in the award have received a construction different from the apparent intent of the words, performance according to the legal meaning is always a good performance, and if the award be that the tenant release as to the time of the award release as to the time of the suit then the

Sufficient performance—

In the latter reasoning reflecting the precedent of an award that a suit pending it submitted in some time would occur see in Yels 35.
5. Of the remedy to compel performance of an Award therein at the Sec. 4 Readings.

As to the remedy on a porole Submission see 3 138. 6.

If a suit be commenced for nonperformance, the
medit must state in his declar. the Submission, the con.
verses that before the award, the award, the breach
not be made necessary the Submission, or after
a request on his part. In all cases where the breach is of the $5.00 sum of money or demand, an actual equilment,
if the breach occasioned him in a bad from of the
award a remonstrance to the exec. may be stand.

If breaches are assigned on more facts than one of
which some are good (as this voice) when once joined.
or all, the jury has all for the 4 funeral entire dam-
ages, the verdict is the 4. The may be arrested. In the
presumption is that first of the damages was for breach
of said parts of the award. But if the damages
for the respective breaches were special and distinct, the
said, as to the breaches of the good part of the award
would stand. This will as to the rest.

The must not assign a breach on a void
part of the award for a breach of that will not subj.
ject the dept. be not being obliged to perform the void for
... is to the remedy for non-performance, when
the omission is in bond. 1 C. 137. 139. Tender and
refusal, it is said, in the case of such a bond, discharges
the obligor whole daily, 1 Ch. 137. 139.

If when an action is seul on the arbitral bond
the act after offer, either an award, the 1st cannot
as in other cases rely, that there was an award. 10
Ch. 275.

The act is understood to mean that there was no legal
award, so that the act here becomes a mere question of
law it is not to be submitted to the jury. But that
in this case must be put forth in his replication, the
whole award in detail. To give the party, he must
also state in his replication, in observance of his part,
of every thing required of him by the terms of the
arbitral bond. To this the party, if he relies on the obligations
of the award, must also make, for the efficacy of one is
now apparent on the face of the record. If, however, he
will sooner that there was no such award. —

When an action of debt is brought on the
Award itself, the 1st need not of itself the whole
award, but only that part of it which makes for him.

If an award is once on one part, it good as
to the other; the act where the same part was made,
would cancel performance of the other; he must and
performance of his part, notwithstanding the award
as a part he was void.

As a case of a part on the bond of the 2d gives to de-
ny the fact that he submitted, his plea must be non ex
citation; in all he never submitted, the arbitral bond is
not at all in debt. —

In most cases, when an award is set aside by the Judge, the assignment of the breach ought to be on good part of the award only. But if the award as a whole, is the subject of the alternative, of which one part is good, the other is not, the Plaintiff, in some form of suit, that neither part has been performed,

+ It is said, in some Italian books, that in a suit on an arbitration bond, only one breach may be assigned for the repudiation, and that some rule applies in all cases of a suit upon a bond given as a security for the performance of any thing. As a single breach occasions a forfeiture of the bond, the assignment of one appears in general at the sufficient. But, there can be no justifiable reason why the rule may not apply more than one. Indeed, for

+P. 293. Some exceptions in the latter point there is reason to doubt, when the 
+P. 308. 6. No suit on the rule is now enforced,

+ If the suit after having had offer of the bond, it has happened, any collateral matter in the cause, it was of course, admit the existence of a legal award. This, therefore, altogether unnecessary, in this case, for the bond to get false the award.

P. 308. 7. If the Defendant denies the existence of the award, he cannot afterwards give performance, or any collateral matter, for that would be a departure.

P. 308. 8. The offer of the award, or the award, to show that there was no other award; this is considered an inadmissibility of the validity of the award. If for this, and the Court, at his election, secure, or discharge any other award. — Where there has been a reservation of such part of the 

P. 308. 9. The suit of the bond, the Court, or the Defendant, will plead "no award." The Court, then, in this situation, states the fact of the suit by the Defendant. When the Defendant desires to call upon the prize of the record.
If the award be void in fact, the court, good the defendant's refusal, may order performance of the good without noticing the act, bond.

If the defendant's refusal of the thing awarded are a good bar as performance. But in pleading, the defendant must aver that he is still ready to perform.

If the defendant, after over, sets out the award partially, in pleading performance, the plaintiff may reply by setting out the whole award, pleading that he ought not to be barred without that there was no other award than that stated by the defendant.

If the time limited for making an award is by agreement enlarged after the bonds are given, another bond is liable to a forfeiture of his loss for non-compliance with the award, if made after the time originally limited in the bonds.

Nov. 20th. 1826.

Chancery will enforce the performance of an award for a collateral thing, when the submission was by rule of that C'ty. And in case of an award for money, if the award was made under the rule of that or any other C'ty an attachment will issue for non-compliance. In other cases the parties are left to their remedy at law.
Of Plans to Suppress Rewards.

If by an agreement subsequent to the award a party engages to perform what the award requires of him, Oth well secures a decisive performance, on the ground, not of the award, but of the agreement. Yet in proving the agreement, Oth, in this, as in all other cases, will refuse to compel a party to disclose a fact which would subject him to a penalty. Whence Oth should make this distinction between a penalty and damages it is not easy to discover. Even when the fact is proved by inference, let it be inferred in by the parties for some time, Oth refused to use it.

Of the Manner of Setting aside Awards.

In Eng. a Ct. of law will never set aside an award on account of any extrinsic circumstances, as corruption, hastiness &c. until the reference to arbitrament was by a rule of the 7th applied to Eq. 3, Part. 589.

Therefore, a reference to arbitrament was not by a rule of Oth, the award founded on the reference cannot be set aside for any thing extrinsic, except in Chancery, where the award is always in the Court of Oth.

In Oth. application may be made to a Ct. of law to set aside an award, as well for extrinsic causes as in matters appearing on the face of the award itself. And this may be done whether the submission was made by a rule of Oth or not. Rather in a suit upon such an award before any Ct. those circumstances may be heard by the Ct. as a bar to the Oth recovery.

When in the Ct. of Oth will set aside an award made by submission by rule of any other Ct. if there has been a submission, it is such a Ct., which cannot be suggested in time to prevent the acceptance of the award by the Ct. who granted the rule for submission.
Not only correction in the Act, but any other circumstances that evince partiality towards either of the parties or any unfairness or improper conduct are sufficient grounds for Chancery to vacate the Award.

A mistake in law or fact, not appearing on the face of the Award, is not, of itself, sufficient to induce a Ct. of Ch. to annul the Award. And that Ct. will not go into an enquiry on averment made of the Act, a mistake. But, if the mistake appears on the face of the Award itself, Ch. will vacate it unless the mistake be on a doubtful point of law—If it is apparent on the face of the Award that the Act were gone contrary to those principles the Award will be set aside.

Were the Act to have made a mistake in calculation or the casting up of figures, &c. This is apparent on the face of the Award. Ch. will not vacate the Award, but rectify the mistake. I suffer it to stand.

If any important fact is concealed from the either party or any one of them, will bear that a knowledge of the fact concealed would have altered his decision, Ch. will vacate the Act on the presumption of fraud, but if he means that it would have had no effect on the award, Ch. will not vacate it.

If, in any case, an Award is made under a rule of Ct., if the Act was ignorant of some important fact which could not to have been ascertained at the time of the Award, the Ct. will upon motion, remit the award to the Act for reconsideration.
7. When the Pf may sue on the original cause of action.

In general rule, a legal award is a bar to any suit on the original cause of action. But, formally in cases, bonds were given of the time, place, for performance, without performance by either party, the Pf might consider the award as reducing his original claim. At the present time, however, the remedy is taken the award itself. And if he should sue on the original claim, the Pf may sue the Award in turn, even tho' he has not performed it, and it is not in fraud. But he must plead performance of the award.

It appears from the authorities, to be a rule, that if the award does not create a new duty, or give a new right of recovery, but merely varies an old one, rescinding an award that all suits should cease. In any other case, when the Award operates solely to extinguish the old claim, this is no bar to a suit on the new claim. This is clearly opposed to bringing an award to be enforced by suit.

An Award may sometimes be taken advantage of by the person not parties to it, as in a case when two joint tenants, a Pf and a Thd, hold an award to an action against the other by the Pf; if the Pf has been performed. But the efficacy of such a plea in this case, and to depend wholly on the circumstances of the satisfaction received, and not upon the award itself. To before acceptance of the Award by the party injured. Such an award cannot be pleaded in this case.

And in all cases where a recovery in a suit at law may be pleaded as a bar to an action at a different instance, there, also, may an award between the parties be pleaded.

There is an old adjudication, that after a submission, or before an award made, neither party can recover in a suit on the original cause of action, without an express rescission. The bringing the suit not being construed an answer to such a suit...
IV. Of Tender.

Tender is a good plea in bar to all actions, in which the demand or damages are certain, or capable of being ascertained by any determined rule, as in Debts. In such cases, if on a quantum total, or quantum meruit, the market price may be tendered. In all other cases if the damages are certain as being fixed by law or assented to by the parties, tender may be heard. But in all actions, in which from their nature the damages are uncertain or presumptive, tender is a bad plea. It is a good plea to tender for money.

If a tender is made, if the tendered sum fails to bring the money into court, he is entitled to his costs.

If the sum pay money into court, the note that has been received and a verdict is given against him, but if he is not entitled to costs, even to the time of the payment into court. After the writ does not proceed.

Payment of money into court is an admission that something is due to the payee.

It has been a question who, after a tender, is the owner of the money tendered.

It is clear, established law, that if a note is issued for any thing except money, a tender in charges the note, renders it incapable of being revived. That the tenderly tendered is absolutely vested in the tenderer, or in the tenderer in the case under any allegation to be as tendered, the being tendered. — (vide 158.)
But when the note is given for money, it is consider, ed by Law, that the tenderer does not discharge it. For, though the note is still sufficiently efficacious to entitle the holder to recover his money by suit, he is also capable of being rendered as a tenant, and, if originally was, by a subsequent refusal on the part of the tenderer to deliver the money on demand, the note was discharged.

It is generally objected to the doctrine, that the fact is always laid on the note; whereas if this property passed by the tenderer to the creditor, the same would be more proper. To this it is answered, that the reason for bringing the action on the note is, that the law will not suffer the creditor to recover his money without bringing such an action, as will hedge the note with the law, lest at a future time it might be lost toward the tenderer.

But in cases where other articles than money are tendered, is the tenderer may, if the articles are of the same kind, to recover the tenderer may, if the articles are of the same kind, to recover. But, if the note was given for money, the tenderer does not discharge it. For, though the note is still sufficiently efficacious to entitle the holder to recover his money by suit, he is also capable of being rendered as a tenant, and, if originally was, by a subsequent refusal on the part of the tenderer to deliver the money on demand, the note was discharged.
Of Dear to Alarm int tend.

 diversas of our collateral article to cattle i.e. subject no obligation to keep the articles tendered, the law does not. The law, subject to the same interest as the original bill to keep the cattle, articles which are not the law required to keep, and if he were to sell himself liable the tenderer is not alleged to sue on his note.

With regard to the main question, whether the note is not discharged by the tender of money, there are at least two decisions directly in point. There are, however, two cases, one of which is that of the note does not give me interest after the tender, and the other that a bill or instrument in the nature of the money shall be borne by the tenderer.

The rule in 27th Edw. 3. has not considered the tender of the money as void in the tender by the tenderer, and so long as the tenderer does the duty as tenderer, tender is not required as the latter. The obligation is dead.

To consider the note as receiving for a default of the tenderer, the note altogether agreeable to technical merit, is not absurd, or rational case of result being of the result. The most rational opinion, however, seems to be, that the note does not in fact revive in the subsequent refusal of the tenderer, but as in this case, the neglects the duty as tenderer, the note not be allowed to avow itself on the tender. When the law requires of him he shall not avail himself of the advantage which the law has put in his hands.

In some cases tender is a good idea when the damages sought are uncertain: as in the case of an ex-
At Clear to Humphry Turner.

voluntary tender, tender of sufficient means before action brought is a good discharge. But in all those cases where tender is a good plea to summary and uncertain in its amount, it is made to be fatal. The principle of the Code Laws would not allow it.

Sec. 178a. Where a penalty is given by statute or C. tender is a good discharge, even after action commenced.

On Ca 23d, if an action has been commenced, tender is made.

In the Code C. has a bar to the action, except in cases where a tender of the debt interest costs may be made at any time, it will be good. But by a Stat. in C. summary language obtains. Leave of C. may be made debt costs to be the terms of the letter. To. To. To. To. The statute provides that a duty of the peaceable, and the justice of such a case is $500. If a tender is made at any time before verdict, but after the action is commenced legal costs, as well as interest is paid, must be tendered.

Act 13d.

Whip 19th.

By an act of 'C. two men were here on a business, which is defined to be such a duty as the said bound may perform at any time during the year, it may be tendered, if at all, by the original debtor himself, not by the C. or their.

In all other cases, a tender begun here, or C. or every part as one by the lessor, it is probable that, at the present time, the last rule would not be required.
Of Plan to Apprehend Tenders

Of what constitutes a Tender

2. Lev. 25:10.
3. N. 184.

To make a good Tender, money must be actually offered. It is not sufficient for the debtor to say that
3. Dan. 6:14, he is ready to pay. It is not necessary, however, actually to produce the money, if the creditor declares that he
will not accept it.

L. 68:10.
5. Reb. 115.
"some major contract minors" — But of the tenderer ac-
2. Shaw 94.
cepts more than his due, he is liable to repent.

Water's case
5. Reb. 115.

Formerly, it was a question, whether Tender of money
in a bag was a good Tender, but it is now settled, that
if there is enough in the bag, to discharge the debt, it is
good; for it is the duty of the tenderer to count the money.

If a man engages to deliver one of two things, as
the obligor shall choose; a tender of one is no bar to
an action. But if the election is not thus given to the
obligor, it shows that a tender of one would be good
leaving it at the election of the obligor. This is the
common usage. But as to this point opinions are
contradictory —

In Eng., any money made current by tenderment
may be tendered —

In the U. S. any current money, i.e. any money
usually passing, is a good tender —

Tender of a large sum in coppers would not be good
when in Eng., & in U. S. such a tender being unreasonable —
If counterfeit money is tendered & accepted, the receiver must, according to an old Eng. authority, bear the loss. And this is a reasonable rule of the person who pays the money, ignorant of its being counterfeit & entirely innocent; for there is no reason why one innocent man should suffer by such a misfortune more than another. & "when must die on the hands of the person, where he is found" in an analogous case. Black. 3 g.

By a Stat. in C. the receiver may recover it back to the payer, if suit is brought within 5 years.

Bank notes have been considered as Chf. as good tender. And it is probable that they would now be considered by Cts. of Law both in Eng. & U.S. There has been no direct decision in Eng. upon the subject of law, so they have been considered as good tender of the tenderer made no objection because they were not cash, so where the tenderer offered to burn them into cash, it was held a good tender. In the P. C. Such a tender to be good, & C. Supper must be reasonable. A tender that one of Charleston Bank bills might not be good in C. because they are not there current.

It is said by the old authorities that if an insufficient sum be tendered & accepted, the tenderer can have no remedy for the remainder. This rule is entirely opposed to the equitable principle adopted in the cases of indebitatus assumpsit.
If no place is fixed for payment of money, it must be paid to the creditor where he is, unless he is out of the government, in which case the creditor is not obliged to receive him. And the rule is, if the tender is ready to tend, but cannot tend, on account of the inaccessibility of the tenderer, he shall be entitled to all the benefits resulting from an actual tender. Tender being ready to tender under the circumstances of inaccessibility are not the same thing. This has been decided in Co. in the case of creditors going within the British line in the late war, & thus putting it out of the power of the debtor to tender to these persons.

Tender by a mortgagee is a good bar to an action. For foreclosure, & J. & J. gives the mortgagee a right of entry. And the case is an easier than to the above rule that the tender must be tendered to the person of the creditor, for the mortgagee may make the tenderer an adequate tender on giving notice to the mortgagee. Why this should be an except, is, because the general rule, no reason can be given. In all cases of rent arrears except for a tender of rent on the leased premises is good.

The rule already mentioned as to the place of making a tender, as close to money only.

But by a whole, if no place is fixed, the creditor, must in general, be tendered to the creditor at his directing house. And the crediting house in this case, is meant the residence of the creditor, at the time of entering into the obligation. Yet, in some cases where the creditor has changed his residence, the tender must be made at his new place of abode. The rule of discrimination in this, if it is more convenient for the action to deliver the article at the new, then at the old.
Of Tender to Assumpsit, Tender

Evidence of the creditor he may tender them at the latter; otherwise he must deliver them at the place, date, or time direction of the creditor.

The obligee may direct the delivery to be made at any place, mode, or it is not more inconvenient to deliver the articles here than at her dwelling-house.

In some cases the obligee must be at the bounds of transferring the articles which he claims. As when goods are purchased of a merchant at his place. For, in transactions of this kind, usage regulates the delivery.

The obligee must also call on Ex'or, Loren in public offices for payment.

Of Tender at a time, place fixed

‘If the time fixed, be on or before a particular day, the last day mentioned is the legal time for making a tender. As if the time appointed be the 17th day of a month, it would be the last day of the month following the tenth of, is the legal time. But in both these cases if the parties meet in a day before the last, the money may be there tendered.

The time of say, been before 4 p.m., it is the “utmost convenient time,” which is continued to be the last time at which the same can be presented unless contradicted by the contract. Next, the tender to make of the tender is not there—Yet, in the other case, if the parties meet at any time of noon before the utmost convenient time.
The money may be tendered then — De. Is not the last moment of the day too enough for a tender? —
If the place is clear, not the time, the debtor must give notice to the creditor of the time when he will make payment. And if the time is reasonable, a tender of the money, or an attempt to tender, if the creditor is not present, being ready to tender it (Deff.) is good. As to the time of day, this meeting at any time of day the rule is the same as before mentioned.

If neither time nor place is fixed, but money is payable on demand, of the parties meet at any time or any place, the tender will be good. Otherwise the tenderer must notify the tenderee that on such a day, he will make a tender at his dwelling house, and on that day the tender will be good.

In such case, however of money payable on demand, a tender will never avail after a demand on the part of the creditor. It is usual to pay by the creditor of such demand be made within a reasonable time after the debt becomes due? — De. —
If bonds notes be not negotiable, or assigned, it has been questioned to whom the payment should be made after assignment? if it is an established rule, it was this, that the obligor must suffer no inconvenience from the assignment. If also that the money must not be due to the assignor, if he is a bankrupt. The obligor having notice of the assignment, it is incumbent upon him, on the assignor, to tender the payment of the money to himself as convenient to the obligor as it would be to pay it to the assignor. The obligor will then be bound to make payment to the assignee.
Of a Plan to Remit the Tenders

The course of decisions in C. after much trouble and litigation, but the Eng. decisions are contrary. If A promise B to pay money to him, for the use of C, the money may be tendered to C. But I say that if A promise B to pay money to C, a tender can be made to B only, not to C. This is clearly no law.

In these cases—

If tender is refused, the tenneree should write for his money; he must demand it in a reasonable manner, i.e., he must not demand it when it cannot be served that the tenneree should have it with him, as if he were absent from home &c. So the law火车s no great indulgence to the tenneree after having been so obnoxious as to refuse it once, neither will it stifle the tenneree to submit himself to any great inconvenience for the purpose of complying with the demand immediately.

The Consequences of Tender Rejected

The first consequence is a stoppage of the interest on the debt, or interest being recoverable after a tender is refused, unless there is a subsequent demand by tenneree to reaffirm his having the tenderer, when the interest begins again in case of a gratuitous mortgage, tenneree requires discharge the deed, as well as the right of actions for
The obligation is discharged by the tender. There being no pre-existing duty or consideration, the mortgagee has no amount on which to recover.

In case of other mortgagees, pawn, &c., the lien of the mortgagee so as to make the tender imperfect, the


of a single bill is given with a discharge

crater. If the refusal of the lien named in the


in the absence, discharges not only the lien but but the
whole duty. The reason of the difference is to the ef
fect of tender or refusal, between a tender. To a lien

ind it is not easy to discover.

So in case of a bond given when there was no


existing duty (as in subscriptions to enticement to


bonds), tender of refusal are a complete discharge

of the whole.

In some cases a tenant by tendering a tender ac-


quires a right. As if I agree with B, that if I pay

if on such a day, I will grant him a lease of such a


farm. In this case, B, by tendering the $1, ac-


quires the same right to the lease, as if he had made


actual payment. It becomes bound of the money—


Nor where a man undertakes to do a collateral
thing, he makes a tender of his service according to con-


tract, the tenderor gains the same right, that he would


acquire by actual performance.

Indeed it is a general rule, that, in all these cases,
in which a right is acquired by tender, that the right
thus acquired, is an extensive one. It would have been a


case of actual performance. Thus if A contracts with B,
to build him a house for $1000, and the time appointed

tender his service. B refuses to employ him, A is en-
Of Clear to Triumph. Tender.

Titled to the Sum Inspector. This rule of law of
goed in its full extent, will frequently occasion
very unexpectedly. And will doubt, whether it would be
properly ordered to in this State.

The manner of reading a Tender.

L. Day 3rd.
Sat. 6th.
C. 1833.
1843.
21st. 109.

In reading a tender, it is not sufficient for
the defendant, that the tendered "according to law," but
he must plead that he tendered in such a day at the
alternors convenient part of the day. The alternors
convenient part of the day, however, need not be stated,
unless the creditor was absent at the time fixed. The
reason for this particularity is, that questions of law, re-
specting the legality of the tender, ought to be reserved
to the Ct. It is also, according to stated a refusal of
the tenderees absent at the time of the tender; and if
he was not present, his absence must be stated.

24. 182.
L. 23.
W. 109.
C. 1889.
G. Sep 79.

If payment was to be made "tender before such
a day, it is not sufficient to plead a tender before such
a day, but the day of tender must be "tendered."—
24. 182. If the parties not before the last day?

If the debt must also bear in case of money
due that the always has been, that is ready to lay the
CP. I now tender payment in Ct. which allegations
must all be true. The must bring the money into
CP upon doing which, he recovers his cost.
Of Pleas to Fungus. Tender.

When the debtor after tender has refused payment, it would be, on principle, sufficient for the plaintiff to reply, to the plea of tender by traverse. The allegation of the defendant that he has always been ready "9." But the uniform practice has been to reply by stating at large the subsequent demand & refusal.

If the defendant traverses the tender, the issue is left for finding on the demurrer, that he cannot in law take the money tendered out of the hands of the plaintiff, that he does not necessarily lose his demand, but that he may recover it in another action. Yet he suffering a nonuit the plaintiff might have taken his money out of the hands of the defendant in ten days.

On the preceding rule respecting the object of a traverse to the defendant is not agreed.

If a tender is made of collateral things, the defendant must plead the tenor of the same, but need not aver that he has always been ready "9," because this is not required of him by having fulfilled his duty by making the tender, without taking back the articles to keep.

This has happened, in C.B. a discretionary practice of permitting the defendant, on motion, to bring out collateral articles wrongly detained. This practice obtains in cases where it is apparent that the constitution of the specific articles rather than damages is the subject of the suit; as when one is sued for withholding from the owner family heirlooms. Other articles, the value of which is chiefly is seen.
V. Another hint to £5. Payment.

Firstly, in £5. payment was no plea to a Bond or other

specifically after the date first for payment, but now by what

the Deft. in his breach to avoid himself of it as a defence.

Performance of a collateral thing must in Eq. be

pleaded unless more.

In a performance of a cont. to convey land must be

pleaded to have been by deed, the many particulars which

would be indispensably necessary in such a deed. in Eq. inci-

dental are not required viz. Ex. By deed duly authenti-

cated, is here considered as a sufficient description in a

deed of hercoll. She in Eq. would be necessary to state

the manner in which the deed was authenticated.

When a person making a payment is indebted to the cred-

itor in different demands as by note as on bond. to the

payer, has a right to direct to which of the demands it

shall be applicable.

Out of the debtor's hand, generally, without incurring

how it shall be applicable as above, the creditor may add to

it to which he pleases. But it is observable in both the cases

desct. that it made no difference to the payer for in our case the

demands were both simple and, neither bearing interest, & in

the other they were both bonds, both bearing interest.) In Eq.

the rule is that it shall always be applicable to that demand

which will be the most for the benefit of the debtor & if not

demand bear interest, & the other not it shall be applicable

to the one bearing interest. Butting then in Eq. is intended to mean

whether then or by the party to whom the debtor is paid, & the bond

therein. & it is paid only in the case, where the bond

is payable in the manner, etc. & if it were made & true party

of the bond, as above it is intended to refer to.

VII. Another defence. Supplt. ££. ££. is that the cont. has

been remitted to the parties or merged in a cont. of a higher

rate.

VIII. Release is a good thing to an act of ££. ££.

The term "all demands," as a release, is the most extemne

sense that can be made of it, for it not only discharges all acts

that the party, but also debts in present.allax, a on future; but is
VIII. Another defence agst. agst. is the plea of

The 17th. For. Attachment, that the money for which the action.

is brought has been attached to the debtor's hands, for a debt.

Foreign attachment is allowed on a. only when.

The manner of pleading this is by stating in their

The action is brought to such a bill that the.

The court is the original court of record.

After one is sued with foreign attachment, he

must pay his creditor the debt to the suit, out of his hand,

But if he creditor dies before he is to read the foreign at.

If the debt to the foreign attachment hav.

In this last case, however, it is incumbent on.

Of Pleas to Aß - Foreign Attach'd - Insolvency

If the debt was owed by his creditor before he was
bod 291. joined with the foreign attachment, it seems that the
No. 291. foreign attachment is no lien on the debt but he must give
it to his creditor not 't the jiff in the foreign attach'd.

Choses in action, in the hands of an agent are not
for objects of foreign attach'd. So far, that service of
the process on the agent will bind the money in his
hands, if paid afterwards to him. And leaving a copy with
the debtor obliges him to buy the agent that money, or
rather prevents him from paying it to any other person
without subjecting himself even the another hands to
some recovery of the choses, but the money does not become
the agent from cutting the choses out of his hands.

IX. An act of Insolvency is another defence.

An insolvency act in another state has been considered
by our âœ as a good bar to an action here. In the sate of
Massachusetts, it has been decided otherwise. A judge in one, the
is, indeed, a good bar to a recovery in an action for the same
cause, in another. But that is by the express provisions
of the constitution.

Acts of insolvency operate only when contract is in
6 Jur. 295. force. An act of foreign is not barred by an act of bankruptcy, the debtor
in a case where the debtor was content with an act for money had and

An Act of Insolvency discharges debts due that are not payable at the
time of its being made. If the debtor is not yet due to a credit, unders,
A covenant is a contract written. It has always been the practice of law to give covenants a liberal construction. But in dubious cases the words are to be taken most strongly against the covenantor.

Covenants may not only be express, as where the parties expressly covenant thus and thus, but they may also be constructive or implied. As,

If a lease land to B, reserving rent, this reservation amounts to a covenant on the part of B to pay rent if he accepts the lease. This is the case, even if the instrument be signed by A only. For A's accepting the lease going into执约 from his intention of complying with the terms of the lease.

So in an exception in a deed, the deed be signed only by the grantor, is a covenant on the part of the grantee that the thing excepted shall not, have

In a lease, an exception, it seems does not amount

In a lease, an exception, it seems does not amount

Thus, a lease, but only an agreement between the parties, that

The exception is of something akin to the lands promises,}

By Act, 39. &c. as a way right of common. In therefore, a land given by

the latter to perform all covenants are not perfected by a breach on the thing excepted, unless it be something akin to

A covenant is a contract written.
The at Law, instruments obligatory are not negociable yet it was always been customary to sell choses in action. And such sale amounts to an implicit cost on the part of the assignee, that the assignee should have the property of the chose in action for course that the assignor would not disturb him in the ownership of it. If then, the assignor himself receives the money due on such obligation releases it to the obligor, he is liable, by way of the implicit cost. In the booke at such cases has been to sue the assignor for the same.

Equity will not protect an assignment unless made for a valuable considerate.

If after assignment the debtor or obligee pays the assignor knowing him to be a bankrupt. Knowing also the assignment, he is liable, both here and in Eng. to pay the debt again to the assignee. Is it necessary in order to subject the obligor in this case, that he should know the assignee to be a bankrupt or even that he should be a bankrupt?

If a person covenants not to sue his debtor for a certain time, this cost is no bar to an action by the covenantee, but if, in this case, he does sue, he is liable on the cost.

But a cost not to sue at all operates as a release not liable in law. So if the obligee should recover, he would be obliged to refund the whole. And such a cost.
must be plead not as a court but as a release. The
instrument must always be plead according to its
legal operation by whatever name it may be called.

In all deeds of conveyance except quit claim
there are two covenants. 1. that the\textit{jeeper} is\textit {clear}. 2.
that he warrants he\textit{will} defend the estate conveyed

When the\textit{jeeper} lives the\textit{jeeper} on the cost of
\textit{jeeve}, it is sufficient to show that the\textit{jeeper} was not
\textit{jeared}. The\textit{jeeper} may sue before he is\textit{jeared}

On the cost of warranty the\textit{jeeper} cannot sue
before eviction the eviction must be stated.

In an action on the cost of warranty the\textit{jeeper}
receives his consideration money. All the damages he
has sustained and in $ the value of the land at the time
of the eviction. On the cost of\textit{jeeve}, he recovers in Eng.
only what he has paid\textit{ lecturer} but in $ the\textit{jeeper} may
recover all his damages in the last case.

If one claiming title to the land conveyed brings
an action agt the\textit{jeeper} to recover it from him, the\textit{jeeper}
must vouch in the\textit{jeeper} that is, he must notify him of the
fact, that he may appear & defend the title. And unless the
\textit{jeeper} thus give true notice, he cannot after being evicted
recover the whole damages, even on the cost of warranty. If
he may still recover the consider money, but in a suit,
by the\textit{jeeper} agt the\textit{jeeper} for this the latter may defend agt
by proving that he had a title. If he knows that the
\textit{jeeper} will fail of a recovering, but it is supposed that the
act of ejectment might after this he done again, to
achieve proceed, then the\textit{jeeper} might succeed.
The lessee, after executing the lease, if the latter will not come in & defend, is obliged to make as good a defence as he can.

The usual mode of giving the notice before mentioned is by writing, but the late Day authors are, that there is no necessity for its being written.

The cost of warranty, in a conveyance, extends not to tenants' claims or acts, unless it be expressly so stipulated.

A quit-claim deed contains neither of the cases before mentioned. Yet in some cases, the quit-claimant is answerable for a defect of title, in an action of ejectment. If the conveyance by quit claim is a contract, that considered as a bargain of hazard, the consider may of the title fail, be recovered back, in which case, it is understood by the parties to be a bargain of hazard. If the grantee knowing, before the execution of the grantor's title, agrees to take it no recovery can be thus had. The quit-claim deed, does not of itself furnish evidence of hazard. In a case taken in execution, Hand sold by & X'd don't i commonly sold by Quit-claim.
An es is liable on the covenants of his
Torture, respecting even real property, if there is a rea
bility of his carrying them into execution. And if there
is not, the heir must perform them if he has a solus.

When any article has been lent for a long time it
becomes useless or out of repair, doubts have arisen whether
without an express consent for the purpose, the lessee is liable.
After adjudication for seen it was adjudged on a suit of
error that he was not liable.

If B's lease to B, a farm, on which there is no
wood except timber-trees, covenant that B to save
stovers, afterwards destroy 16 trees, he shall be liable
to lease on his covenant.
Covenant.

Of Covenants which run with the land, and bind the Assignee.

In case of lease, assignment by the lessee, the principles will be found to govern all the obser-
dications in the rule, or the case, of the Assignee.

1 Rep. 10. 129 It is in possession of the land, bound for the enjoyment of the profits at the time of the breach of any cove-
dant in the lease, he is liable the not named he

named the thing covenanted to be done, concerning which

something is covenanted to be done, in case at the

time of making the lease. The cove.

If there be a rent to repair houses fences &c., in the

land, the Assignee is bound to perform the the

lease in the lease covenanted only for himself, without

mentioning his assignee. As he is bound by a rent to pay

rent for the, the not substantially is said to be poten-
tially in case. But if the rent relates to a thing not

in being at the time of the demise, the assignee is

not bound unless named, i.e. unless the lease covenants

for himself. If he assignee as if it be to build a wall

he is not bound, unless named.

Whether the assignee be named or not, the assignee

is not bound to perform a rent to do any thing, which

is merely collateral to the thing covenanted to build

or house, or some other part of the lessee land. Thus

the assignee is not bound the he is named.

But if the covenant is for the benefit of the

estate covenanted, the assignee is bound, the not named, as

when the rent was to have 15 acres every year, untitled.
As the assignee is liable to the lessor only when the ground of profession & enjoyment is not upon any breach of contract between them, he is liable for those breaches only, which happened while he was in profession. And this extends to the cost for payment of rent as well as all other covenants, the assignee not being liable for rent that became due either before the assignment to him, or if he assigns it over again, after such lease assignment. And the lessor, even where making such assignment, the assignee was to a true covenant, that the assignee was discharged. But in an under-lease or assignee of part of the term, is not liable to the lessor for any cost.

Covenant, however, will lie out, as a prisoner of war, until it be for rent, gu. a. is that? In cases of assignment of leases, there is no a reinstatement of rent, or between lessor & assignee, or one assignee to another. E.g. If the lessor assigns the lease, the assignee continues in lessor, eleven months, then assigns it to a third person, a assign it to the lessor, before the end of the year, the rent becomes due, he is not liable for any part of the rent. But will not lessor compel him to account for the rent which accrued while he was in lessor's, if he assigns over to a bankrupt? In such case, the assignee is liable for the whole year's rent which became due after the assignment to him, since he came in lessor's, but a single day before it became due.

The lessor is liable to the lessor, not only upon the ground of profession & enjoyment, but also when the ground of his contract for there is both a priority of estate & a priority of contract between him & the lessor.
Covenant.

Therefore, the lessee by assignment, never sets himself of
his liability to the lessor; the points of contract still remain-
ing between them, the lease and matter of estate is destroyed.

But it is said that he may accept the assignee for his
lessee. By accepting rent of him, he discharges the lessee
from all liability for a future neglect of payment. (Note. The
amounts only to discharging the lessee from liability in an action
of debt on rent afterward becoming due, being not paid for.)

The lessee accepts rent from the assignee, the
lessee is still liable for the breach of an express contract, the
committee on the assignee after assignment; and in this
case, the lessee may institute suits both at the lessor &
assignee at the same time, for they are both liable. And
if he recovers against one judge, it is said, the other is
of course discharged except as to the costs, which must
still be paid.

When the lessee assigns his reversion, this assignee
has the same right as the lessee as the lessee himself;
but it is said that he cannot maintain an action as the
assignee of the lessor, for that is neither himself or estate
or contract between them; his remedy in this case being
against the lessee himself.
Covenants or Bonds of Indemnity.

If a sheriff takes a bond to secure himself agst. the escape of one who has the liberty of the yard, the prisoner escapes, the sheriff may immediately sue on the bond of indemnity, as the ground of his more liability; he is not obliged to wait till sued himself by the creditor.

As if one, being bound as Surety, in a bond with another, takes of the other, a counter-bond of indemnity, the debtor fails to discharge the former as soon as it becomes due, the counter-bond is immediately forfeited. Before the condition of the former bond being broken, the Surety has become liable to the creditor.

In cases of the bond last mentioned, whether more liable alone gives the Surety a right of action agst. the principal, or whether he must sued till he has been actually subjected, is a question that has been debated by the ways by the Sub-Ct. of C. The Ct. of Errors have reasoned, that liability alone is not sufficient to create a right of action.

If the principal has been compelled to pay the Surety on the mere liability of the latter, it is afterwards obliged to pay the creditor;Chancery will oblige the Surety to refund. Might not the same relief be obtained by

If a Surety who has taken no bond of indemnity, has paid the debt of the principal, he may recover the money of the latter by an action of indebito juss. Tanner, he cannot not.

But, if one obligates himself in a bond as Surety, for a Debt incurred by the Debtor, or becomes joint obligor on a single bond, he becomes himself, taken of the Debtor, a bond to have hereafter, no right of action arises on the bond of indemnity before actual dishonour. For it would be absurd to consider the bond of indemnity in these...
cases, perfected when the more liability of the surety, since, in both instances, his liability commences from the moment of his becoming surety. If, in these cases, a right of action accrued on the more liability of the surety, it would follow that a bond given with condition to be paid on the event of the obligor losing the obligee's favour, would be perfected at the moment of its execution. —

Covenant by or against the Heir or Executrix.

§ 1745. Covenants are either real or personal; those annexed to the land being called real; those annexed to the person, personal.

On the death of the covenantor, the personal covenants are extinguished; but the real covenants descend to the heir.

§ 1746. On the death of the surety, the personal covenants in all cases descend to the heir; as he is the person to sue for a breach of them. — With respect to the real covenants, the rule is this: if the breach of the covenant happens before the death of the covenantor, he becomes entitled to sue for damages; as these are personal property, the right to sue for them
Covenant

2 Lev. 92.  
Shen 508.  
Hand 1111.

descends to the cr. but, if the breach did not happen until after the death of the covenantor, the heir is the proper person to institute the suit, because the land descends to him with the copyhold interest.丁. 丁 both belong to him in the proper sovereign to sue for a breach.

When the covenantor dies, act 1 for breach of personal co. is always to be brought ag. 丁丁. In the breach of a corporeal it is also to be brought ag. him, when the breach happened before the death of the covenantor. But, if the breach happened after his death, the heir is liable to act the cr. upon the issue of his taking the land with 丁丁. And in such case, of an action brought ag. the heir, upon the co. running with the land, he cannot plead

infancy in bar.

In the last case, as the possession and enjoyment of the land is the ground of the heir's liability, if the land in any case goes to the cr. or upon a devise for pay of debt 丁丁. he is liable, not the heir, after the breach happened after the death of the covenantor.

Therefore is the case of Eng. In 丁丁, the cr. is liable in all cases, whether the breach happened before or after, the death of the covenantor.

If a lessee covenants with his lessor, to do certain acts, 丁丁. 丁丁. the breach happens after the time limited under the law of 丁丁. for the exhibition of claims ag. the lessor's estate. 丁丁. the cr. is liable on the co. notwithstanding the statute. Under the statute of 丁丁. contemplated such subsequent liability, when it allowed the cr. to secure himself ag. future claims by taking bonds to the hand of those entitled to the lessor's estate.

A distinction has, however, been made in the law of between cases of this kind in which there is no existing claim within the time limited by statute. In which the claimant has no power to create a claim within that time, and these
Covenant.

case in which the claimant can, if he pleases, by some act of his own, create a claim against the estate within the time this limited. As, when the claimant may raise the claim in his own favor, by some act to be done by himself, which act, by the nature of the contract, is one that may be performed at any time during his life. In this case, the defect of being judge the estate not liable, unless the claimant creates the claim within the time limited by Stat. This defect evidently limited the other 9 of the contract, contrary to the intent of the contracting parties. In case of involvement of the estate the claim is allowed as a general, in either of the above cases.

Of the Declaration & Pleadings.

In an action on oath it is necessary to assign a
be the 3D breach coextensive with the impact of the contract it the 9 C. 62. covenants that he is seized in fee. It is SUFF. to state that
it was not seized in fee.

On 9 C. 62.
1 Sel. 5 B. 9. 9th part. it is not SUFF. to State a breach generally. as, if the case be, that the Lessee shall enjoy without tenancy. B. it is not SUFF. to assign a breach that he has not enjoyed without let or for the entering may have been by a misconduct, at which the case does no
Covenant

Secured, therefore, the lessee in this case, must state the
specific breaches, that the molestation was legal.
And if the lessee has been sued by judge, of 0, he
may only show the judge to prove the molestation legal.
Otherwise, he must show the defect of the lessee's title.

If the P lacks a breach, which he sets out, he
does not assign a breach, under a "viz." inconsistent with
the act, it shall not destroy the act, but be rejected.

Where a breach in the alternative, a breach must
be assigned of both the acts commanded to be done.

Where the cost is to pay a sum certain, there can be
2 Sec. 124: no assignment of the demand, as where the cost was to
pay $10 for freight of goods. If declared to so many
tons, 1000 pounds, it was held to be ill. But, the P
Sec. 125: having this demanded too much, may enter a remittal,
for what he has claimed too much, it take judge for the rest.

4 Sec. 253, 1852: A release, by a lessee of damages incurred by a
breach of cost, on the part of the lessee, after assignment
As Sec. 103, of the lease, the lessee is void, for a breach at Com. Law
2 Rest 151: is negotiable. As the rule is, That, if the instrument
is negotiable at Com. Law, the obligor cannot release
after assignment. If the cost is not negotiable, he may
release it, even after assignment, for it will not be
Law in any case, take notice of an assignment.

In C., the P, after having, that he has not
broken the cost. This however, is a very irregular mode
of pleading. In the P, assumes, the P, must change
his plea; for the P, have never allowed this mode of
pleading to be legal, for it tends to refer questions of
law to the jury.
If one's mind upon an affirmation, the def. must plead performance, not in general terms, but the specific performance of the particular covenant to be done. It is a practice that pleading in general terms, is cured by verdict.

If the def. are in the negative, the def. cannot plead in an absence of their own doing. He must therefore plead in general that he has not done the things covenant at against. Note: themselves with regard to pleading in affirmative & negative covenants are different from those last shown the Edgcomb.

There is no exception to pleading in actions on affirmatives or negatives where the covenants are very numerous, or rather where the things covenant to be done are very numerous. In these cases the rule that performance of every particular must be expressly pleaded is dispensed with.

In actions on bonds or ass'ns to have harmed, the def. must in general plead that he has saved the def. harmless. Also plead the particular act or acts by which he saved the def. harmless. But in some cases the def. may make a general negative plea, viz. non damniatiss; the def. has not been damaged.

The rule of distinction is then: When, according to the terms of the oblige the def. is to be indemnified or, some particular act by the def. as a release,质押 etc. The def. must plead quo modo; of he does not, however, but plead generally non damniatiss; the def. must take advantage of the specific damages.

But when the bond or ass'n is to save the def. harmless from any trouble, sort damage &c. expressed in general terms, non damniatiss is a good plea. But if the def. instead of pleading this, as he may, should ende...
Covenant.

take to hear affirmatively, that he has joined the
self-harmfully; he must state quo nondum.

When the self-pleadings are demanded, the jury cannot
generally
proceed by traversing, saying that he has been summoned,
but he must reply the manner in which he has been summoned.

1. If joint several covenants.

2. If three persons are bound jointly severally, the

3. If two are bound jointly severally, and one, but two of the three can-
not be sued alone. For, the court must be treated as wholly
joint or wholly several.

2. If two are jointly interested in a right of action,

all must join in the action brought.

3. Where an abatement of the obligations rest themselves jointly

4. Severally interested in one cases they are jointly interested

5. Of two joint creditors may release, or to bind the others.

When two persons are jointly severally bound, one

may charged for the neglect of the other. And judge, end one

is no bar to the other, the neglect of the judge would be.

If there be an intendment reading that A, B, C are

bound or one had to, let it be seen that C did not execute

the other, the jury may state the A, B, ordering that C

fails to execute.
Of the Action of Account.

2d Ed. 145.
C. Sth. 172.

In the action of Account, when the deft recovers, there are always two judgments. The first is, that the deft account, and computes. On this nothing is recouped, but the deft has a right to demand to hear the accounts of the parties. When the auditors have examined, or they select the account to the et by which they were authorized. Fiddo: shewn the return of the auditors as a verdict.

Before auditors the parties are a common right entitled to testify; they are even required to do it, for refusal may be imputed.

If the deft will not a hear before the auditors the whole demand will be found & returned to et. This is the case both in Eq. & C.

It may also be that the deft will have a balance found in their favor & returned.

At common law this action lay against a Guardian.

C. Sth. 172.
1st Ed. 116.
C. Sth. 89.
On Cap. 229.

This action lies only on the ground of a treaty of contract between the parties, created for themselves or by act of law. By course it lies two cases; first, if the last rule there is one condition. What one has stipulated when the land of an infant, the latter is not obliged to
consider him as a wrongdoer: he may sue him in an
action on account for the rents and profits while he was in
possession of the land.

Further, will he not be any breach of trust or
negligence arising out of a breach of personal honesty,
unless such act is done in the course of mercantile-
dizing or making profit with it? And then the act is a Breach of
Promise.

If a person receives articles of another on the face
of his account, the act to lay no claim. If he refuses by
promise to account, the act is a Special Act. The
latter is the case. But in the case of a case it is
Similar to a case. Still, the act is not to be
in the act of account on the act in case. As in Eng., a bill
in Chancery is in all instances concurrent with an action of
account. Its design is to effect the same as the act of a
law. But it has in fact, very nearly, the same effect about
in case, in ordinary cases, where an act of a law will lie. The prac-
tice always is to bring the act at law. It is a very fre-
quent one. If one receives a sum of money of another
under such circumstances is will suit for an act of
account, but makes no promise to account, of course, is then
concurrent with the act of account.

But where there is no promise, and money be found,
the act of account will not be ag. the principal. It is
essentially characteristic of this act, that the parties them-
selves may testify their right to testify acts on the ground
of trust and confidence, it being where there is the idea
of trust and confidence, between the parties to exclude: to have no right to testify, and where there is no breach of
contract. Such trust cannot be imputed.
Account.

It can take an ex or dem., could not sue or be sued in this action for want of privy. But, by a Stat. of Ann., the action is extended to them, as also to co-partners, tenants in common, & joint tenants. —

A Stat. of C. has extended the act of credit to all the cases except that of an ex. debtor, to another in the St. of An. But notwithstanding this omission in our St. practice has extended the act of credit, as well as to tenants in common, &c.

Can a note of one! the declaration states, that the def. set up the money as land of the def. as bailiff, and received the note, and the plaintiff, when reasonably required to so. The def. demands the def. a reasonable note. In the case of partners, &c., the declar. states that the def. has received more than his bail or...

The def. may plead anything which renders it unreasonable, at the time of suit, that he should account as the pl. has a release "a course," that the def. has fully accounted for. But, if the def. pleads this case, he cannot go on from the C. (or his frequently attempted to be done). Then this he owes the def. nothing. In that would make the def. as the husband of the other, but then he has pleaded that he has fully accounted, he must prove that fact to the C. Then that he has actually accounted with the def.

When the judge of the C. says that the def. is not bailiff or receiver, a that he has fully accounted for, it is evident there is no necessity for a reference to another, but the def. has paid for the cost, in ordinary cases.
The defendant cannot show before the auditors, anything which he might have pleaded before the Court. He cannot, therefore, plead before the auditors, that "he has fully accounted," that he is not Warfield's Receiver. He-

But, it is good accounting before auditors, to show anything, which, in any other action, would free the defendant from liability, as payment.

A Justice of the Peace in this State, has no power to appoint auditors, therefore if an act of a Just. of a Just. before a Justice, he must act as auditor himself.
Of the action of Debt.

The action of Debt lies in general to recover on liquidated or certain sum of money. Unless it be due to
on a written or a parol contract, in some cases, whether
there has been any suit at all is immaterial. If the
sum demanded be certain, in case of a penalty given
by a Statute, it is irreducible. There must have been
any suit between the parties by judgment.

It was a rule formerly, that in an action of debt
the exact sum demanded must be recovered, or nothing at
all. This rule of late has been much relaxed.

The action of debt will sometimes lie, either as
judgment of O to recover the sum adjudged to the O.
It has been a question in C. whether it can be said
the OJ may take out cos. for that sum. As it now
seems no good reason (interest never been recovered
in a court by O, unless interest has been expressly
reason for granting it. By the com. it is claimed is always allowed when a judgment is not; when it becomes a matter. From some late adjudication it is
probable that the same rule remains, no case in O,
this should be the case. Debt toly might be brought
if no case of it might occur, in order to recover the
interest.

In the debt to oly, let after a year, a day,
from the rendition of the debt, the suit begins for the
in that time it cannot sue on the suit. Upon
this being the rule of this case: it could not be that in C.
until after 12 or 13 years. For within that period, at
any time, it may be taken out. But it is now
settled that it is from any cause within that time. Or
cannot sue for, or when the full benefit of Suits
if had cause be obtained, this act will be on jury
a case of 10. Herein a free game
may be laid upon the judgment.
The judge must be an actual & dissenting judge at
the place of the action. But if it has been removed or
in any way transferred, the act does not lie.

In an action at law, or debt, no evidence is
to be introduced before the judge, that is to be taken
as conclusive evidence of a debt to that amount, etc.
where the judge has been obtained by force. Evidence
that way always be introduced. So it goes to show that
there was no such person obtained. The hand being considered

Neither does this rule extend to debts contracted
in a foreign country, that being considered merely as
foul & detestable. It is only to be seen, for instance of
a debt, an angry thereby, in which case may be made
ought 2026 into the original suit. And if suit will be on hack dock

By the Constitution of the U.S. it is evident is
that can be given in each State to such a receiver in another, if
not, there be considered as being foreign slander.

In C. if a judge obtains an additional debt,
with service where the garnishee has no right, the ad-
cending debtor himself, nor can an action of debt be main-
tained ag. him, in such suit. All intent is merely to
conclusively set the hand of the garnishee, and is
of no further effect than to lose the suit for a
free grant ag. the garnishee. In the original act:

Against what the act excepts except the personal debts from the gen-
oral debt, garnishee cannot 2027 & defend, for, if he is not a receiver,
or has any other grant of defenses be to avail him-
self of it in the debt action, or on the suit. And on
the suit, the act cannot prevent the garnishee's
testifying as to the part of his having settlers properly
in his hands.
For money due on bond or single bill, the action of debt is the only remedy. If the money is due to be paid by installments, i.e., at one day and at another, the rule is that if it is a bond with penalty, it is just to allow both the principal and penalty, but if it is a single bill or promissory note, it cannot be brought till after the last day of payment. An act 11 Geo. 3, c. 25, however, might be used on a promissory note before the last day of payment was past.

A suit conditioned for the performance of a collateral act is viewed as on oath as a suit in equity in a county, in general, be obtained. But if it is evident that the obligor was to do the act, or pay the penalty at his option, equity would not be deceived.

A bond made upon an illegal consideration is void.

If the illegality appears on the face of the instrument, the debt can be denied, but if it does not, the court must determine illegality in the plea, and not of its own motion, it being the duty of the party in whose favor proof shall be admitted to prove.

On a covenant or obligation having been to pay a sum certain in action of debt, the court may be required.

If a covenant with a penalty is given, the obligee has his election to sue for the penalty or damages, unless it appears that the covenantor was to have the election.

The court, in an action on a bond, damages may be given, exceeding the penalty, as if principal and interest amount (should not exceed) more than the penalty.
To recover money out of the hands of an officer who has seized it, debt or indeed as he lies.

**Stat. 253.**

By a Stat. 3d, it is enacted that an action for neglect in a sheriff must be brought within two years. But if an officer has seized money & refuses to pay it over to the creditor, indeed as he lies after two years, or if the officer being neglectful to collect refuses to deliver the creditor all the money after two years. The Stat. limits only actions for damages for the neglect of the officer, not those which are laid to recover out of his hands, the property of the creditor.

**Stat. 120.**

Upon a promise to pay the debt of another, when the promise is without the Stat. of frauds, debt will not lie. Accordingly, in this case, is the only remedy, the thing is certain. If a promise is founded on a past consider, the action of debt will not lie; this in many cases a recovery may be had by debt.

The action of debt has fallen into disuse in Eng. at late, owing to the extensive practice of the debt arising. The law being admitted in the action.
Of the Action of Detinue.

The action of detinue lies to recover possession of a specific chattel, i.e., in nature of a bill in Chancery.

On an action of detinue, the defendant is ordered to make specific restitution or to pay a certain sum which, in nature of a penalty, is imposed. This action is rarely tried in Eng. It is one in which the defendant pays the costs.

To recover will lie in all cases in which detinue will lie; but, this rule does not hold in concursus. For, detinue will only in those cases, in which the defendant originally obtained possession of the property lawfully. The action of this rule appears to be that according to an old principle of com. Law a trespasser taking diverted the benefactor of the ownership of the thing taken, and it is essentially necessary to the support of this action that the defendant have a property in the thing demanded. But as it has been settled in later times, that a trespasser taking does not divert the owner of his property it is presumed that the action of detinue would now lie, for the recovery of property wrongfully taken.

In bringing this action, it is necessary in the declaratory to identify the property for which it is brought with great precision. It is evident, therefore, that it will not lie to recover money due, which cannot be identified at all unless it be contained in a bag.
Of Notice & Request.

A new Law a request of what is due, is always necessary. In many cases however, the request may be just, only containing the ordinary allegation, that the debt has not paid. The obligation too is remedied.

The debtor need not, in O. be inserted in the declaratory, or actual request in the case is necessary.

Sec. 34. If a liability is to arise on some contingency, which is known to the obligee only, or which the obligee is bound and to know, notice is necessary as a promise to say the debt is much, upon coming into possession, notice of the happening came into possession, was held to be necessary. But, it is said that if the fact may be settled, our knowledge of the facts, and the knowledge to say as much as old due as notice of the debt is necessary.

It is also said that request is not necessary where there is a present debt or duty.

A more accurate general rule however is, that whenever there is an agreement to do anything on demand, the obligee cannot discharge by tender without notice, in actual demand is necessary, when a debt is thought of by the court, or that A. shall not be certain thereby, for B. to give him information of its being done. A. agrees to pay $10 a month. Here actual notice or the fact of A. meeting the necessary. But, if the obligee can discharge himself by tender without request, no actual request is necessary, the the agreement was to have "on request." If there was no present debt or duty, as in case of injury caused by arbitrators, &c., these must always be an actual request.
Notice and Request.

On due bills given by merchants to deliver to the holder, such a sum in goods, demand must be made not only because the merchant cannot discharge himself without request, but because the common course of business has established the necessity of a demand.

On the reason last mentioned, on the score of general convenience, request must be made for payment due from public officers in their official capacity.

And where actual notice or request is necessary, a special request must be made in the declarer's favor. The general averment in all declarer's of such facies or requisites is not sufficient.
Of the Powers of Chancery, relative to Contracts.

2 Pomer. Ch. 425.

[Text continues with legal exposition, discussing specific cases and principles related to contracts.]
Powers of a C. of Cht. —

If one of two joint obligors pays the whole sum due on the bond, Cht shall be held to cancel the other to reimburse him who has paid the whole, and this is his only way in Cht. to obtain relief. In C. a court of contribution in nature of undeb. acts in such case, to recover that the other obligor ought to pay.

2. Bac v. C. 10. 44. 8.
2. Bac v. C. 31. 3.
2. Bac v. C. 10. 44. 8.

It is a general rule, that Cht will not interfere to enforce the specific ex. of a cont. unless it be such as one, as damages may be recovered when at Law, and then be an agreed to convey land, this cont. must be such as one could entitle the grantee to damages when non-perfor.

and in such case will not decree performance of any

and in such case, will not decree performance of any

such as, for example, and I without notice. Yet,

Where the grantee, under the act of

the cont. itself, a share there is in Subst., a bona fide cont. or not, but by reason of some fault of part, a Cht of Law cannot give damages Cht will decree a specific

ex. So where the remedy at Law has become extinct,

the cont. as when a testamentary act is made ex. But, where the reason why a C. of Law cannot give

20. v. C. 17. damages, is the not happening of events provided for by

the parties, Cht will not decree a performance.


Whenever a person files a bill for the specific ex.

of a cont. he must, before he can procure a decree, that he has performed, all that he was to do on his part by the cont. or that he is ready to do it. For, equity will not on

face performance of a cont. one. See only.
The principle is to carry the contract into effect, pursue the intent of the parties, accord with the intent of the parties. Hence, when a landlord covenant made out a lease, in general terms, it was held that he was bound to do it, without incurring restrictive clauses of an unusual nature.

Upon the same ground, if being the intention of the parties, in a marriage settlement, where lands are agreed to be settled on one for life, remainder to the heir male of his body, which on a contract executed would give the first
Powers of a Ct. of Chanc.

3rd. 240.
2d. 240.
1st. 149.

4th. 633.

3d. 149.
3d. 32.

2d. 42.
3d. 32.

1st. 35.
2d. 260.
3d. 260.

2d. 35.

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1st. 149.
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Powers of Ch't of Clrt.

Money thus agrees to be laid out in land is subject to the land's century, but not to the wife's power.

This rule, however, of Cl't considering a deed, what is agreed to be done, is not allowed to a wife's power to shelter any fraud, &c. If vendor of land, after entering into article to convey holds the title-deeds, it is thus enabled to sell the land a second time. The second sale to a bona fide purchaser without notice of the first, shall be binding on the articles notwithstanding.

But when there has been no actual contract of sales, but merely an agreement to make an contract in future, Cl't does not consider the husband as transferee, but as belonging to the original owner, who of course is liable to bare all losses that happen.

Of the power of Cl't to rescind or refuse a contract:

The Cl't, if there be personal contracts, has ready grants relief, &c. but not as to and any other Contracts or agreements whereby in the transferring of lands are always on just or irrational hardship, and Cl't will enter into the contract and requests the grantor agree to be transferred that they may have greatly arisen in value since the time fixed for sale.

Whenever Cl't refuses an asset, or sets it aside for any cause, if does it upon the terms of restoring the lands to the situation they were in before entering into the contract, and if the party applying for relief has not any part of the consider money, he must refund the same.
Power of a Ct. of Ch. —

1848

Nov. 6th.

2 Pm on 12th. I have no objection to Ch. enforcing of a contract. This is a penalty provided in case of non-performance, and if the object of the act is damages only.

Relief: e.g., penalties included in bonds &c. is founded.

Nov. 12th.

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3 Pm.
Said Act 100. penal in their effect, yet if they be not strictly con-
ścipt with, Oty will afford no relief, as where a creditor
agree to take less than the debt, if paid by a certain
time, the debtor failing to pay at that time, Oty would
not affect him.

Oty will never relieve as a penalty, however great,
induced by threat to compel obedience to its decrees.

If bonds have been given for the performance of
a variety of acts, for a breach of each of which an action lies
at law, or the payment of money by instalments, altho
the relates to personal property merely, Oty will, in order
to prevent the trouble and incumbrance of a suit for every
breach, get a penalty which will either compel a strict
performance or be an adequate compensation for non-com-
pliance of agents between merchant, and thus treat it.

So, in general, when a controversy cannot be settled
at law, without a multiplicity of suits, or, in matters
of account, from which have sprung a variety of suits,
Oty will take up the whole controversy, and make a
final settlement. It will, in cases of this kind, be
called - bill of peace.
Powers of a Ct. of Chancery.

Chs will sometimes refuse to decree a specific
relief. In cases of unreasonable cont. and things
with force.

Any evidence that has been made use of by the
person applying for a specific performance of a cont. may
impart representations of facts. If it is not sufficient to in-
duce the Ct to reverse the cont. yet it will prevent the
interference of its favor.

A cont. must be certain, definite, or no decree
can be obtained for its execution. But, if it be ma-
tual at the time it is entered into, the uncertainty be-
destroyed by subsequent events, it is no objection.

An executory cont. which is purely voluntary, is Jlden
enforced in Chs. If such a cont. even if under seal, nomi-
nal damages only can be recovered at law; and the rule in
Chs. is, that the cont. must be such an one as will en-
st the party at law to seal damages, or they will not
carry it into eff. But there are exceptions to this rule.
If the cont. is a reasonable one, such as one as that
when application would have required to be done or ref-
it is one founded on justice, if the Ct. can lay hold
of any cause whatever, they will decree its perform.

Chs will not secure the inference of a cont. tending
to promote extortion, oppression, or immorality.

Chs. cannot form the specific cont. of an assured.

Chs are allowed to take judicial notice of facts.

Chs. have no legal existence. In cases where
ance warrant the neglect.

Conts. against infractions of the law are en-
ble. And if an infractions or money is actually repaid it in a
situations. Also, when the cont. is beneficial to the obj.
9. Ct. of Chancery will in all cases relieve a cont. in which there is the least tincture of fraud, whether it be in the consider, or execution of the cont., whether the cont. respect real or personal concern.

To the taking an undue advantage of a minor.

This procedure, if unreasonable, cont. whether T. be in necessities (embarrassed circumstances) or a state of intoxication or a man of weak intellect, is always considered as a ground for relief. In Ct. of Chancery on the ground of fraudulent intentions, imposed fraud will in the gen. procure the cont. Even if the cont. be entered into under any undue influence or under circumstances not favor. assurance, that one of the parties had an ad vant. over the other, it will be relieved, e.g.:

4. if the parties are parties, and the cont. is not equal, the reason is of a party, no relief can be had.

Inadequacy of price, alone or under circumstances.

A contract was unreasonable, if the parties were

of one accord and account with their rights, and where in the nature

misrepresentation or misconception in either of the parties.

A party is a ground for relief. But it is sufficient

that it may be a ground for recovery. It is not one that

evident demonstration from the nature, subject of the

bargain, itself, that fraud or intention.

And if there are any circumstances, which the Ct.

can lay hold of evidencing that the cont. was not, hastily

free of fear on both, that it will relieve:

2. Coercion, not amounting to legal duress, is

a sufficient reason for Ct. to proceed when, in resolv.

a cont. Not ajustable degree of assurance for a

parent or superior does not come under the description

door coercion, as to render a cont. void.

Bargains originally oppressive, as well as those

gained by fear or coercion, may afterward that fear, or

hope, it is reasonable, to conform. This renders binding.

but such confirmation must be made by the party who

1864.
Powers of a Ct. of Chancery.

Ch. 1814. fully apprised of his rights, freely & without compulsion or fraud exercised upon him by the adverse party. —

Ch. 1815. Ct. of Chf. are sometimes influenced by motives of national policy or adhering to contracts, as in cases of marriage, borrego co. to comply with young heirs for their expectancies.

Ch. 122. Where contracts are rescinded void by law by the Stat. of 1835. Permits the void in some instances enforce them, as where the cont. is executed or partly executed or one side or some. Sometimes has been omitted in the written cont. by fraud or mistake.

Ch. 123. In cases of mistake in private trusts, there by reason of the fact of trusts no recovery can be had at law as sec. 122, 124. the trustee. Ct. of chf. will enforce performance of the trust, if need be known by confession of the trustee by circumstantial parole testimony &c.

Sec. 124. As a general rule, Ct. of chf. will enforce performance of all trusts.

Ch. 125. that is not yet decree'd at the lapse of time, i.e. if the time fixed for the per. of a cont. is elapsed, they will not sustain issue to it to be performed. The doctrine of the equity of redemption of mortgages. declare party after the fact. a decree of this kind will never be made, unless there will otherwise be great injustice.
An injunction to stay waste may issue from Chancery in all cases in which an action at law will lie, or in many others. E.g., if an owner can never give remedy in action at law, as one has the legal title to land as a tenant, yet the owner's will issue an injunction ag't such tenant. Chancery will also issue an injunction ag't tenant in tail, after possibility of time extends the estate, for waste at law. In this last case, however, Chancery will not issue an injunction unless the tenant has committed very unreasonable waste.

An action of waste will not lie at law in favor of a remainderman, or reversioner, if any other estate intervenes between his remainder or reversion and the particular estate in which the tenant is at the time in occupation. Yet Chancery will grant an injunction in favor of a remainderman under these circumstances. So they will do in favor of a contingent remainderman.

Notwithstanding a lease for life, the word "without
injure or deprivation of waste" are made use of by the phrase includes an action at law for waste. Chancery will grant an
injunction ag't wrongful waste.
Powers of a Ct. of Chancery.

Injunctions to stay proceedings at any time either before or after suit commences, after ven-
ment before judge, after part, before ex. inf. or even after ex. inf. This injunction lies ag. suits or
all causes, which the good of law are void in equity.

If in mortgage covenant that he will not sell
the land for relief ag. foreclosure, the court will
grant an injunction to stay proceedings notwithstanding
the fact. If a suit at law is brought on the debt or
injunction is granted, the court will accept

In Ct. of Chancery will relieve ag. fraud. So they
will grant an injunction on a suggestion of fraud ag.
Stay proceedings in a Ct. of Law.

Chancery will issue an injunction ag. an executor
forbidding him to act as such, but not to respect
his right to the execution.

Injunctions in favor of authors, ag. such as at
tempo to reestablish their works without permission,
were frequent even before the Stat. of Anne, which has
more clearly defined their rights than they were at new
law. I grant them a legal remedy in those cases.
Powers of Chancery.

A Ch. in Eq. in Eq. have lately issued injunctions to prevent a party from multiplying suits by repeatedly bringing actions of ejectment for the same cause. For as the facts upon which this action is founded in Eq. in Eq. actions one action is as bar to another for the same claim, & therefore there might never be a Tenor action, if there were no such interferences by Ch. In Eq. as the proceedings in ejectment are not judgments for one action is a bar to a future action for the same cause, as such interference is necessary.

I know holding evidences of debt. After they have been held, but not being cancelled or delivered to the debtor, may be cancelled to renew them by a certificate to Eq. That it is also has power to order evidences of debts to be delivered up when it becomes proper that they be delivered up. It not return them, as in the case of a mortgage, when the debt secured by it is paid by the mortgagor. And as deeds take effect by being recorded, the mortgage may be cancelled on receiving payment to recover.

Eq. will order an offset when equity would otherwise be done, as when a person is sued upon his bill, and, there being mutual debt, Forei.

Phil. differs from a Ch. of law chiefly in these particulars: 1. As mode of obtaining evidence. 2. As mode of trial. 3. As its mode of relief.
According to the latest authorities, slanderous words are to be construed according to their ordinary acceptation. The old rules of interpreting them in favour of the person upon whom an injury is obliterated—

Slander is of two kinds, consisting of—1. Words actionable in themselves—2. Words put in themselves actionable by reason of some special damage, which the occasion to the person of whom they are spoken—

In words in themselves actionable, the test is to ascertain whether he has sustained any real damages or not—From the malignity of the words themselves, the consequences may probably ensue; this is a sufficient ground for a recovery. In words not actionable in themselves no recovery can be had, but in consequence of actual damages this is the gist of the action. It must be stated clearly—

I. Words actionable in themselves are of four kinds—

1. Such as charge a man with that which, if true, would subject him to corporal punishment. It is observable here, that the charge being of a crime scandalous or not, is no criterion by which to determine whether they are actionable or not, for they may be actionable, the thing to be injury to one's reputation as a charge of treason, under certain circumstances, also affect one's reputation materially; yet not be actionable, as to call a man dishonest, or a liar; the only thing we have to regard is, whether they be true or whether they be false; or whether they are spoken into danger of legal punishment or whether they imply a crime punishable corporally. Words charging a man with a crime, which if true would subject him to a fine merely, are actionable or not, as the crime charged is infamous or not. This has been adjudged by

Virt. 14b.

the inferior Ct. in Q.
null
The position, "that words of heat or passion are not actionable" is not strictly true. To call one "vicious" or "rascal" is indeed not actionable, but the case is that these terms imply no definite charge. Yet, if a person should voluntarily throw himself into a heated discussion, it would be no defense if he could show that there was no intention or probable cause of a definite charge. The question of whether such words are actionable varies with the circumstances. The general rule is that words of heat or passion are not actionable unless they impute a definite charge.

All words actionable in themselves are not, in order to be actionable, to recover a debt. If the debt is due, the person who has been defrauded is entitled to recover. It is necessary for the recovery to show that the person who defrauded was guilty of malice or intention to defame. The legal definition of the word "malice" is any wicked, corrupt, wrong, or unjustifiable motive. It does not exclude intent by color of title, but if the person defrauded had no cause or reason to believe the defamatory words, it would not be actionable.

In an action for slander, if the words were spoken to another person and are not actionable unless the words are spoken directly to the person defrauded, the words are not actionable unless the person who defrauded intended to defame. The words in question, "a fact committed" were charge of false intentions, not being a ground of action; but the words "adjective words or words spoken in the way of conjecture or belief" are actionable charges, as actionable. See Case 35.
It is a rule, that the whole sentence, all the words spoken, must be taken together; for though but of the words are actionable, the rest may explain them. Dyer, 101. The words spoken are to render them not so as “I did in a thief for he stole my tree” — this is not actionable, for the taking of trees is no theft. Whether did was charged with an error.

Where words are drawn from a person, by helping interrogatories, they are not actionable, this being a proof that they were not maliciously spoken.

Any thing pertinent or material to the case may be spoken or at by counsel for their clients, the it go to charge a party or witness with some crime. But if what they say is irrelevant to the case, they are liable.

Neither will an action be a for making a regular complaint to a grand jury, nor a for testifying on it. But in these cases of the complaint or testimony were false and malicious, an action for malicious prosecution would lie in one case, if for answer in the other.

II. Any words not actionable in themselves, charging one with any thing slanderous or infamous, who then by pu- tent fraudulent damage in any way, an action of slander lies to recover his damages, is to charge a person with being a liar. And in this case the special damage the if has sustained must be specifically stated in the action.
In an action for words actionable in themselves, the

if, may give evidence words not actionable. The

reason assigned for such indulgence is to induce clear-

age, but this reason is founded on principles entirely

false. The only rational ground for introducing evidence

of this kind is to show malice in the def. But the

if, cannot brook such words actionable in themselves, &

may have a separate action for them. — 2d.

so, if the def. states in his declaration any special

damage, where the action is for words actionable in them-

selves, he may know that, but no other special damage.

In the declaration, it is frequent to necessary to in-

roduce an "intent," for the purpose of explaining the words

spoken, or matters to which they refer; but as the office of

the intention is merely explanatory, it can never extend

the meaning of the words beyond their natural import; nor

then can it extend their application to some particular

person, unless from the terms of the words or further

it is indefinite & uncertain,—of the words are. Know one

more or less about the intention that the intention cannot make

their words liable to any particular person. — But the words

on literal sense must be his proper name, but in some

characters in "your father, or your brother, etc., etc., etc., &c.

it is to make an assurance that the def. is the father or

brother of the person spoken to that the words "your father"

can mean the def., or that so was spoken to such a person.

It is also necessary to state that the words were spoken of

concerning the def., unless the words were spoken to the def.

himself, or that cause the meaning is obvious enough without

that allegation.
In a declar. for words actionable as referring to a man in his office, it is necessary to show that the words were spoken in a colloquy or conversation, and not in his office. So if the words were actionable as referring to a man's trade or business, an averment that the speech was by his business that the will that arose that trace of the Slater is always necessary.

When in an action for slander, there are two different counts; one for words that are actionable, and another for such as are not, and the verdict is general for entire damages, it is held by judgment must be entered. But if the words are all contained in one charge the verdict may be actionable that not such a verdict would be good.

Under the general issue in Case. The first may in their favor that he did not speak the words at all, or that he spoke them without malice, for he may plead special if he pleads that they were not maliciously spoken. But if he wishes to justify when the ground of their being true he must always plead the justification. In C. he may give either of those defenses in evidence under the general issue.

But in B. if the defendant other words than those laid in the declaration, as he may to enhance damages, the verdict may always have the truth of those.

For words actionable in themselves, one action only can be maintained, the damages recoverable in that diversity considered as a satisfaction for all injuries that may ensue in consequence of the words having been spoken. But for words not actionable in themselves but become so by reason of special damages, it is said an action may be tried as often as any damage is sustained in consequence of them. (See, vide. 

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10. Co. 130
30. Willis 177

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10. Co. 91

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10. Co. 28
1. Co. 91

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10. Co. 28
30. Willis 177

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10. Co. 28
30. Willis 177
1. Co. 91

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10. Co. 28
30. Willis 177
1. Co. 91
Slander

Accord & satisfaction in a good case, but it is said 2 Co. 158. 94. that it must be executed in a valuable consideration. In law, asking pardon was not considered as such.

165. 125. The Stat. of limitations with regard to slander in Eng. is two years; in O. it is three. It does not extend to cases in which the special damages are the gist of the action, or their damages may not have arisen until after the two years are expired, nor to cases of slander of title.

142. 143. In an action for special damages, they must be [qu.]

143. 144. 145. exactly stated. Nothing can be proved which is not thus stated. [squ.] or may not other wishes be proved to show malice?

185. In Eng. the crime of slander is no crime, only if it accuse the magistrate. The Stat in O. the def. may be fined $5 if a conviction in that State. Two actions have ever been but when this State.
Of Libel.

A Libel is slander reduced to writing; and a defamatory libel in writing is a libel, as well as a slander in speech. A libel is of three kinds, 1. A libel as a reflection upon private honor. And it has been held in a late case, that any libel or reflection upon private honor is a libel, as well as which crimes are charged against them. In any others that will tend to disturb domestic tranquility or the peace of a family is a libel, of which an action lies.

2. Writing which reflects upon the government or the administration of public offices, but for which no private action lies. Is this species of libels recognized in the country?

3. Publications of an infamous defamatory nature which tend to corrupt the morals of the people or libels in which an indirect evil lies. In publications the established religion in the have been held to be libels.

A private action lies in the first case, but no private action lies in the second or third cases.

A libel in order either to lay a foundation for a private suit or a private prosecution must be published.

5. Libel, and a libel publishing it, knowingly and maliciously is as guilty as the writer.

5. Libel 200.

The expression it in libel, unless otherwise appears, always to be as
Libels.

1. Quot. 131. Any thing made use of in a course of legal proceedings or any memorial or remonstrance adopted to particular persons, for the redress of grievances if it is libelous of a person in a private letter reportorially with another, or his words if it is libelous, there is no proof of malice in such case.

2. Quot. 157. On an indictment for a libel the jury find the fact of writing, composing, printing, or sending, they must find guilty. This rule on this principle appears just in these cases the fact is libelous and the law can be libelous of the libelous intention. In the case of reading it is otherwise, for the reading must be malicious & the jury must find the malice. The libelous matter.

3. Quot. 120. When on the receipt of a general verdict of the jury, an action for a libel, is equivalent to a special verdict.

4. Quot. 157. The penalty for the offence is fines which is infirm as the description of the 9th shall endorse.

If the action or the case

for a malicious prosecution or occasioned damage.

An action lies 1. for a malice public prosecution.
2. for a malicious civil suit.

An action lies 3. for a malicious civil suit.
4. for a malicious civil suit.
5. for a malicious civil suit.

And in 151, 5th. at any one, who maliciously induces a criminal prosecution, knowing it to be false.

Formerly, nothing except the loss of reputation was a ground for damages in this action. But now, damages may be recovered not only for loss of reputation, but also for loss of liberty, or inconvenience the loss of health, or the loss of life.

So in 175, 958, for loss of liberty, or inconvenience the loss of any life of the party, or for any thing occasioned. 
Malicious Prosecution

Properly speaking, the U.S. has been subjected to an
indefinite and unjust malicious prosecution.

It is essential that the prosecution should have
been both false and malicious. By false is meant not
merely that the fact was unproved, but that there
was no probable cause, or, in other words, no rational
ground for suspicion. From the want of any possible
cause, malice may be most commonly inferred, but from
the greatest of malice, it cannot be inferred that there was
no probable cause.

A verdict of guilty evidence of a want of probable
cause, is the only evidence admissible. But if
it is necessary to show that the prosecution is at
any end, any other evidence may be admitted, besides the acquittal to show that there was no probable cause.

Acquittal, however, is not conclusive, but merely
presumptive evidence of the want of probable cause.

Accused: If in an action is lost, it is incumbent on the
defendant in most cases to rebut the presumption by showing
the existence of any probable cause. This he may do by proving
that a certain number of witnesses have given so much
credibility to the prosecution, or to the evidence for the true in the
one case or to present in the other. If it is proved by
the defendant, it is necessary for the jury to show a want of
probable cause from other facts than the acquittal. In this
there is one exception. If a person is prosecuted for
false or fraudulent theft which is no crime, the burden
of proof at present does not affect an evidence in favor of the
defendant which there is probable cause to believe that
fact from other quarters.

An acquittal for a defect in the original complaint.

of prosecution affords evidence of a want of probable cause
as much as there had been a trial upon the merits.
Malicious Prosecution

Conviction, if it be before a Ct having competent jurisdiction & power to convict, is in all cases conclusive evidence of a probable cause.

Apparantly from the authorities, that after an acquittal the deft can never have a probable cause, unless thy has been a crime committed by some person of the kind charged in the prosecution claimed to be malicious, but such. Fig. from this rule would not now be adhered to.

2. 231. Public officers commencing prosecutions when false information are not liable to this action. But here was going such false information are liable so of the... 231. Public officers should prosecute maliciously without probable cause he would be liable. But if a magistrate grants a warrant to apprehend a person without any proper information, this action will not lie but the improper person's remedy is in the forged or false arrest for false imputations.

II. In a false & malicious civil suit, an action lies. This is called an action for malicious prosecution. It lies:

1. If it can be made to appear that a person has commenced a suit knowing that he had no right to recover this action lies. It must be evident however that there was no colour of claim that the person who brings the suit knew there was none.

2. Where at the time of the suit there was a just claim, yet the deft has made an unnecessary use of legal process by arresting the deft for a much greater sum than was due for the purpose of deterring him to receive debt, or if he has attached property to a much larger amount than was necessary to this debt.

3. Where a person brings a suit in the name of another without any authority for so doing.
Malicious Prosecutions.

3 Will. 302. 2. If there be good cause of action, yet if a suit is first brought in a Court not having cognizance of the cause, this fact may form to the benefit bringing the suit, an action agst. him will lie.

Westyl. 80. 3. If a person in a suit legally commencedureka, deceives maliciously obtains a decree agst. the other party, this action will be supported agst. him.

It has been a question, whether the practice of forcing debtors into a manner similar circumstances which offered no particular benefit to the creditor, but even as malicious intentions, is not actionable? The judges have decided that it is not. But when the loss or great injury is often done in these cases to the debtor, not only by rendering his credit suspicious, but by depriving him, as it must happen in many cases, of the benefit of the more indulgent laws of his own State, by subjecting him to unnecessary other inconveniences to which he would not be liable of himself, or among his friends, it near his prosperity.

Yet suppose that if a creditor will make use of legal process to harass does his debtor unnecessarily without deriving any benefit to himself, this debt ought to be brought.

A malicious prosecution, or vexatious lawsuit, is a public injury under our laws. If the injured person is to recover treble damages.

In order to support this action, the fact claimed to be vexatious must be such as in some way, the it is not necessary it should have been

In the declaration, the defendant must state at length the facts on which he has been troubled, the proceedings after that, the final issue or determination of it, whether by trial acquittal, or by a verdict. He must also state if it was a public prosecution that it was commenced or instigated by the plaintiff. In all cases he must state that it was falsely or maliciously or without probable cause.

When the action is for a malicious public prosecution, a copy of the record of the proceedings after that prosecution is made and affidavit on the part of the plaintiff, and it is said that it is disinterested with the court before whom the trial was had to grant such copy or any it, if the cause is absolutely necessary to the defendant it cannot succeed in the action, a general of it, &c., in fact, deciding the cause against him, it is clearly prejudging the case.

The trial to prove malice or may give in evidence that was testified on the former trial, or any circumstances that show want of probable cause, or malice in the deed.

The facts that every thing ought to be admitted, this it be not immediately connected with the former suit or prosecution, to prove malice in the deed.

The defendant may plead either the general or a special justification that they that were not carried or maliciously, or that there was probable cause.

The authorities are contradictory as to whether the jury may award damages or not, in this action. And finds it ought to depend on the amount of all other cases of a like nature, therefore that they cannot.
This action of trover, as unknown to the common law, arose with other actions on the case, under the Stat. Westminister 23. Vik. 13. Dec. 1.

Trover was originally used to recover such articles that had been lost or stolen. But it now lies to recover any personal property, capable of being identified, which has in any means come into the possession of one to whom it does not belong; whether it be acquired by theft, wrongfully, or whether it came into his hands by right.

In case of bailement, the maker of the baile, different from the original donor of the bailement, or refuses to deliver it up upon demand.

The plaintiff, alone, is the subject of the action.

The plaintiff, in order to recover such goods, must show that the defendant is in possession of the goods, and that he has no title to them.

The defendant may recover the goods, if he can show that he has a title to them.

These actions of trover are of two kinds:

1. Action of trover on a case of misdelivery.

2. Action of trover on a case of conversion.

The action of trover is either by an unlawful taking, or by unlawful detention.
Traver

If the jury find a special verdict that there was a demand refusal, the court cannot adjudge a conversion.

In all cases of unlawful taking, theft, spoliation, and the like, if the owner has been held to have concurred with the taker in his acts, the taker is liable for theft, theft, and not only, unless the taker, the not forcible, was found not—i.e., unless the original intention of the taker was to abuse or convert the property taken. Where property is taken with such an intention, the law considers the There is no fraud, but that the fraud annul the contract.

252. 1078

A recovery by the owner in an action of trover rests on the property, in the act, or in all cases except where the property has been returned after a conversion.

252. 1069, 902. I. The owner is not barred to the action of trover, but only goes in mitigation of damages.

252. 975. Where there has been only a partial use or conversion of the property, with damage to the rest, recovery lies for the whole, even after a return, to the owner of the property, as when a thief drew liquor out of a cask. When it was water, it was held to be a conversion of the whole.

252. 316. Trover does not lie for a mere non-performance with

252. 810. To recover property for it affords no evidence of a conversion.

252. 143. As a finder of property I should lose it again—or, if a common carrier should be robbed of property entrusted to him, or should lose it, the remedy is put him; would not lie in trover, but in an act on the case, his negligence affording no evidence of a conversion.
It is not necessary for the BA, in an action of trover, to have had the absolute ownership of the property taken, possession alone being a sufficient title as to every person except the true owner or, a finder of property may maintain trover ag any person, depriving him of the property thus found.

But, possession is not necessary to support the action; a right to possession is sufficient. If A. delivers goods to B. to deliver to C. & B. converts them, A. may maintain trover ag. them. But if C. has a mere gift from A. & C. in that case, would notenable C. to an action unless he had been in actual possession.

A special property is as competent to maintain trover as a general or absolute property; Tr.

If property is taken from a bailee, he may maintain trover for it as well as the bailee. If the bailee fails to restore the bailee is estopped from an action against the trover, the he still has a remedy ag. the bailee.

But if the bailee in this case anticipates the bailee in suing the trover, still the bailee the estopped of his action of trover may have an action as the one party to recover his special damages. It is to be observed in these cases, the commencing of an action attaches to the BA, whether bailee or bailor, a right of recovery fronts the other of his action.

While supposes that the bailee ought not to be permitted to maintain trover, unless under the circumstances of the case, he is actually liable. But the rule is, that the bailee can maintain this action, whenever he may by responsibility be liable, and as every bailee may be responsible, the rule will amount to this, that the bailee may in every case maintain trover.
Trover may be brought not only ag the bailee, who actually took & converted the property in the first 

first, but also ag the owner, since the taking was unlawful, or ag the owner 

who in case of a theft it will be ag any person 

into whose hands the property has come, unless the pro-

perty taken is money or negotiable bills or, unless the 

pole was a sale in market or over, or other good transa-

This action can in no case be maintained ag the ba-

tle ag the bailee for any injury done to the bailee to the 

talee to the property bailed. The bailee's remedy is by 
an action on the case for his special damage. So: "No 

part of the bailment is a general one to the bailee, trover 
can never be maintained ag the bailee except, where for any 
injury or conversion of the bailee by him, but of the 
bailment to or for a special bailee, the bailee can any 
at amounting to a conversion, has liable to trover. 

Since there are two joint owners of property, they 

must both join in an action of trover for that property. 

Therefore, one cannot maintain trover ag the other. — 

When one has a lien upon property in his possession 

he is not liable to trover for refusing, to restore it to 

the owner, unless his demand is made or tendered. As in 
case of a common carrier for the owner, he is liable in 

for $582.3.

for $582.3.
It has been questioned whether the Stat. of Limitations barring actions of torts after three years does not equally apply to actions of terrors for the same injuries. This the Stat. does not expressly mention actions of terrors, and I hold, that wherever terrors is concurrent it with theft, it ought to be barred as well as that, for it is the nature of the injury, the defects arising in consequence of it, that is meant to be barred, and the form of the action never. It would seem absurd that the remedy for the same injury should be barred in one form of action, and not in another. The law of this State, however, have decided contrary to this opinion, upon the ground that such of premonition should be construed precisely.

In a declar. for terrors, it is not necessary to state a complaint even in those cases where proof of a demand is necessary, for a demand is, and an evidence of a consideration, and a consideration itself is always stated.

Very great accuracy was formerly necessary in describ. for injury, but now convenience certainty is sufficient in description, a definite rule in this particular cannot be given.

The general issue is almost universally pleaded to this action. It is first issued by both Parties, that nothing except a release can be specially pleaded. But this rule is now unenforceable. The practice has been to give any defense in evidence under the general issue. But the strict. Ct. in C. admit any special plea, as in other cases.
Of Reprieve.

Reprieve in Eng. is of two kinds: 1. that given to the owner whose cattle are taken damage present. 2. that allowed to a tenant whose property is disturbed by his landlord for nonpayment of rent. The second kind is unknown to the law of Port. The practice of disturbing which gives rise to it.

210. If cattle are found damage present, certain damage upon the lands of any person, the owner of the land may, at his election, bring redress for the damage done, a distinct fine against the cattle, and when impounded, they are held as security for the repayment of all the damages that have been done. The owner of the cattle, however, as a right of reprieve, may obtain the restoration of his cattle. This must be procured by any magistrate competent to the giving of such writs. Where procuring it, he must give sufficient security by a bondman, to answer all damages.

The bond stands in place of the cattle that were impounded as security to the defendant for the damages he has sustained.

When the suit of Reprieve trial is had, if it is found that the defendant, the original defendant, had a right to impound them, judge is rendered in his favor, for all the damage he has sustained. If the execution on this bond is not satisfied, the bondman will become liable; and in the body of the suit, should he be liable to satisfy it on his own, or discharge the bondman, he will be liable. In such cases, the cattle that were impounded must be restored to satisfy the judgment, when, if they are the property of the said, when the suit is. But in C., the bond coming in lieu of the defendant absolved, that he satisfy by the reprieve, absolute, rests in the absolver, and not liable to be restored to the debt, in case he obtains judgment.
By Stat. in C. the owner of the cattle, when notice given them of their being impounded, must either surrender them on penalty of incurring a daily forfeiture.

On the trial that succeeds the suit of Replevin, if it is found that the deft had no right to impound the cattle, the plaintiff becomes an action of libel by the owner, in which the deft recovers damages for the unjust taking. Generally, however, the design of the deft in impounding is not to recover damages, but to obtain for the purpose of having the deft's damages assessed.

As the deft, in a suit of Replevin, may state the damages he has sustained by the taking of his cattle at what sum he pleases, if he states it to as to bring it within the jurisdiction of a justice of peace, when the trial it turns out that the deft's damage amounts to a greater sum than the Justice can render just to him, he must dismiss the whole cause: in this case the deft's bondsman becomes immediately liable.

2 Dec. 59.

The owner of cattle distressed, is bound to maintain them, or receive notification that they are impounded. If the owner of cattle impounded is not known, the party impounding must rebate them, the enhancement of their keeping must be added to the damages.

In C. every cattle taken damage, peasant, must be paid the candles, after hearing of damages costs, belong to the town treasury. The law is the same respecting estrays found not damage peasant.

2009. As the body of a cattle impounded is held in pledge, if no cattle impounded. In neither case is the
The breach of this clause will be made by agreement, but if the breach is not made by agreement, it will be made by the owner of the land to which the fence belongs, who has the right to recover his damages.

When cattle enter an enclosure from the highway, it is immaterial at common law whether the fence was good or bad, because it is unlawful to permit cattle to go at large in the highway. But in certain cases of cattle, such as cows, sheep, and calves, the owner of the land is entitled to recover his damages from the wrongdoer. In such cases, the owner of the land is entitled to recover his damages from the wrongdoer, whether the fence was good or not.

In cases where there is a statute enacting that any town may vote to remove, make any other cattle common.
able in such cases. And the rules prescribed by the
laws, in such cases, are rendered binding, if not by strict
precedent.

A man finding cattle when his lands were turned
them out or drove them out with a little don. If they are
lost in consequence of this, he is not liable unless he has
been guilty of some malice wanton or neglect with re-
gard to them. But generally, if he turns them out so that
they may go from where they came, he will be justi
fied.

2. For the law relative to the c. out of replevin,
where goods have been distrained for rent. See Black. Com.

3. In C. there is still another species of replevin
in use which bears a great resemblance to that in Eng. for
real. This is that sort of replevin which lies by a debtor
to restore goods that have been attached to respond a
judgment. This sort of replevin however, the debtor is not
obliged to resort to unless when his cattle have been taken
damage, i.e.,

Replevin, however, upon an attachment in C. is new
an adversary suit. Its only object is to restore to the
debtor his property which has been attached, upon his
finding sufficient security to respond the judgment.

The justice of replevin (who takes replevin-bonds as
he acts in a ministerial capacity) is liable if he takes ins-
sufficient bonds.

It has been made a question whether the judge's
own land might be taken on a replevin, but it has been de-
determined in the @ of Error, that it could not—o at least.
that the bailor himself would in such a case be liable on failure of the defendant to answer.

It has also been questioned whether, if property of the value of the amount of the damages, or of the property attached, the bailee is liable for the whole damages, only to the amount of the property attached. From analogy to the cases of bail, of lands of indemnity, it clearly appears that the bailee would be liable, only to the amount of the property attached. For, it is an undisputed rule of law, that the duty of a bailee is discharged by his detaining the chattel party in a chattel as good as he would have been in if lands had not been given. difficulties however arise from the words of the Statute itself, that the bailee in replevin shall be bound to answer the whole debt due which may be demanded. no adjudications have been had in our Court upon the question.

Another question depending upon the same principles as the last is this, whether properly replevied, can be reentered by the bailee or discharged of his bond? This is also undecided.

If the property of one person has by mistake or otherwise been attached for the debt of another, the proper remedy is not by replevin, but by an action of troth and damnum. for our replevin is never an adversary suit.

The general rule in replevin is more exact, that the
defendant, not wife the cattle as complained of. All in all
other cases the debt must cease i.e. he compells the to
keep, but justifies his right so to do. And this, answer,
considered as a declar. on the part of the defendant the
damages damages for the injury he has sustained to the
cattle.
Of the action of False Imprisonment.

Any unlawful detention or restraint, or confinement of the person of another, or any violation of every man's right of locomotion, is false imprisonment, for which the injured person may obtain relief in an action of libel or at assize.

A detention of a person, whether in a house, or in the stocks, or jail, is an imprisonment.

Certain persons are by law exempted from arrest: as, Pa. 3d. 30. as such are not liable to be arrested.

Other persons are free from arrest under certain temporary circumstances; as, parties who incite in a cause depending in Ct., are not liable to arrest while going to, attending, or returning from Ct. A distinction is made between these two classes. Where the freedom from arrest is connected with the character in which the person acts, as in the first case, an arrest would be false imprisonment; but in Eng. in the case of persons privileged only un-
2 Bl. 70, 119. on certain circumstances, as justices of Ct. In. if they are ar-
rested, no action for false imprisonment, but arrest of the
3 Bl. 326. person will issue from the Ct. to discharge them.

It has been questioned, whether an action for false
2 Bl. 326. imprisonment will lie in Ct. By a person who having a suit of
protection from a Ct., has been arrested. According to
2 Bl. 326. the reason of the Eng. rule, it would seem that an ac-
tion in this case would clearly lie; for, a protection is suf-
ficient evidence to the officer of an exception from ar-
rest; and the reason why it is not false imprison: in Eng. to
arrest a factor going to Ct., is, that he has no evidence to
offer to the officer, to prove that he is exempted from an-
2 Bl. 326. no. 377. suit; but if a supersedeas has been once obtained, if an
arrest is made, it is false imprison. And it is observable
that a protection in Ct. is virtually the same as a super-
3 Bl. 326. deed.
An arrest on Sunday, in civil cases is void. If he has been detained, the detention is void.

Serg. 328. If an officer by mistake arrests A, instead of B, he is liable to an action for false imprisonment. The case, affirmed to the officer, that he was B. It is hereby shown that the last rule would not be adopted in civil cases.

2. See III. 12 Svep. 268. It has been doubted whether the detention is void.

Serg. 328. This detention is void.

Serg. 328. The detention is void.

Serg. 328. The detention is void.

Serg. 328. The detention is void.
The most common cases of false imprisonment are those which take place under a writ of aid—

A Ct. of record acting within its proper jurisdiction is not liable for any mistake of judgment—

But such a Ct. if it transgresses the limits of its authority may be called to an account: it is liable to an action of false imprisonment, like any private person.

A Court, however, of general jurisdiction, is never liable unless they have acted from malicious & corrupt motives. Any judge acting in a judicial capacity, is guilty of corrupt practices, or conduct maliciously is the prevailing opinion, that in this respect he is, like any other individual liable to personal action, even tho' he does not exceed the bounds of his jurisdiction. The law in this particular has been somewhat mitigated by several statutes.

In Eng. a Ct. not of record, is liable even for mistakes of judgment. But the Courts of the common law in this particular, has been somewhat mitigated by several statutes.

The Ct. of a Justice of peace is in C. a Ct. of record, and no person acting in a judicial capacity is here liable for a mere mistake in judging. The Eng. distinction between Ct. of record whose not of record is not recognized by the laws of C.

Commissioners in the estate of a person deceased are not a Ct. of record in C.

If a corporation, which a breach of their bye-laws by imprisonment, not having power so to do, it is false imprisonment.
False Imprisonment.

The kno. or person who obtains a warrant or broker, is always liable to the answer of the court, and is always liable to the suit of the person who is injured by the warrant or broker, if the warrant or broker is regular or illegal, and the defendant upon it is false imprisonment in the person he obtained the warrant or broker. So if an attorney procures an illegal warrant to be made, or indeed, if any person is the real or immediate cause of an illegal arrest, they are liable in false imprisonment, for as this is an action of trespass, there can be no accessory in a case of false

As if a warrant is given by mistake, an action for false arrest lies, ag. the person who issued it, and also ag. the officers who served it if he knew the fact.

Of the liability of the Officers to an action for false arrest.

If an officer answers when a warrant, from the face of which it appears, that the C. from whose estate, he issued, had no power to grant it, he is liable to an action for false imprisonment, as also the C.

But if the warrant is such that it is uncertain from the face of it, whether the C. had jurisdiction or not, from a Justice of Peace or an Ex. for a false imprisonment, the C. might have had jurisdiction, it is clearly settled in C. that the officer obeying it is not liable, for, he is to assume
False Imprisonment.

that the Ct has done right. Yet it is not imposed upon him as a duty to search the records of the Ct. To whether it be a fact that the warrant issued rightfully or not; as it is enough for him, that it might have been properly issued. Yet if in this case it be eventually found that the Court had no jurisdiction, the Ct & the Off. are liable.

Whether an officer is liable for arresting on a warrant, which the party does not appear necessary to be so, is an unsettled question in the Eng. law. In 6 B. Rep. 407, it is laid down as clear law that the officer in such case is liable. But the authorities have quoted 7 B. Ray 228, do not support the position. And that authority is 2 S. 6 & 7 G. 3, at least shaken by later decisions. To there is 2 Den. 633, 1 Co. 332, one case which seems to recognize it for law.

Proceedings under a jury rendered by an agent, 2 Den. 631, being jurisdiction are legal, the after service reversed the action lies not the officer or Off. in such case.

Whenever an officer is sued, he wishes to justify on the ground of a warrant or to execute, he must produce the warrant, ex 1 Co. 43, unless it is by law out of his hands. And if it is returnable he must show it has been returned.

Sect. 108.
1 Co. 52. - he must revoke the judgment.

1 Co. 52. - So, if the Off. is sued for false imprisonment.

Sect. 140. - So, if a justice of peace is sued, he must show that the imprisonment was legal & ordered by him while in the execution of his office.
False Imprisonment.

Search Warrants.

Stat. 275. General search warrants are illegal. A search warrant to be legal must be directed at a particular person, or to a particular place. Before it can be obtained the person applying for it must make oath of the felony committed, or that he personally suspects some person or certain persons, or certain places, stating the grounds of his suspicion. If none a search warrant, the stolen goods are not found the party searching is liable in damages, for he is justified or not by the event.

Stat. 315. A person may sometimes justify an arrest and imprisonment without a warrant, as if an atrocious felony be committed, any person may arrest the offender and detain him, until the proper authority can be had.

Stat. 500. If the action is brought against several, the heirs, not guilty jointly, of one is found guilty they must all be found so.

Stat. 324. False imprisonment is a continuing injury, damages are recovered only as to the value of the rent. If the imprisonment is continued after that, a new action lies.
Of the action of treachery for Assault and Battery.

The lowest species of injury to a man's person, for which an action lies, is for menaces or threatening, by which a man is deterred from pursuing his business, or he at the trouble of hiring or guarding his person or property. But the menaces must be such as might affect a man of ordinary firmness, or the action cannot be maintained. The remedy in this instance is, a Sufficient answer to an action as the case, not by 

An action may lie for an Assault, which is an act of 

assault or offer to strike a person. The question of action, in giving an intent of some personal injury to another man, constitutes an assault. But what would otherwise be an assault may be excused to be none, by words at the time, which clearly show that it is not intended for an assault, or the man law his hand when his word to draw 

But at the same time says if it were not a particular, 

I would not use such language. This is not an assault.

Battery is an actual striking or touching the 

person of another, in a malicious or unlawful manner. Putting on one or throwing any thing at him, is also 

aBattery. Every battery includes an assault, it is mere 

for committal called an Assault Battery.

A Battery is the same as a Battery only in a 

greater degree to constitute this the person injured must have been deprived of some member necessary for his defence, an eye or both a finger for.

It is not necessary to constitute a Battery that 

the act be the immediate act of the defendant if it is 

done by him, or the intervention of some intermediate 

instrument or agent, it will be a Battery.
Where a person receives an injury in consequence of an act to which he consented, he can sustain an action for it, as where two persons agreed to lay out dirt on each other's land. But it seems that if the act which was consented to was unlawful, there can be no action, notwithstanding the consent. Mr. B. thinks this distinction between lawful and unlawful acts unpardonable. It is analogous to cases of contracts where the parties are in pari delicto, that the maxim, voluntary act, voluntary injury, ought to be applied.

According to some authorities, the injury must be committed wilfully or maliciously, in order to lay the foundation for an action of assault and battery. According to others, such intention is not necessary. The true distinction appears to be this: if a person is doing that which he had a right to do, or, in doing a lawful act, is guilty of any wanton negligence, a battery or other injury ensues, injury half six arms will be the true case, no intention to do an injury. But if a person is pursuing lawful business, his common brevity, if an unintentional injury arises he is not liable.
Battery

A battery may frequently be justified as

22. If an officer in arresting a man should commit

22. A battery upon him, it would be justifiable, but, this

22. justification would go no farther than to mollify mo-

22. rous persons, unless there was a necess. To a refusal

22. to be taken when a battery may be justified, & in some

22. cases even a wound ing.

552. So a servant & a husband & wife, a master &

552. servant may justify a battery in defence of each other.

552. the whether a master may in defence of a servant seems

552. to be a question.

252. So, if any person attempts unawares to enter the

252. house or inclosure of another, if this is done forcibly

252. it will be a sufficient justification for a battery by the

252. owner. But if such intrusion be peaceably without

252. force the theft cannot justify a battery without a request

252. to depart.

252. A battery may be justified to defend personal

252. property. But after it is actually taken away this if be-

252. come unawares, the true owner may not make use of

252. such unusual force to retake it, however he can retake it without

252. force he may do it.

252. It is always a justification for the theft, that the

252. theft or even assaulted them first, for a battery is always

252. justifiable in self defense. This is what is called an

252. assault domino. But there must be some contra-

252. ction between the battery, since the first assault, i.e.

252. if the theft has made use of much greater force, has

252. beaten the thief, much more than was necessary it is no

252. justification for him to say that the theft, though first,

252. the even in that case this would go in mili of damage.

252. In case a person assaulted in a church-yard is

252. not allowed to defend himself.
Assault & Battery.

A parent or master has a right to use moderate chastisement to a child or servant, so a schoolmaster may correct a scholar moderately; these, therefore, are justifications.

Generally, whenever the elf has been the cause of the battery or it has proceeded from his own fault, it will be a justifiable to the elf.

The elf, in an action of assault & battery may give many things in evidence which are themselves grounds of action.

To prove, as in an action for a battery to himself, he may prove that there was the elf in the action, the elf beat his wife at the same time that the a female action lies for that. The reason given for the evidence, in the books, is to aggravate the damages. The true reason is to show the atrociousness of the battery, the outrage, high handed violence, which has been done for, if the elf at the same time that he beat the elf, also beat his wife & children, this makes the whole transaction more outrageous and atrocious than a reason why the elf, himself, ought to recover greater damages.

When the elf steals, for assault, demense of the elf means he steals, he must 30 it under a replication of de injuria sua triumpha, abique talis causa. This is the technical traverse to a plea of assault denounce, that the battery arose from the elf's own wrong, without any such cause as authorized to him in his plea.

If the elf means to confess, that he assaulted the elf, but seeks to justify that assaulted, he must always found the justification directly.

In Err. of the elf, wishes to justify the battery, he must plead his justification directly. He may however give in evidence under the general issue, that the battery was accidental. In error, either may be given in evidence under the general issue.
The justification must be as broad as the charge. If the deft has stated a battery雁wounding, it will not do for the deft to say that he was an officer. And the deft, by a warranty in this case, justifies his own warranty in the suit which will justify wounding him.

A former recovery is a complete bar to an action for assault & battery, & any consequential damages that the deft has sustained are no grounds for another action.

In a assault & battery, & every other action of his, the right comes, where there are joint trespassers, each one is liable for the whole damages. & if any one may be sued at the action of the deft. But a reocc.

For, in torts, a jury' alone is a bar, but in contracts the judge to be a bar, must have been Satisfied. The reason of this is, that in torts, the damages are uncertain, the deft if not bound by the first suit, would in many cases be induced not to take suit as he has another help easier. See if he could not recover more. In contracts the sum demanded being certain, no such reason can induce the deft to meet such suits. And as the first suit may be unmota to satisfy the judge, recovered ag. him, the rule is established that satisfaction alone shall be a bar, the law presuming that the deft will never being a good suit, if he can obtain satisfaction from the first when the same principle that every trespass is in its nature joint & several, a release to one is a release to all.

The Stat. of Limitations, which in Eng. is four years, in C. three, is a good bar.
Every assault & battery is a breach of the peace. Therefore, the defendant is liable to two actions: one by the party injured for his damages; the other at the suit of the public, for the violation of the law. And this last is not sustained upon the ground of the alarm occasioned by the breach of the peace, as is generally supposed, but for the violation of the law, for this action equally lies, whether the assault were public or private, the in the last case, there can't be no alarm. The defendant in the private suit cannot give in evidence the conviction of the defendant in the public suit.

In an action for a battery, after the jury have first in their verdict for the defendant, the Court may, upon instruction of the party, increase the damages.
Of the Action of 

The action of trespass upon the case, generally.

Ef. 380.

Trespass upon the case is an action which lies for an immediate injury, caused by some unlawful act, which injury may be to the real or personal estate, Ef. 380, or to the person of the plaintiff, trespass on the case, lies 1. E. 5. 3. for an injury consequent on some unlawful act 3. E. 3. 1. 3. 2. B. C. 3. 8. 2. or voluntary, and when the action is stated to be 5. D. 5. 3., the case, if the injury turns not to be immediate, it Ef. 5. 53. is not good. 2d. Would it be lie on a general damages?

8. Co. 115.

An act which in the beginning is lawful, 9. Co. 115. by subsequent unlawful conduct, becomes a trespass 1. E. 5. 15. as if a person should enter into a tavern, which 2. Le. 6. 2. is a lawful act, yet if he should steal any thing from afterwards, it would make him a trespasser at once.

So, if an officer enters a house to execute a warrant 9. Co. 115. & after he has entered legally does any unlawful act, it makes the whole transaction a trespass.

If trespass upon the case, does not lie for a mere non-assurance, it always supposes some act done, some act done, or if an officer should attack goods and 5. Le. 112. then when a settlement between the parties should require to deliver them up, he would not be liable in trespass. So, if a man after entering a tavern should refuse to pay for the wine he had had it would not make him a trespasser.


Where an officer, attacks breachly, neglects to turn the vict, he is held to be a trespasser. No, this ap-pear to contravene the rule above laid down, as it 3. E. 20. is a mere non-assurance, yet it will be found that it does not, for, this goes upon the ground, that the officer, in fact, had no authority to take the property, it being a rule that an officer can never justify under a vict.
Treasons vis a vis arms.

which has not been returned.

3. Sec. 37. He said the act causing an injury, must be voluntary; or the facts will not lie. See 39. 200. &c.

8. 38. 1423. As to property, &c. &c. &c. to sustain this action, see 39. 198. &c. or in treason, the law is the same.

Sec. 211a.

Treason is in its nature joint. Several define there are several treasurers, an action may be brought agst. any one or all.

Sec. 211.

So in treasons there are no accessories, but all

Sec. 217. are principals. I. E. an action lies agst. all who aid in 2. 1443. 1435; but no countenance a treason, &c. they do not the act themselves. So, if one has received the benefits of it, on

d it was committed, he becomes a treasurer.

Sec. 157.

A principal is liable for treasons that he commits. But he is in no case liable criminally. Per

Sec. 37.

Sec. 134.

The declaration in an action of treasons for

2. 3. 39. 37. 1443. &c. to lawful property, must describe the treason,

Sec. 38.

3. 2. 24. 33. &c. to lawful property, must describe the treason,

Sec. 48.

2. 150. 24. 34. &c. to lawful property, must describe the treason,

Sec. 160.

2. 150. must also be stated in the bill, & the value of the

Sec. 180.

property, &c. to lawful property, must describe the treason,

Sec. 418.

It seems necessary, that the treasons should be.

Sec. 443.

stated to the contrary. Baccus. Dem. 12. to have been don

Sec. 436.

vix arma. The reason in which this rule was founded

Sec. 456.

was long since ceased, and in C. 7. they are did not to

2. 24. 24. &c.
The right in this action is not confined to proving facts to the time stated in his declar. But may prove the facts stated at any time, within the Stat of Limit. And as the declar. must be as broad as the declar. it must in this case cover all the time within the Stat.

Neither is he confined in his proof, to the place stated in the declar., the action being transitory.

Formerly, it was in no instance allowed the def. to join in one declar. immediate injuries, whose loss was consequential, or in other words, those had in arms, which had on the case. But it now seems to be admitted so far as to suffer the def. under the general clause of alien enormis, to prove consequential damages which he has sustained from the breach, for which the action is brought. As in an action of breach of promise of marriage present, he is entitled to prove that the def. debauched his daughter. This however appears to be some confusion in the books, concerning the precise limits to which a def. will be suffered to go. There has been one decision, in 2 Ed 2 D. which fully recognizes the right of the def. to join these two causes of action in the same declar.

5. Durn. 5. All causes of action, arising in delicts, whether the remedy be by an action of self-harm, or care, are general, & one of general also liable may be joined alone.
In an action of trespass at arms, it is not necessary that the
plaintiffs prove the defendant guilty, or in any case where more than one
of them are guilty, they must prove the damages, &c.

If the defendant is found guilty, the jury must not assess the damages,
but must find as many damages as there are parties, &c.

In the case of the damages, and in the case in which the damages
are severable, it is bad, &c. If he pleases, may avoid the judgment, but he
is not obliged to do so, &c.

For the sum found ag.

3. C. 123, in trespass; the jury find ag. &c.

For the L. 32.

This verdict is ill. &c. May be amended by the defendant, &c.

For the L. 32. &c.

For the L. 32. &c.

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For the L. 32. &c.
3. Bbl. Com. 122. 2. 08.
22 Bbl. Rep. 552.
3. Bbl. 103.
4. Bbl. 2092. 1st. only there the act is unlawful & the injury
immediate - the latter is sustained, where the injury
arises in consequence of the unlawful act. But, in
many cases where a lawful act is attended with incon-
sequent consequences to another person, as if a man
2 Dec. 1402. by digging in his own land which is a lawful
act, deters a water-course from his neighbour's land high-
ways or the case lies agt. him.

It is not, there is a distinction between actions on
the case, actions of trespass on the case, but the distinc-
tion is not clearly pointed out.

69. 328.
The action of trespass on the case lies, not only
where damage has been sustained. In consequence of some
act of the defendant, but it is the higher action for a sedgoly
injuries that have been sustained as a result of some
deliberate neglect or negligence on the part of the def.

Cio. S. B. 179.

But this omission or negligence must be of some
act employed upon the deft. as a duty to him.

Cio. S. B. 179.
2 Sec. 7.
1 Sec. 12.

It is no excuse for the deft. to say that the deft.
by a sufficient degree of care & attention might have
avoided the injury. It has sustained as if the deft. had
thrown logs in the highway. The deft. had fallen over
them, thus received an injury, it will be his defence
for the deft. to say that the deft. by due care might
have avoided them. So, since the act of putting the logs
there, was unlawful, the deft. by that act made himself
self responsible for all subsequent injuries that might
be sustained in consequence of it.

But it the injury has arisen merely from the
deft.'s own neglect, clearly he will not be entitled to a
recovery.
Rescue

21st. 2d.

This is the proper action to be brought as a master for the misfeasance of his servant.

2d. 30. 3d.

It is also the proper action for a master ag. a person who has enticed away his servant. But if there be no

3d. 18. 132.

a recovery of the penalty is a bar to an action ag. the police.

Rescue on the case is the proper action to be brought ag. a rescuer for a Rescue. This is the

4d. id. 2d.

forcibly freeing a person from an arrest or imprisonment, and an action may be brought ag. the rescuer, either by

5d. op. 35.

the officer in whose custody the prisoner was when rescued or by the original bty. at whose bail he was arrested.

If the rescuer was under an arrest when rescuing the rescuer is a complete discharge of all liability on

6d. 18. 2d.

the officer to the bty. But it is not to on an ex imposs. for there it is that he might have had the bty. com-

11d. 18. 12.

In an action ag. the rescuer by the original

12d. 18. 2d.

bty. before he can recover he must prove 1. the original

13d. 18. 12.

cause of arrest ag. the bty. second. 2. The act or facts

41. 3d.

under which he was arrested. 3. An illegal arrest by an

245. 37.

officer. And if the bty. can prove that the rescuer

255. 37.

is unable to pay the debt on that by means of

305. 37.

the rescuer he has been deprived of all means of recov-

355. 37.

ering his debt it will greatly enhance the damages.
...And it is to be remarked, that if the levy receives, at the rescuer's own debt due from the person rescued, it is a bar to an action ag. him. But if the whole sum is not recovered, it is considered as being given only as a recompence for the delay & trouble occasioned by the levy. In the rescue, it is not a bar, even for tax, to ag. the person rescued.

The cases in which this action will be the are, almost infinite; for an enumeration of them see §§ 651. to 657.

§ 158. It will be for special injuries arising from 23. 2. sale, a retention of the levy properly it will be no bar to an action of trover or detinue for the same.

§ 161. In the declar. the whole case, tell the circumstances should be particularly stated.

2. 2. Nov. 81. When the action is ag. a common carrier, it is not necessary to state that any particular sum was tendered to him for his wages.

1. 2. Nov. 5. In case for converting a watercourse, it should be stated that it is an ancient watercourse, that it ought to be a clear that the levy has a right, etc., not by grant, by immemorial prescription. If a watercourse can not be held to immemorial prescription, the levy is not to be held to be ancient.

CO. § 152. In this case, the party failed in the declar. is not material, and in the State of Tennessee, does not generally attach itself when this action. But if the fault rests on the reasonable time will be sufficient.

2. 2. Nov. 23. The general opinion is not guilty. Number it 2. 2. Nov. 5. 2. 2. Nov. 3. 2. The general opinion is not guilty. Number it 2. 2. Nov. 3. 2. 2. Nov. 5. 2. 2. Nov. 3. 2. 2. Nov. 5.
The form of the action for adultery, as it stands in its present shape, is not, in general, an action on the case; since the consequential damage arises from the relation of the wife to the husband, and the ground of recovery. As in the same reason, the Act of Limitations, applicable to actions of this kind, is not applicable to this. Neither does the Statute which restrains the wife, to no more damages than costs after the costs are under forty shillings.

In this action, actual proof of a marriage in fact must be made, proof of cohabitation, presumption of a marriage, which is sufficient in ordinary cases, will not be sufficient.

Many circumstances may be proved in this action:

1. To enhance the damages, as that the life is a man of rank or character, the suit is a man of low character.

2. That the wife of the latter, had a good character before that separation, so that the time she spent with her husband will appear to be harmless.

3. The debts may give many things in mitigation of damages, as that the husband encouraged her to be or at least connived at them, that he lived inable or with her before, so that she had had criminal connection with others before she left with the debts, but it seems the general reputation of her being a prostitute can not be admitted.

4. The only justification the debt can make use of, is in the consent of the husband, or there seems to be a difference in the authorities whether this shall go as a complete bar to the action, or only in amount of damages.

5. Observes that the consent is given to an unlawful act, and according to a former rule, consent in such a case is no justification.

A husband cannot maintain an action for adultery committed with his wife after a separation under this code.
Of the Writ of Mandamus.

This is a Writ issuing from the Superior Ct of a State, directed to some inferior officer or corporate body, requiring them to perform a duty. It resembles the issue of a Ct of Chancery in this, that it enforces specific performance of a duty. But it never has to enforce contracts of a more private nature between individuals.

Ch. 110. 252. 253. 254. 255.

The Ct will grant this writ generally, to compel any public officer or any corporate body, to do their duties. But it will not the more adequate remedy can be had by an ordinary action to en a Ct. of Law. I will tie in one instance to compel the payment of money. That is

(1.) When a Treasury, as the Treasurer of a County, but it is done in the case

(2.) Bec. because there is no adequate remedy at Law, a county not

To obtain a mandamus, the duty must be made

a complaint to the Ct. over the, stating the injury he

has sustained; this application includes expense, as not

force upon the complainer. Upon this complaint a

mandamus issues to the complainer, entitling him to do

the act which the complaint states him to have neglected to do, or return to the Ct. return a written to a sufficient reason for not doing it; if neither the act is done

or a return made, it is a contempt of the Ct. attach

ment will issue. If a return is made which is insuffi

cient, the applicant will demur to it, but the Ct. find

it to be insufficient, they will grant a preeminent man

damus commanding the act to be done, at all events.

Ch. 585. 4. If the return on the face of it is insufficient at

com. law, it is satisfactory. No exemplary mandamus

could arise even if it was false; the remedy being by

private action at the officer by such false return. But by the

act, if a return is made, it may be traversed.

If on trial, it is found to be false, a exemplary mon

damus will issue; the applicant will appear judge for
Mandamus. Prohibition.

his damages and costs. A failure of compliance with a mandamus, in every stage of the proceedings, is a contempt of Ct. punishable by attachment.

Whenever a mandamus is issued to a corporation, or a number of persons, that are willing to comply, the the majority refuse to do, the attachment will go agt. those only who have refused to comply, or at least those only, will be confirmed upon it.

In O. there's no Stat. on this Subject, but our Ct. have adopted the method established by the Stat. of Arm.

Of the Writ of Prohibition.

The writ of prohibition is issued by Superior Ct. to inferior, to prevent the latter from deciding cases out of their jurisdiction. It also issues where the inferior Ct. is proceeding in a cause within their jurisdiction, but by rules unknown to the law. It may issue in vacation time from judges of Com. law Ct. as well as from P.D.C.

There is a Stat. in O. recognizing this Writ.

It issues on a suggestion by the Ct. of the breaches in the inferior Ct. of the want of jurisdiction. The mode of obtaining it is by serving a rule to show cause, why the rule is joined on the defendant party in the inferior Ct.
Prohibition. — Habeas Corpus.

If the suggestion is sufficient, a prohibition is granted. If insufficient, it is not granted.

To declare in prohibition, it is to file a declaration at the opposite party, inferior Ct. or a fiction, not traceable, that a prohibition has issue. Then disobey. And in this case, if it is found that a prohibition would be proper, the judge of the Ct. is good prohibitory Act. If, on the contrary, it is found that no prohibition ought to be granted, a writ of consultation is awarded. This is a writ directing the inferior Ct. to proceed not withstanding a former prohibition, real or fictitious, and which issue, whenever upon deliberation the judge Ct. find the reasons offered for a prohibition, insufficient.

Of the Writ of Habeas Corpus.

The writ of now stands is regulated by a Stat. Car. 2. which has not been adopted in Ct. for its principles would probably be affirmed by our Ct. on considered as reasonable.

This writ, also issued from the Suf. Ct. of its design is to liberate a person unproperly kept in confinement, whether that confinement be in a jail or elsewhere. If a person in confinement is denied bail, this is the proper method to obtain it. On a confinement for felony or treason, or when an execution or conviction, habeas corpus does not lie unless the case may be the es.
Habeas Corpus.

is satisfied, or when a conviction, the time of imprisonment is expired. So, if a person is confined in an improper place, the writ lies.

It is also, that whenever a person is confined out of priso.

1. Rule 254, &c. or without legal process, in this case a writ, may be: asked out by a stranger. Children, may have this writ, against parents, for confinement or restraint, which they justly have to be abusive. So it lies in favor of a wife, agt. her husband, under similar circumstances.

The writ is directed to the gaoler, or person confining, commanding him to bring to or the person confined, to get her up with the cause of his detention.

When the prisoner is brought or to her, if there is no cause for the confinement, he is discharged; if there is cause for it, that he is entitled to bail, he will be bailed or, if he is improperly confined, if it is not a bailable case, he will be remanded.

Disobedience to the order, or writ of habeas corpus, is a contempt. It is punished not, as in ordinary cases of contempt, with imprisonment till compliance, but at the pleasure of the Dr.

A Habeas corpus ad testificandum, is a writ directing a Judge to bring up a prisoner into Or. for the purpose of testifying. It was formerly doubted whether, if the order was complied with, if the prisoner carried out of the limits of the gaol, it was not an escape. And in the reign of King 3. it was determined by judges agt. 6. that it was an escape. But from the subsequent practice in 150., if any that has authorized this practice. In Or. we have no doubt, to this effect, but the practice constantly prevails, it is never considered as an escape.
Of Proceeding in Court.

I. The first stage of a suit commences with the \textit{next Declaration}, which in Eq. are joint. In Eq.

1. Decl. If a suit is taken off the files first, the Eq will not

end the suit, to get it from an attested copy taken by himself.

3. Bl. Pro. 301

II. Pleading. There are of three kinds:

1. Plead to the jurisdiction of the Eq. These in Eq. are

signed by the party and by his counsel, because it has been

subscribed that a pleading by counsel amounted to an explicit

acknowledgment of jurisdiction. In Eq, however, these plead as well as others

are signed by counsel. 2. Plead to the incapacity

of the Eq. 3. Plead in abatement. These plead go

only to that part of the record which constitutes the

suit. The suit in Eq. comprehends that part of the

declar. which precedes the statement of the facts.

The date of signing are common to this suit. Declar.

herefore, become objects of a plea in abatement.

Many causes of abatement however are dehors the

record, as insufficient notice, selling part by an estray-

for failure, another suit pending, insuff. evidence &c.

III. Pleas to the Action. There are of three

kinds: 1. Demurrer to the declar. 2. The General

Pleas to the declar. 3. Plead in bar. A plea in bar admits

an original cause of action but not necessarily an

original right of recovery. The replication may

1. demurr to. 2. Traverse the plea. 3. void it by alldo-

ing any matter in nature of a plea in bar, &c.

These quotes.
Of Pleas and Pleadings.

1. A plea to the jurisdiction must in Eng. be signed by the defendant himself.

If a person is sued in common justice, he may have an action on the case or the defendant to recover his costs and special damages also if the defendant knew that the Court had no jurisdiction. But if the party ignorant of the want of jurisdiction, the defendant can recover his costs only.

In C., when a person is sued before a Ct. not having jurisdiction, it is customary for that party Ct. to allow the defendant his costs. This allowance of costs is made to prevent a law suit, & especially answers that purpose, but it is in reality no bar to another action by the defendant. In these cases where the action is removed ex officio by the Ct. it is not the practice thus to allow costs, but there seems to be no legal reason for the distinction.

If a Ct. exceeds its jurisdiction when it acts are clearly defined, the judge is liable to an action by the party aggrieved. But if the question of jurisdiction is not clearly settled, he is not in that case liable.

After importance a plea to the jurisdiction will not be received.

2. Of Pleas in Abatement.

A plea in abatement being a declaratory plea a judge, when it is in favor of the defendant, is no bar to a subsequent suit by the defendant in the same cause. The judge, on a plea in abatement, if for the plaintiff, is "that this suit is abated" if for the defendant, "that this defendant suitor" that the defendant answer over.
After a party in interest is awarded no found

plea of abatement can, at com. law, be received except
5. Durn. 98.
in cases where it would be error to render judg. in
6. 98 80 117 in cases where it would be error to render judg. in
any stage of the proceedings. A is of some court be sued
in absence of the proc. A is if some court be sued
without her husband or an infant be sued without
the guardian. In such cases abatement may be
pleaded in any stage of the suit.

74. 70.

Matter of abatement must be pleaded in abatement.
It is not good in arrest of judg.

8. 9.

The deft. cannot plead at the same time two
causes of abatement of the same kind; or two excom-
unication &c. for this is duplicity. But if there
are several causes of abatement of different kind,
they may all be pleaded at once.

70. 79.

After a judg. that the suit abates & amendment
by leaves of Ct. the suit is itself in Ct. considered
as a new one. Of course the deft. is allowed to
plead other pleas in abatement. — But when the suit
once begins to amend be may rectify all amend-
able defects.

103. 112.

The deft. cannot plead in abatement after one
embarcation, i.e. adjournment or continuance of the
cause until from day to day, except in cases where
it would be error in the Ct. to render judg. as,
if some court be sued alone, and in cases where the
cause of abatement has arisen after the first im-
portance. And in this last case, it must be
pleaded as soon as possible.

My deft. in Ct. all pleas of abatement must be
pleaded twice before the examining of the case.
The impracticability of observing this deft. has caused it
to be entirely disregarded.

8. Durn. 987.

3. 106. 180.

The last inaccuracy or mistake in a plea of
abatement is fatal to it.
When a plea of abatement rests on a fact which
6th 21st.
disputes, before being joined, is submitted to the
jury, if a verdict is found for the plf. in Eq. judg.
is not respondent's costs, but in chf. no further tri-
al being had when the motion is made, it is the prac-
tice to not such demurr as to the plf. & judg. is not con-
tected in chf. but respondent's costs.

When a cause of abatement is pleaded, a judg. ren-
ders opinion, if it, a suit of error will always lie from
that judg. But if the cause of abatement is not pleaded
as suit of error, but only the cause is such as in
two entirely excepted the deft. from being shut or
disabled the plf. from bringing any suit on it on an in-
fant or some other defect in such action.
3d 27. 39.
2d 128. 8.

If one of several defts. leads in a statement to
the rest some other time, when plea in abatement is just
enough, the plea abates as to all the defts. The conse-
quence is the same. If one of the defts. leads a re-
compliance.

If Amendment of Writs after Abatement

By the Stat. if plaintiff in Eq. it is always
allowable to amend a misstatement. State the facts
of that which renders the suit null & void. 64. or, if the
Shirt returns a suit as served on the 1st of May 54
in order to make the Service good, it should have
been served on the 1st. Here if it was actually served
on the 1. The return may be amended. But if, in
this case the service was on the 1st, it cannot be a-
mmended. If a writ shall not be made good by
the insertion of a falsehood, when an amendment
the deft. must always pay the deft. his cost.

Art. 11. 23.

By Stat. in Eq. any part of the writ declare, or
pleadings may be amended under direction of the Ch.
The causes of abatement are the following:

1. Disability of the p[.]f. Which may arise from

4. Bac. 352. 1. Culpry, which disables the party from bringing an action in his own right, unless it be to recover the certainty, but he may maintain suits on another's right.

2. Ecumenical communication in law, disables the person to sue but it must be pleaded in abatement or not at all. Neither this nor outlawry is a cause of abatement in C. They are not known to this law.

Co. Litt. 178. 3. Average of the ship is a cause of abatement. But

2. Rep. 1052. if it is a personal action, he must be there to be

7. Rep. an alien enemy, i.e. belonging to a country at war with the one in which he lies. This plea may also be taken advantage of in case of the fact as

Co. 178, as in abatement. A Tripk Causeveny, as known to the laws of C.

4. Bac. 302.

5. Any privilege of the debtor, either real to be sued at all, or only in some particular case, may be pleaded in abatement if he is sued in contempt of such privilege.

2. Rep. 818. 6. Misnomer of person or place of abode. When

18. 208. the debt having this in abatement, he must always furnish the ship with matter to make his suit good, that is, the debt must state his true name or place of abode. If the debt is unsanctioned it is not obliged to plead this misnomer in abatement, but may justify the fact to proceed. If he fails, the judge, and if he is sued again to his true name for the same cause, he may discharge himself by proving all these facts to the p[.]f. If one person is by mistake sued for another, he may disregard the issue and run the risk of proving that he is not the real debtor.
In action on notes, misnomer may be given in evidence under the general issue of non-assump-
tion, for the instrument shown in evidence does not subject the declar. to any other.

In Eq, the issue or definition of the debt must be inserted in the declar. by Stat. 2d. 5. In C.
issue, when a person is sued in his official character, or when his character or office is the inducement
to the action, such character or office must be annexed to his name.

7. In C, a variance between an instrument de-
ded and alleged when the description of it in the declar. is
matter of abatement. It may be taken advantage of to the jury as in itself evidence, or by objecting to the de-
scription in evidence as being irrelevant. In Eq, it
works a monstrous.

8. By the Common law, the death of either of the
parties abates the suit. But now, both in Eq. & C.
in case of a personal action brought by two heirs or agt.
tive debt, the suit does not abate by the death of
one of the causes of action, but the cause matured as
to survive in the respective cases to or of the surviving 
heirs in the action as in the case of co-heirs.

But in real actions, the 2d rule still holds, to the
death of one of the heirs or debt, causes an abatement.
In C, it has been adjudged, that one tenant in common
or co-heirs, might maintain an action without join-
ing his co-tenant, yet it would be reasonable to extend
the rule by analogy, so to avoid an abatement of
the suit by the death of one of them.

5. In such a case where the suit does survive the death of
the decedent under the second, the suit that has
curred, if it is a cause which would have survived the decedent.
in case as just had been instituted by the act? or is
this the case with all actions upon actions? or all
with those actions upon torts, where the property of
the p'st has been injured by the act for which the suit
is brought? In those actions therefore that are merely bet
for prescriptive damages such as slander, assault &
battery &c. as they would not have survived to the
es't had no suit been brought if they are abated by the
death of the es't.

When there is but one debt the dies the suit
is the same if the action would have survived to
the es't he must enter for the suit to be entered ag. him.

If he will not enter voluntarily, he may be compelled
to do so by one process. Generally in all actions upon
contracts the suit will not abate as the suit ag. the es't, but where on the face of the complaint it is evi
dent the debt has not or can not be considered by the court to have
ever been in the account, the suit may do so as the suit ag. the es't.

10. If a debt is due to or from several, if one
only suits, or if suits, the debt may be levied on or
abated but cannot take advantage of it till any
subsequent stage of the proceedings.
II. That two suits are pending for the same demand is a good plea in abatement to the second suit. But both must be of the same kind or at least concurrent, or it is no cause of abatement if they must both have the same object in view. Therefore a suit of tort may abate a suit of trust if they in both for the same act, but if the first after having tried one action finds it to be a wrong one only brings another which shall not be abated on account of the tendency of the former.

In Scott v. H., the court determined that when the first suit is simply ineffectual (as if the property attached to respond to the suit is of no value or does not belong to the deft.), a second action should generally may be commenced pending the first. Mc. A. addresses the principle to be that a second suit may be commenced pending the first; whenever this second would not be exception.

12. If the suit has not been duly authenticated, duly issued be, briefly according to the requisites of the act, it may be abated.

13. Whenever it appears from the suit to declare that it was not true to fact, the suit may be abated, as if in an action on a note, the suit is stated that the moneys due by the note does not become due until the 5th of June.

If real property is attached in C. to respond to a suit, a case of the attach is directed to be left at the town clerk's office. But as this is required for the security of purchasers, a default on this particular cannot be pleaded in abatement. In such case of such default however, a sale by deed is valid.
The operation of a demurrer is to admit the truth of the facts stated in the plea, but to make the party who pleads them to be true in order to entitle the person pleading them to a recovery. It admits, however, those facts only, which are regularly stated or pleaded. It does not, as in law, allow of the proof of such facts to be admitted. Indeed, the insertion of such facts may itself be a good cause of demurrer. As if, in an action on the first, the defendant made a separate agreement to the contravention; this might demurrer, because if such an agreement actually existed, it could never be proved to bar a recovery on the act.

Neither does a demurrer admit the truth of anything material to the cause or point in question.

Demurrers are of two kinds, general and special.

A general demurrer is proper where the plea is not a real issue of substance; no recovery can ever be had upon it, admitting everything stated to be true, and if such a demurrer prevails, then made to a declaratory judgment for the same cause can never be sustained. Or, if an essential and material allegation is omitted to be stated, a general demurrer is proper to take advantage of such defect. But, in this case, a new declaratory judgment containing the allegation may be had; it will be good, as in an action for slander, if the words are not alleged to be maliciously spoken.

A special demurrer lies exclusively when the defect is in want of legal accuracy; i.e., if, where the law is clear, the manner of performance is stated and is not done, or, in pleading a former fact for the same cause, the defendant only states that the defendant had done before, without stating the manner, the fact before which he was sued, or it would be bad upon general demurrer.
Under a special demurrer, however, advantage may be taken of all defects, whether defects of form or of substance. A general demurrer reaches defects of substance only. (Laying a venire in executory actions is merely matter of form, even in Eng. If a venire in such cases nothing at all in CD.)

A demurrer may be used in any stage of the proceedings, and whenever it is used whether by the plaintiff or defendant, it reaches back in its effect to the first defect, whether that defect be in the declarer or any of the pleadings. E.g. A, sues B, upon a bad declarer. B pleads a bad plea. A demurrer to the plea; the demurrer reaches back to his own defective declarer. It is in effect a demurrer to that. And in such case the judge must do that the plea in bar is insufficient, for all the it is faulty, it is a suff. answer to the bad declarer.

The Judge, when a demurrer is in chief, goes of course for the whole form last in the declarer, if it is for the plea. But the chief in such case, in Eng., by motion to the Ct., may have a jury of inquiry to ascertain the real damages. In C. the Ct., in chief, exercise this office themselves without the intervention of any jury. Even in Eng. when the damages are certain or ascertainable by calculation, the Ct. do it themselves without any jury. — If a plea in bar is adjudged in suff. a jury of inquiry is called, in Eng.
Of Denver to Evidence.

A Denver to Evidence is of the same nature with every other Denver. It is filed by taking an
inventory of the evidence adduced by the opposite party
upon the trial, & admitting its truth, but denying
that such evidence supports the claim or plea which
it was intended to prove, & therefore the party adducing
denies it is not entitled to a recovery. The object of a dem-
ber is to take the consideration of all
from the jury that to the trial, & its operation is
the same as that of a Special Verdict.

If the evidence demurred to is written evidence,
the party adducing it may be compelled to join in the
verdict of the demurrer. But, if it is parole, a joinder on the de-
nominator cannot be compelled, & it may always be

A demurrer to evidence demurts the truth of all
facts which upon the evidence filed ought have been
found by the jury in favor of them who offers it.

Of Bills of Exceptions.

Bills of Exceptions may be filed when in any
stage of the proceedings, the OT gives an opinion which
does not appear upon the record & which the party
objects to as being improper. The
bill of exceptions is the ground of a writ of error.
It must be filed & tendered within 24 hours after the
cause of exception occurs, unless the OT grants further
time.

It is signed by the OT. Justice who is not
bound to sign such a bill as the party may choose, is
obliged to sign such on one as in the opinion of the
OT comports with the truth of facts.
of Writs of Error.

Sec. 39.

A writ of error can be had only in cases where there is a judge of O[i] in some point of law appearing upon the face of the record. Note a bill of exceptions becomes a part of this record.

No writ of error can be taken unless there is a final judgment; the after final judgment renderd a writ of error may be had upon any interlocutory judgment.

The reason of this rule is that before final judgment, there is a possibility, that the party ag[t] whom the interlocutory judgment is rendered may recover. It has been decided in O[i] that an agreement between the parties will not supersede this rule.

A writ of error will operate as a supersedeas to all proceedings in the O[i] in which judge has been rendered, and upon that judge; of all the time of taking the writ of error, a sufficient bond is given to indemnify the party in error, of all loss which he may sustain in consequence of the stay of proceedings. Without this a bond proceedings will not be stayed. Now,

2 Bar. 974—two, a writ of error is a supersedeas under certain circ[umstances].

If ex. has been taken out when the judge's before error is lost, & is in officer's hands the writ of error will not operate as a supersedeas unless the officer is also served with a copy of it.

2 Bar. 974. 2d.

If ex. has been executed by taking the body or goods of the unsuccessful party below the taking of a writ of error, this a bond is given does not release the debtor from guilt, nor entitle him to his goods, & if the bond is not paid within [sic] time of issue.}

Sec. 39. 1 Bar. 730. 2d. 399.
If an erroneous judge is executed on land by
for reversal, the land is, on reversal, restored to the
in error, unless the land has been transferred to a bona
free purchaser. If the land has been thus transferred
before reversal, the ip, in error, has a remedy in damage
only, the purchaser is quieted in his possession.

Cases exemplifying the effect of an affirmance
or reversal of judgment upon a suit of error.

2. Dec. 274.
A vs B. 1. Judgment below for A to recover of B
$20 debt & $10 cost. This judgment is reversed: A has
recovered any part of his $20. The judgment is that
decision be reversed, so that B recover of A, for the amount
of the costs incurred by B on the Ct below, but no
cost in the suit in error, for more is not allowed. An
defendant, instead of demur, pleads to error after verdict
against him, moves in arrest, for an order at the
judgment, on the ground, that there is error.
Affidavit he is not even allowed his costs below.
This is a rule both in Eng. & C.

2. The case as before, except that A had collected
his money, viz $20 debt & $10 cost. Judgment of reversal as
before, so that B recover $20, viz the $30 paid to A on
the erroneous judgment. Value $20 cost, which B ought
to have recovered in the Ct below.

3. Judgment below as before, affirmed in Ct above.
In this case, no judgment is rendered, but a judgment of affirmance
with costs to A, the debt in error. In the judgment on the
Ct below, is again operative.
4. When the judge, which has been reversed, is one that does not determine the merits of the case, the fee must enter his cause for trial again; in order the judge may be had upon the merits. If this Ct. in which the reversal is had, is one competent to try facts, as the Dechupan Chamber in Eng. X Ct. of Errors in C. the cause must be remitted back to a Ct. that is capable of trying facts, as C.B. or C.B. in Eng. 2 Leiph or County Ct. in C. If the reversal is had in a Ct. competent to try facts, as Leiph. Ct. in C. the cause must be entered for trial there, however small the demand may be. Suppose then judge below was in favor to the deft. in the original suit. A by rev. on error reverses that judge, he recovers only a jury of reversest, enters the cause for trial. On final judge, he recovers his whole costs before & after reversal, except the costs of the suit in error. And if B had paid all his costs on judge below, he would also have recovered that on final judge.

5. When a fact is reversed to an inferior Ct. for trial, the deft. pleads what plea he chose, except that he cannot plead the same defence upon which the error was taken.
6. Demurrer to declar. - The declar. is adjudged sufficient. Error by B. - Judge reversed. Then if it should be ass'd for in error, it is open to enter for if judge in error is right, his declar. is insufficient.

7. Declar. in Ct. below adjudged insufficient. - Judge reversed above. Now A. enters for he has a good declar. the cause of complaint has not been tried, for the Ct. above has rendered only a judg. of reversal not a recovery in chief as the Ct. below could have done if they had rendered the same judg. - For the Ct. above cannot after judg. in chief ascertain the damages.

8. Plea in bar demurred to by judg. reversed. - The plea being thus a sufficiently the def. must enter his cause for trial.

9. Plea in bar adj. in Ct. below insufficient. - On error not adj. suff. Off in original just. If he enters must enter to no purpose. Def. does not wish to enter for there is nothing agt. him.

10. Judg. below that this is not a declar. Judg. reversed. - Off. must enter.

11. If error is not for the admission or rejection of a writ or a writ below. Off. may enter whether he is def. or def. in error.
When judge is ordered for debt in error he recovers his costs; the judge in error operating as to debt costs as a judge below on his favor costs have operation. If judge is ordered for debt in error, he recovers his costs in the former suit, but not those incurred by the suit in error. If he was debt and if he was debt in the original suit he enters his cause for trial if the Ct. is competent to try facts. And in such case, or final suit, he will recover all his costs, except those of the suit in error.

The there be no error apparent in the record yet if there is an error in fact, i.e., where by reason of some fact not apparent, any judge by the Ct. would be erroneous (as if a fact went for or be found alone) a species of suit of error may be brought in a Ct. of Error capable of trying facts. Even of this kind may be brought coma before the same Ct. which rendered the first judg.
The general issue is a denial of the facts
stated in the declaration.

It is a rule, however, in Eng. with regard even to
special contracts that in some cases the gen. issue
may be pleaded when the facts are not intended to be
denied. This is the case where the obligation was under
an absolute incapacity to contract, so that the con-
tact is utterly void. But if the contract is void in its own
nature, that by reason of incapacity in the obligor,
the gen. issue would be ill.

This distinction applies to special contracts only for
actions where personal contracts, any thing may, in law,
be given in evidence under the gen. issue, except the
Act of Limitation or matters of a bartament. This
removes, may be given in evidence to show a variance in a
court, between the one declared on and that exhibited.

The lodgment of goods is not admissible in actions on
contracts.

In C. it is a rule, established by Stat., which ap-
slies indiscriminately to suits as well as to suits of
all kinds, that any thing want an act of theخف  by
which the debt is discharged may be given in evi-
dence under the gen. issue. An act of theخف
antecedent to the cause of action, as a licence, is
may be given in evidence, if the act be subsequent
to the cause of action it must be pleaded.

The Stat. of frauds requires is excluded with
the terms of the foregoing rule & consequently
may be given in evidence. In acts the Stat. of
Limitations, but it appears to be settled that it
must be pleaded especially in actions of covenant.
In cases of debt & debt of debt it may be taken advantage
of under the gen. issue.
...withstanding the above rule, it is customary in C. as much as in Eng. in cases of contract, to lead official matters specially. But in actions on title, the gen. issue is laid pleaded in almost every instance.

What is an act of the def. within the deft. has been much questioned: whether such a plea falls under this description. And it seems that an act of the def. within the deft. is nothing else than a release of some kind.


4 Dec. 62-5

A special plea amounting to the general issue cannot be pleaded in bar, unless it also contains some special matter of justification. But at common law such a plea even when bad cannot be demurred to, but the method is to overrule such plea on another. In Ch. however a special demurrer to such plea is good.

When the deft. alleges a train of facts which go to prove the gen. issue, when concluded with the gen. issue, by way of inference, the plea is good: as the plea in bar, which he has been altering. Where for is not the act itself of the deft. Such a plea, although it amounts to the gen. issue, may, if defective, be demurred to the gen. issue never can. This plea is useful in confining the attention of the jury to a particular fact which amounts to the gen. issue, by concluding with the gen. issue.

Of Pleas in Bar.

The this is added more particularly to the special answer which is made by the deft. to the left deor. yet any plea in the course of the pleadings which is not on matter by way of justification or even as a reason for not being answerable is a plea in bar.
Plea & Readings. — Plea in Bar.

A plea in bar always admits the original right
of the deft. to an action, but avoids or excuses it by
some fact that does not appear in the declar. 作, which
justifies it dated in the plea.

In every stage of the proceedings, the plea in
bar (as in all other pleas) must answer the whole of
the declar. or foregoing pleas, for what is not answered
is taken for confesse.

A plea in bar, defective in form only, may, in
some cases, be set aside by the subsequent pleadings. E.g., if deft.
You have made a bad plea, if it makes a bad whole, deft.
Cannot demurr. specially here the defect in his plea, if only in
form, would otherwise; however, if it was in substance, according to the rule that a demurrer reaches back
the first defect. So, if the demurrer be a general
one it reaches his plea 2 c. omnes, it, even tho the
defect was only in form.

2 Co. 4, East 160

A plea in bar must be certain to a common intent. vid. author.

1. Co. 21, 20
2. Co. 310
3. Co. 321, pleading two or more defences in the same plea. Dist.
Cont. 8. 5: each counts inserted in a declar. in order to estab.
4. Co. 518, the same right of recovery, do not amount to
5. Co. 211, duplicity, as if they do not require different judg. to
6. Co. 214, it is not bad. But if different pleas are required to
answer them, or if they require different judg. & the cir-
clar. is bad.

In the case there may be two distinct defences stated
in a plea yet, if it is alleged that one is stated to
be way of incorporation to the other it is not ill, as if
to an action mentioning a former covert, deft. bleed. that
since the date the deft. has married. I. D. that
I. J. has given him a release. This is not bad, as to the
it would have been enough for the deft. to have bleed
that the deft. was a former covert yet he does not here only by
way of incorporation to show that the release from
I. J. is good.
In order to vitiate a plea for disability each of the defenses pleaded must go to the whole action. For if one goes to fact, the other to matter, it is good.

The alleged of immaterial facts is said. Shall not be construed to destroy the plea for disability. Hence if one of the defenses be a defective state, that it would be bad if it stood alone yet when joined with another in the same plea of demurrer it fails.

It has been decided in 2d that two distinct defenses do not amount to disability where either of them is altogether foreclosed. To constitute disability in pleading there must be two substantial defenses.

Pleas of demurrer, as a defect, must in form 2d must therefore be taken advantage of by special demurrer or not at all.

Departure vitiates a plea. This is a deviation of one defense already admitted for another distinct from the former. There is no relation to it. If if to the action for breach of contract. Hence that performance generally, if relied on and a breach for non-performance. Of such a defect, prevent that if it had existed as the was held to be a departure from the former plea of performance therefore fatal.
Whenever one party denies a fact alleged by the other by traversing it, the latter must generally join issue. For it is a rule of law that there cannot be a traverse after traverse. To this rule there are some exceptions:

1. If in an action of trespass the defendant alleged a release or licence for the act of trespass stated in the declaration, traverse as to the subsequent or antecedent time; the defendant is not obliged to join in this traverse but may rely by traversing the release or licence. This is traverse after traverse.

2. If the P[roof] in his reply should traverse an immaterial fact stated in the deponent, if the deponent should also allege new matter, the deponent in his rejoinder may totally disregard the traverse of the P[roof] himself traverse the new matter. This is the regular proceeding. But if the deponent does not join issue when the immaterial fact, if the case goes on to trial, a verdict against the defendant will be rendered. For the merits of the case have not had a trial. In this case the C[ourt] will order...
A traverse may be sometimes defective, the it be a denial of the facts stated by the opposite party in his own words. - as if self-charges itself, with obstructing three of his windows, self-charges itself, which is denied, without that to obstruct the three lights. So, this is bad for he might have obstructed one. If he had, it would have been liable. The proper mode in this case is to say, without that he obstructed three lights or any one of them.

2. Scu. 127.
1. Durf. 49.

If a whole, which is entire, is bad as to part of the plea in bar, it is so as to the whole.


It is a rule in Eng. where one party counts 10 to 9. in 936 on an instrument in any part of the preceding, he must make a protest of it. This however is not necessary if it be in the hands of the opposite party, or if some person from whom the party cannot receive it, or if it be destroyed without his fault; but in this case it should be stated to be lost by time and accident. In Q. it is not necessary to make a protest, but the adverse party may always demand once of the writ, if will be granted it.
Plea and Pleadings.

Of Arrest of Judgment.

After a cause has gone on to trial, if a verdict has been found by the jury in favor of one party, till the judgment may in many cases be arrested. As

1. If the declaration on the face of it is

as a court of equity, than as a court of record, such as one as would have been bad when a general

of the verdict is taken.

generally from the whole oral demurrer, i.e. no sufficient ground of action. Then judgment may be quashed, but, if judgment is filed in it, if the verdict of the jury is in favor of the defendant, the defendant cannot have judgment, but it will be arrested. But if the defect in the declaration was only such as would be one whose special demurrer, i.e. there is sufficient cause of action stated, but stated defectively, this defect is cured by the verdict, judgment will not be arrested. So if there is a defect in any of the pleadings which would be bad on a general demurrer, the verdict is found in favor of the party. So unless such defective plea is cured, judgment will be arrested. In some cases however, judgment will not be arrested.

2. (p. 201)

For the greatest defects, as of plea in bar, objection are both insufficient. A verdict is found for the defendant, and judgment will not be arrested in favor of the plaintiff. For the the chief defense is insufficient. It also appears that the defendant has no ground of recovery.
2. In C. judgm. may be arrested for misconduct of jurors before the trial in Eng. is not a cause for arresting judgment, but is a cause for a new trial, if being a rule, that the juror cannot be arrested for any thing which he does in C. 232. If the juror be an alien, infant, or slave, cannot a judge be arrested?

Notices on arrest must be made in C. within 24 hours after verdict.

3. When issue has been joined between the parties when an immaterial fact by which the result of the cause are not determined, judge will be arrested. And in this case the Court will order a repatriation that the matter shall stand again. In Eng. when a repatriation is ordered to the parties began to plead where they first
faulty plea was made. In C. they begin at the beginning. One is bound to plead the same plea or make the same defence they did the first time.

A Repleader is ordered in C. when judge has been arrested for misconduct of parties or jurors.

Where judges are arrested for the total or partial

1st Com. Deficiency of the declarer or plea in bar, no repleader is ordered for on the face of the record it does not appear that the plea in one case, or the deft in the other, has any grounds of recovery. But, if the plea in bar is good in substance and the deft traverses some immaterial fact upon which issue is joined, a repleader will be ordered. At the verdict, he either for help or deft.

For the subject of Repleaders generally, see 1st Dec. 12. 1857.
Generally, the verdict should follow the words of the issue, and all the facts stated, either in the negative or affirmative. Official verdicts write particularly all the facts found to be proved, but as the jury are ignorant how the law is arising from these facts, they do not decide the cause either in favor of the left or right, but leave the Ch. to do it.

If the law it is necessary for all the jury to agree in their verdict, the Ch. will not accept the papers until they are agreed. In Ch. the Ch. will receive the papers from a jury without a verdict if they continue to disagree to the end of the session, but not otherwise.

An expedient has been devised both in Ch. to evade the rule of law requiring perfect unanimity in the jury. This is effected by permitting the minority who differ from the majority of the jury, to come in silent; i.e., to appear without objecting or directly opposing to the verdict. And the dissenting jurors are not allowed, afterwards, to testify their difference of opinion from the rest, in order to set aside the verdict.

After the charge to the jury, no further evidence can be given to them, nor are they allowed to hear again the testimony once given.

In Ch. no written testimony can be given to the jury without the consent of the parties. In Ch. written testimony is delivered to them by the judge without the consent of parties. Nor have the parties the right to withhold such testimony.
Of Verdicts.

If any person not given in evidence on trial having any relation to the cause, is delivered to the jury taken out by them, judgment may be arrested.

In Eng. if such taken affects evidence for both parties judgment will not be arrested, but if they continue testimony for one party only the above rule holds.

A person cannot communicate to his fellows after they have retired any fact in his own personal knowledge relative to the cause. He should have testified it in open court.

That a person is acquainted with any of the facts is no legal objection to his being a juror in the cause. The if his knowledge of any of the facts is disputed before the trial, it is not at all to disqualify him.

If a juror goes drunk after he has retired to consult and the verdict delivered he is answerable in Eng. for the same. At such rate before in Eng. But eating it in a juror does not even in Eng. vitiate a verdict unless the food was furnished by one of the parties. Ditto in that case it would vitiate it in Eng. Being verdicts were derived in Eng. for the purpose of releasing jurors from the hardships of obscurity confinement &c. But in Eng. they are not necessary.
With respect to new trials, the practice in Eng. and in some republics different, the principles are almost precisely the same.

The general principle upon which the go in granting new trials is that something has interposed which has prevented the cause from being fairly tried. It is therefore but reasonable that the parties should have a chance of litigating it again.

The power of granting new trials is incidental to the Co. of Westminster Hall in Eng. & the Stat in C. is lodged with the Srs. County Chrs. and so that Stat. counts upon the "law & usage" already provided which has a manifest influence to the Eng. law & usage, the Com. law of Eng. on the subject, is emphatically one case to which a locality of causes & usage or difference of practice renders it unfit or improper.

In Eng., a motion in arrest of judg. or for a new trial must be made, if at all, within the first four days of the next term after the judg. is rendered. This motion, if allowed, puts back the judg. & the reasons for a new trial are afterwards discussed before the whole Ol. In C., a new trial is obtained by motion to the Ol. which must state all the reasons for the new trial. It might be obtained on motion as in Eng.

No time is limited in C. for bringing a petition for a new trial. But it seems after a great length of time it will not be granted. In one case 23 years, in another, 25, was held to be a bar. If new trial does not stay proceedings on the judg. in C.
Causes for granting new trials are:

1. Want of due notice to the defendant. If, however, the defendant appears and demands a new trial, it will be warranted on the issue. For it is merely a matter of statement if the defendant appears and demands it, and that he has not actual or not legal notice. The Court will also, unless consent on the part of the defendant to have the case proceed, reject the subject matter of the defect, as within the jurisdiction of the Court, the consent of the party removes all other objections on this account.

2. Another cause for new trial is the misdirection of the judge at the former trial, or the improper admission or rejection of testimony by him. This will rarely be a cause for new trial in this Court, as all the judges here give their opinion to the jury and decide when the admission of testimony is in the first place, thereby unless there has been a change of opinion in the Court, no new trial will ever be granted. When the Court admit or reject testimony improperly, a better exception is the cause pursued in this Court.

3. If one of the jurors was so circumstanced that he might have been challenged at the trial, the unsuccessful party who was entitled to a challenge, did not know the situation of the juror at the time of the trial, a new trial will be warranted. Otherwise if the party knew the fact at the time of trial, he neglected to challenge. In this Court, a motion in arrest of judgment is made in this case instead of asking for a new trial. The judge will not be bound by the cause of challenge if merely a want of interest in the juror.
4. Another ground for a new trial is, the misconduct of the jury—its corrupt practices in deliberation. If, after the jury have deliberated, it is evident that they cannot arrive at a verdict, a new trial will be granted. And it will be granted in this case, with 434. 49. 1. 1. 
2. When there is no reference to the merits of the case, in whether the verdict is a proper one or not. But it seems that the jurors themselves cannot testify to such misconduct. 2. Can not a few of the jurors as well as not concerned in the misconduct testify?

5. In misconduct of the parties is a cause for a new trial, and this too, without any reference to the question whether the merits of the case have been decided or not. As if the party who has obtained the verdict had bribed away the witnesses, so bribed them to swear falsely. Even if the conduct has been strictly legal, yet it may be a cause for a new trial; as if the party kept back evidence in his possession or takes any other unfair advantage of the law, a new trial will be granted.

6. In some intricate cases the Court in England, will upon a motion of one of the parties, direct the jury to find a special verdict. The in this case, the jury are not bound to follow the judges direction, yet if they do not, but find a general verdict at the relation of the Court, on enquiry, it is discovered that the verdict was founded on expressions which in the opinion of the Court are false, a new trial will be granted. So if the special verdict finds only some trivial circumstantial facts, without touching the important facts put in evidence, a new trial will be granted.
New Trials.

7. Where the verdict in contrary to evidence, it
ought that the CH both in Eng. & O. will grant a new
trial. But as the evidence is the decisive circumstance
of the jury, no new trial will be granted in this case,
unless there was either no testimony in support of the ver-
dict, or so little & trifling that no important & interest-
injury could have grown from it. And even then if the
jury is perjured, done in which the CH at most, could
accrue only nominal damages, the CH will not grant a
new trial.

S. If the verdict of the jury is not law, this
must be cause for a new trial. This must hap-
pen in a case where there is but little doubt con-
cerning the facts: it in such a case the jury bring
in a verdict, manifestly opposed to law, the CH in
our have granted a new trial. So this has not
been recognized as a cause for a new trial.

9. A new trial is sometimes granted for
smallness of damages; but this is rarely done, where
the damages are in their nature presumptive, or is the
case in torts, where the action is founded on a contract.
The damages can be ascertained, if the CH have not
given enough, a new trial will sometimes be granted.

2. Will. 205. excessive damages. Where excessive damages have been
244.
given in an action upon contract, the CH will not be
21.
2. Sir. 125.
2. 220. allowed to grant a new trial. But in actions on torts
2. Sir. 220. they are very careful; and it would seem from Jones
230.
of the cases, that the damages must be so outrageous
230. 
2. Sir. 252. as to carry conviction of corruption, or partiality in
2. Durn. 151. the jury, before the CH will grant a new trial: but
2. Durn. 151.
2. Sir. 251. there are some cases, where it has been granted when
2. Sir. 251. no such presumption could arise: as, in an action for
2. Sir. 251.
aggravated battery. It stands in an act for slander; but it
2. Sir. 251.
was denied in an act for comm. Now is it in cases he
2. Durn. 151.
11. A new trial is granted for a mistake by counsel; i.e., when counsel plead the wrong plea, mistake the defence. But for neglect in counsel a new trial is never granted. The party aggrieved is left to his remedy agst. his counsel.

12. That a material witness was by inevitable accident prevented from attending the trial, is a good cause for a new trial. If the witness was wilfully absent, no new trial will be granted, but the party is left to his remedy agst. the witness himself. If he is a bankrupt, the party is remediless.

13. If a case has been lost by the testimony of persons infamous, whose infamy was at the trial unknown to the party, petitioning a new trial will be granted. In Eng. this rule extends only to persons known to be morally infamous. But in C. to those whose moral character, though not known to the court and actæ, is really infamous, without the intervention of a judicial sentence; so in all cases of a judgment obtained by false swearing a new trial will be granted.

14. Another, the most common ground in C. for a new trial, is the discovery of new & important testimony. On this head, it has been settled, that testimony which was, or by due diligence might have been, brought in former trials, but being false testimony, the party of the trial, a new trial will not be granted. So, a new trial will never be granted, to give a witness who was examined at the former trial an opportunity of testifying something which he forgot or omitted at that time. In order to give the party an opportunity to judge of the importance of the new testimony in the case, it must all be stated in the petition for a new trial. If the testimony must be relied on before the Ct. to examine, and, if on such examination it is found important, a new trial will be granted.
In O. of, in an action of debt, debtors knowing that he owes a certain sum, suspecting that the proof will take in judicature for that sum only, does not appear, does not take in judicature for a larger sum; debt may have a new trial. The OY considering him as past guilty of breach in such a case, but he pays the expense of the new trial.

Cases in which a New Trial will not be granted.

Salk. 273.
627.
If a cause has been lost by any negligence or omission of the party, a new trial will not be granted.

2 Dubr. 112.
128.
If by a mistake in computation, the plaintiff has obtained a verdict for more than is due, a new trial will not be granted on account of the mistake of the plaintiff, will remit the excess. This rule it is evident is applicable one in case of contracts.

Salk. 556.
1233.
In criminal prosecutions, if the defendant has been acquitted, he is not to be put in jeopardy again, a new trial will not be granted. In actions on personal

Salk. 240.
528.
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Salk. 240.
In Eng. a new trial may be granted in favor of persons convicted, if the offence charged is not higher than a misdemeanor. And, in C, the rule is extended even to felonies.

Where there are several defendants, and one is found guilty, the other acquitted, a new trial is not granted in favor of the one found guilty. This is founded on the principle that if it is required as to that one, it must be as to all, it being necessary to receive it in the same situation in which it was at the first trial. But from a late decision, it appears that the Ct is not inclining to adhere to this rule. It admits it to be receivable only as to those who have been found guilty. This is the practice in C. The Ct considering the Dfts as interdicted not jointly, but severally.

If the action is a hard one, one founded on malpraxis or brought merely for the gratification of the passions of the Df. If the deft. is acquitted, the Ct will not grant a new trial. So if it is an action in which the deft. would be entitled to nominal damages only, a new trial will be refused, but it must be an action founded on a fact. The basis of this rule is, that the justice has been done between the parties, the not strictly according to law.

So a new trial will not be granted in favor of the deft. in order to enable him to plead a plea which, if it may by law be a defense, yet is one, that in conscience justice he ought not to make use of, as the law of honest. So one case, in C, this would not do it, to enable him to prove error.
The Court, when they grant a new trial, have the power of imposing terms upon the party to whom they grant it, so that he shall pay the costs of the trial &c., and this is generally required of him, if the other judge was not obtained by the fault of the jury, or the other party. In those cases, they suffer the costs to abide the event of the second trial.

Consequences of a New Trial.

The granting of a new trial, in a case, vacates the former judgment. But to prevent the inconveniences which would result from this principle to the relation of the petitioner, should he, or become a bankrupt, or if he should be out of the State; or, if lost taken in or on the former judge had been sold, it has now become a settled rule in C. That a new trial shall not be granted without laying the petitioner under such restrictions, or exacting of him such security, as will place the opposite party in as safe a situation, as he was, when the petition was presented.
Nulla Dicit Quæresæ

An Acciteda Quæresæ is a suit which is used by a person ag. where the debt is not owing, to obtain relief ag. debtor. Such for some reason he ought not in justice to be bound to pay. This may be the case either when judge. That ought not to have been obtained or when the debt is due. Some things which will discharge him from liability on that judge, as payment, a release from the pledge. In all such cases, the officer who holds the debt is not warranted in judging of the validity of a release. He is that he must proceed in causing the debt, therefore the acciteda quæresæ is the debt only remedy.

In C. there is granted only by the Chief Justice of the Common Law in his absence the next inferior Justice of the Peace. It is a suit not granted of course, but at the discretion of the judge. He examines the facts laid in that affidavit, judges or decides on the justice of the relator's claim to relief. The suit when granted is a mortgage to the debtor, containing a direction to the officer to take further proceedings with it.

On taking out the suit, the bond must be sworn to answer to the plaintiff party all damages which he may sustain in case the acciteda quæresæ when the trial is determined to be without foundation.

If it is determined in favor of the one debts the suit it not only excites the debt, but also gives him damages for the injury sustained by reason of the suit. If the has bad any thing on the debt which thought not to have done, he may also recover that.

This suit charges the debt in ex. from bond, the bond does not only constitute for the/improve reason. And in this case, the acciteda quæresæ is a total final proceedings, the bond is the only remedy for the debt in the ex.
The most general cases in which an aud. quez. may be had are the following:

Where a debtor is imprisoned on an ex. di. to liberate with consent of the creditor, and is afterwards released with the ex. di. he is entitled to an aud. quez.

If the def. has had no day in Qt., as a judge, has been rendered an confession or otherwise, as a minor, without his guardian, an aud. cert. quez. will be granted.

This ent. the also when judg. has been obtained by fraud. A di. has effect.

It was also; decret. by our Ld, Qt. to the Tenor. for remedy in a case where, binding an action on note, the def. paid the note, before a discharge; but the bill notestanding, took a di. by default. Here, the tenant having the def. as not having had a day in Qt., he being justifiable in this case, in trusting to the def.'s promise to withdraw the suit.

If a def. is by itself, or a groundless assent, by the opposite party, prevented from attending at Qt., this judg. goes ag. them. He is entitled to an aud. quez. on the ground of not having had a day in Qt.

If two judg. are obtained, it two ex. taken out ag. two joint. Several obligors for the same debt, it is a rule that only one can be satisfied, any further than for the costs. Therefore, if after payment of one, the other is halted for anything more than the costs, relief may be obtained by aud. quez.

If one of the has taken out administr. recovers judg. It takes out ex. ag. a debtor, an executor afterwards appears. Whose the wife of the dec. the debtor may have an aud. quez. Ag. the ador. if the latter pursues him with the ex.
If an abscinding debtor had, before he ab-
scinded taken up, ag. a debtor of his, that that ut to
into the hands of an officer, such debtor, the factori-
ted in a fact. ag. the abscinding debtor is obliged to
pay the ex. into the hands of the officer, and in doing is indemnified ag. the foreigner, instead of
being driven to aid quer, ag. the officer. In short the
money in this case remain in the hands of the officer?

If a bond given by two joint obligors is laid by
one who has left the State, the remaining obligor is
just, then judg. ag. him, on which judg. debt is paid, as
ex. taken out ag. him, who has paid this bond an sure
quer, les, if the action of debt ag. judg. is not within
the State. And if that out of the State, a new bond
may be that. A.B. when one of two joint obligors has
left the State hence on, one remaining, is good as to both.

In Eqx. upon affidavit of the party applying
for relief ag. an ex. a rule is granted for the other
party to appear, deposing on oath the facts stated by
the applicant. If the party sues with this rule,
affirms on oath the facts an sure quer,
may be had to try the facts. If he does not thus
deny them, the ex. will be dis. aside.
If is a general rule in the introduction of evidence, before a Court. That the best evidence, which the nature of the case admits of, must be adduced. The meaning of this rule, however, is confounded to this, that the evidence adduced must not be evidence, but the evidence of a higher nature, which is kept back, as thus. John attempts to prove his parole, that the deed he gave him a bond, this would be rejected, for the circumstances of the case show that there is higher evidence kept back viz. the bond itself.

But there are exceptions to this rule. 31.

In case of records which are of a public nature, or not made for the benefit of the community are to be kept in a particular place, copies are good evidence, not of the highest nature as the record itself.

21. So if the original instrument is lost or destroyed, the copy or even a verbal proof of its contents is admissible.

Another rule is that parole testimony is not to be admitted to contradict or vary the import of a written instrument. But it is admissible to prove the execution, force, or validity in the consideration, so that you show that the instrument never had any deviation.

So where an ambiguity arises from something co-

41. 333. times, or design the instrument parole bond is admissible to show the obligation or meaning of the terms made.

3 Co. 26. 50. as where these cases deviate to one another in their parole, when the of that same parole bond was admitted to show their was intended. And this is called a latent ambiguity.
Evidence.

But where the ambiguity arises from the terms of the writing itself, and not from any thing extraneous, recourse cannot be had to parol evidence to show the intention. This is called a patent ambiguity.

The rule, however, has been extended as far as the use of the word or use of such have an equivocal import, or even if they are apparently plain, have a definite meaning yet parol evidence will be admitted of the circumstances of the writing to show what their intentions must have been.

Parol testimony is also admissible to rebut an equity or to put an implication of law that is otherwise of if.

Equity have given a construction to words made use of in an instrument different from what they bear by of Law, parol evidence may be adduced to show that the intention was that the legal construction should be.

In general rules, hearsay testimony is inadmissible, and in most cases it is not the best evidence. The case admits of, and as evidence when oath is given, it admits of the last speech being without oath, it does not render the evidence good that the witness who testifies it at all, when oath, what he heard spoken is a man not upon oath. To this rule there are some exceptions.

1. Proof of what one has said before trial may be adduced to impeach his testimony when called as a witness. The same kind of testimony may also be adduced to corroborate the evidence of a witness who has been impeached. And in the case of children admissible as witnesses, proof of what they have said before trial may be adduced to strengthen their testimony, if it has not been impeached.
Evidence.

2. What a party has said respecting the cause against himself, may be proved; but not what was in his favor until the other party was present at the conversation. Did not Deagree to it. But the confession of a man against any other person is inadmissible; and frequently occurs in operating the parts of a confession, so as to introduce only that part which makes ag: the person confes which applies to other persons, but this must be done if possible.

3. Proof of what a dead person has said respecting the boundaries of land, a prescription a right of way &c. where such person may be supposed to have known, to have been uninterested, is good testimony.

4. Hearay is good evidence respecting the pedigree, marriage, connections &c. of a family also respecting the fact of a person in a distant country being dead, or of the situation of such person as to property &c.

5. What a person has said in contemplation of death whether he in fact did or not may be heard. The law considers it as much efficacious, as if it had been made under oath. The words of a person thus circumstanced may be proved in all cases, in which they might have been proved if they had been sworn to.

6. What has been said before death, by persons mortally wounded may be proved, in a criminal prosecution, agt. the person accused of having inflicted the wound.

7. A witness may be impeached in respect of his veracity. In this case hearay is the only higher evidence, & that too of his general character as to truth & veracity only. It is questioned, whether an inquiry ought not to be tolerated as to his general character not only for veracity, but for integrity also. The character of a witness can never be impeached by the party who brought him forward to testify.
Evidence

6. An actions of slander, hearing, testimony, &c., that only, is admitted to prove the character of the deft. unless he has been accused by the deft. of particular facts in which case they may be proved. This rule is founded on this reason: That in general, a person is no judge to come himselfe, to disprove particular char

ges, but it is presumed that he is always ready to justify his general character.

In some cases the character of a party may be examined in others it cannot. As if a man is sued for a battery no evidence can be admitted to prove his conversable habitable quiescence &c. So in an action for a malicious houseaction, the deft. cannot prove that the deft. has a malicious disposition. But if in an action of book debt, the debt is in dispute between the parties, may be introduced to prove that he is not a person who adheres to the rules of honesty in keeping his accounts. The distinction reducible from the books, appears to be this: If what one party attempts to prove respecting the character of his antagonist, you desire to weaken the charges defence, if the latter, he may go into the proof. Otherwise he cannot.

Eva v. S. G. In some cases, besides slander, particular facts rule
But S. D. P. S. fire to a party's character may be proved. This is the case, when the character is put in issue, i.e. when the character of the party determines the right to recover. As in case of a suit upon a bond given to a shipmaster, particular facts as to his character, are discoverable for if he was a huson of good character before his connection with the ship, the vessel, otherwise not.

In an action on a promise of marriage for the kind last mentioned is admissible.
Evidence.

Who may be Witnesses.

Generally every person is a good witness, except the following classes:
1. On account of being infamous.
2. For want of discretion.
3. On account of interest.

Persons infamous are not allowed to testify.

An infamous person in this case is meant those who have been convicted of treason, felony, or any other crime which in its nature impairs their integrity, and shows that the man capable of committing it is destitute of the common principles of honesty.

It is the nature of the crime which is the bar to punishment, which renders a person infamous. And the evidence necessary to prove a witness infamous is the record of the conviction.

In Eng. a pardon, after conviction, restores competency to the witness, unless it is part of the judgment that the convict shall be disabled from being a witness, as in case of a prosecution for bearing on the statute.

A despotic person, however, even in this case, will refuse his competency. Still, doubts the correctness of a person's restoring competency in any case; for the effects from punishment, it does not restore innocence or integrity.

In C. the Court have admitted proof of a witness having lived an honest and unimpeached course of life for 20 years after being convicted of the crime, and this testimony admitted him as a witness.

Infidels or persons not believing in the Christian religion, were formerly inadmissible. But now, any person believing in the existence of a God, let his religious tenets be that they may be a good witness, so that any person except an Atheist, may be a witness.

In every person is to be given according to the
Evidence.

Ceremonies of the religion of Mahomet. A Mahometan
in Christ's name have been admitted in the Eng. courts.

The affirmation of a Quaker is to be considered
as an oath, in civil cases; but, in Eng., they are not ad-
mitted to testify in criminal cases when affirmations.
In C. they are admitted in both cases.

2. Persons wanting discretion are inadmissible as
witnesses. Of this class are idiots, lunatics, &c. and, gen-
erally, all persons incapable of understanding the
nature of an oath. This rule also applies to chil-
dren, if they know the nature of an oath, & are capa-
bile of distinguishing right & wrong. Frequently when
they have been too young to be grown, they have
been admitted to tell their story to the C. without
being past when oath. They have been admitted
as young as five years. I reject when older.

Co. S. 16,
Husband & wife cannot testify for, or against
2. D. 1688, each other. This not on the grounds of interest, but on
1. 27, 26, that it is policy to preserve domestic tranquillity; so, if the
2. D. 1688, husband consents to his wife testifying ag' against him, she
4. D. 203, shall not be admitted. But to this rule there are some
exceptions.
1. A second wife married while the first is living may testify for or against her husband. (Note: the second wife, in this case, is no wife.)

2. The second exception is that of a woman forcibly carried away & married. (Note: here the married woman is not married.)

3. 2 Mark 4:32

4. 1. Deut. 34:2

5. In cases of high treason the wife is admitted in Eng. as a witness of her husband. 20. in Q. All the cases in Eng. have been where the treason was agt. the person of the king.

6. The declaration of the wife respecting matters peculiar to her province have been admitted to charge her husband, or with regard to a contract of nursing a child. 20. Is this law where the hurt is one of the parties to the suit?

7. Eph. 13:8

8. Where the legitimacy of a child is in question, if it was born after marriage, husband or wife can neither of them be witnesses to prove it to be illegitimate, but they may testify that no marriage between them ever was. So, the wife may testify to this fact of assent to the hurt. 20. She cannot be admitted to testify that there was no assent.
A Counsellor or Attorney cannot be a witness to divulge the secrets of his client. And this is the privilege of the client, not of the attorney, for if the latter is willing to testify, the Court cannot compel it. Facts, however, which have come to the knowledge of the attorney from any quarter but from the client himself, he is much bound to testify as an other person. And the client must have commenced to them to him, by way of instruction, hearing a fact or the rule does not hold.

1. Dec. 1812. It has been adjudged both in Co. v. C. that other Play. 33. persons, who have been confidentially entrusted with facts relative to a cause, by one of the parties may be made witnesses.

3. Interested persons may not be witnesses.

But the interest which excludes in this case, must be pecuniary. An interest, a feeling, of love or hate in the view of one party, does not to the competency, but the competency of a witness.

The interest must not only be pecuniary, but it must be certain absolute, not contingent. If it is certain, it is no matter how remote. As a remotest

remotest

remainder man cannot be a witness, but an heir at

law may be the heir ancestor be on his death bed.

This a trustee may be a witness, but he must be free from all liability. As an Executor who is not a

law.

liable to costs. We of the first trust by an act in a person, he is reimbursed the costs out of the estate.

2. Man v. 1852 A minor cannot be a just for an in

3. 06. Bank is not answerable, he being liable for costs
Evidence.

The wife of a husband and father has been admitted to redress her love.

The quantum of interest, unless not to be regarded, concurs either to mean either of relations that tend to lead to the parties as an objection.

A party may be interested, in the event of a cause, for, or in the question agitated in the cause.

An interest in the event is where the vetters will lose or gain something by the decision of that cause in which he is affected, as if he be bound to pay part of the cause or damages. If the loss will only be caused, original, it is the same thing as, in the case of debt.

Vetters interested in the event have been uniformly excluded by the Eng. Co.

An interest in the question, is when the judge to be obtained, the it cannot be make use of, directly, either on favor of, or against, the vetters, yet may operate in an indirect manner to the prejudice or advantage, or if the vetters have cause, under such expected circumstances with that in which he is about to testify. So, if one a person, the has been injured by an act which is an offense ag. the public, it a public prosecution is brought forward ag. the offender, here, if he is offender as a vetter, he is interested in the question, because, at the conviction of the offender which may be obtained by his testimony, it can never be enforced by him in a private suit for his particular damage, yet, it is evident that it
Evidence

will help his case of the case, by giving the jury an idea that the deft. has really committed the act charged. Thus influence them to give a verdict in favor of the deft.

1910. The decisions in this log. Or as to the admissibility of a verdict's interest in the question have been perfectly contradictory — in case of an indictment for an assault. Whether, in any other violence, the person injured has an

2 Nov. 1031. pays been admitted. In cases of public proceeding for

jury inquiry, they have been uniformly rejected. In an

1 Bar 2251. of this verdict has had the note he may testify, other

back 253. does not. In cases of prosecutions for cheating, the law

1 Nov. 119. cheated has in some instances been admitted, in others re

2 Dec. 595. is not, apparently, without any distinction in the cases.

1 Bar 295. 10. In an action of one underneath, another underneath to

the same policy, has been rejected. In an action by a ta

1 Nov. 1031. swearing for debauching his daughter, the daughter was ad

mitted. In an action by a master for a battery to the

7 Nov. 595. 414. servant, trusted Swearing as to the servant has been

both admitted & rejected.

1 Dec. 1031. Thus were the authorities in a perfect chaos as to

1 Bar 295. 5 principle, then in Fien. field in the case of Akens hams a

Denon, first broached the doctrine which was finally set

3 Dec. 27. In the case of Bent v. Baker, "that interest in the

question, should never include a verdict, that of Bent.

2 Dec. 496. as to his own capacity only, not to his competency." And

2 Dec. 595. 580.

In C. the decisions stand made as they did in Eng.

before the case of Bent v. Baker. In cases of a public

prosecution for any other violence as an assault. Whether

the person injured, is admitted as a verdict. But in prosecu-

tions for forgery, robbery, during they are rejected unless in

the last case the money has been laid.
Evidence.

When a witness is in any way interested, whether in the question, or the event a release from the necessity to whom he will be liable, renders him incompetent. Doug., 134. It removes all objection to his admissibility. But the question whether a witness to a will who at the time of attesting it was interested, can become by any subsequent matter a release to a competent judge decided to alter the will. There have been three cases in point on this subject; two in favor of the affirmative, the other in the negative, but the number of judges is equal.

To the general rule, that witnesses interested in the event are not competent witnesses, there are some exceptions at Com. Law. Some by Stat. but all found as it is put on the necessity of the cases:

1. When a person is employed by another as an agent to transact business, as a carrier, factor &c., he may testify in an action that against his employer, for a failure, here in the same business, that he has transacted the business faithfully &c. according to his duty; the it is evident he is directly interested in the event. But if an action is brought against the master to recover damages for the negligence of his servant, the servant cannot testify for his master without a release.

2. When Stat. have given rights or remedies, of which the person entitled to them cannot avail himself without interested interest, they are admitted. And in many cases, without the loss of himself. This clearly is grounded on the idea of necessity, for if these persons were not admitted, the Stat. would fail totally of any effect. As in an action on the Stat. of Writs, ag. the hundred, by a person who has been robbed, he is himself a witness to prove the robbery. So under our Stat. giving title to the theft damages to the heir from whom property has been stolen.
Evidence.

2d. 363.

In the party injured, may himself testify in his own case, as to the theft, the not as to the theft. So, in an action under our Stat., for a private assault, the person aforesaid is a good witness, & necessarily, the only one. Vide 363.

3d. If these cases, the party is admitted as a witness, or necessitate one, because it is self-evident there are no other witnesses. If there are other witnesses, the party ought not to be admitted.

4d. In case of a rescue, the person rescued may be a witness ag. the rescuer, tho' he subjecting them to may discharge himself.

5d. In case of a voluntary escape the person escaping may testify in an action that a' the time for the escape. This is the strongest case of interest that can be put for if the escaper can prove it to be a voluntary escape, he exempts himself from any liability whatever.

6d. A person who is injured by his own act, after a party has a right to his testimony, even till he make a witness, N. compelled to testify. As if a witness has taken a wager on the event of the fact. So, if a person, when knighted, an instrument, has become heir for one of the parties, he must still testify to the event of the instrument. In this case, if he were bound for the debt, he would be obliged to testify, as to his own interest directly.

7d. If a person after having given a deposition in a case, becomes interested by act of law, his deposition may be set aside. Due is the rule the same if the person became interested by his own act?

8d. According to some laws, authorities, numberless corporations may testify in case in which their corporal is concerned, if their own interest is troubling, as in a suit for the penalty inflicted by an eye-law of a contract. In case of a seizure to a breach, the corporation have in some instances been admitted. But, the current of authority is apt such an admission.
In C. it is a general rule, that members of a corporation are competent witnesses, in cases, in which the corporation is interested. There is an exception to this rule, in cases where from the nature of the business, & common usage, it is not to be supposed that the custody depends on parole proof. For, the members of corpor are here admitted, in these cases, on the ground of necessity. And in no case, can the agent of the corporation testify, even in C. that is the agent, who transacts the very business, concerning which the action is brought, he is no more interested than any other member of the corporation.

8. In the action of Account at Law, your Honor, that all interested brokers are witnesses.

9. In a Ct. of Ch., in some instances, the parties not only may be witnesses, but they must testify even as their own interest. This is when one party appeals to the conscience of the other, to disclose the facts relative to the case. The party appealed to, must testify or the alleging of the opposite party, will all be taken for confessed. A decree pointed upon them as if true, but in this, as in all other cases, if the testimony of the party will criminate himself, or subject him to a penalty, he is under no obligation to testify. However, if the penalty is going to the party. He will waive it in his behalf, and the debt must testify.
Evidence.

If a person thinks himself interested, he is not in fact, or if he conceives himself bound in law, nor the law clearly is not by law, he cannot be admitted as a witness. This has been recognized in O'argaidh Law.

But A.D. 2857.

A principal criminus or accomplice, is a good witness to his fellow the be he in many cases interest in the event. This kind of testimony, therefore, is very suspicious.

There are two modes of proving a witness interested.

1. By examining other witnesses, & thus proving it, like any other fact. 2. By examining the witness himself, when he swears there. Resort can never be had, to both one of these methods at a time. After examining a witness, on the first, other witnesses may not be examined to prove his being interested, & c. converse.

1. Sce. 441.

If a person desires to secure the testimony of one of them, he may strike his name out of the record, when examine him as a witness.

But A.D. 2857.

If the be he, arbitrarily makes one a defendant to prevent him from testifying for the other side, his evidence may be obtained in two ways: 1. If there be no evidence agst him, the be he, on motion, will exchange his name from the record & may then testify.

2. If there be some slight evidence agst him, he may be tried first & if acquitted may then testify.

Esb. 1142.

A witness is not allowed to create his testimony, but may read it in his memoranda. But, if he cannot refer to the facts from his recollection, or testify that they are true, otherwise than because he finds them written, the original notice.

3. Sce. 753.

If the facts must be added, as it names breathe, however, the rule is not so strict.
Evidence.

No person can be admitted to exculpate, by his testimony, any negotiable instrument, to which he has given credit, or given currency by signing his name. Hill, C. R. 125. The rule, however, is confined, strictly, to negotiable instrum.

Facts may sometimes be proved by presumption; but it is said that in order to amount to proof, it must be a violent presumption. A probable presumption, it is said, can never amount to sufficient proof. The truth is, that all the distinctions made between the different kinds of presumption are unnecessary; if the proof offers amounts to enough to satisfy the mind, it is all that is sufficient.

Proof may in some cases be derived from a minute examination of handwriting, or if the subscribing witness to an instrument one be at proof of a resemblance between the hand-writing of the name of the obliger of the instrument, and other hand-writing is admissible to prove the ut of the instrument, by him. But, proof of this nature is very slender, it is admissible only in civil cases, not in criminal.
Evidence.

At the number of witnesses.

At Com. law, no fixed number of witnesses is necessary to establish a fact, such testimony as satisfies the judge is sufficient. The rule indeed is, that a fact cannot be established without the testimony of one credible witness or what amounts to it. It must, therefore, be questioned whether, under our law, one deposition uncorroborated by any other evidence is sufficient to establish a fact; for a verdict is not as good as a witness testifying unaided. Mr. J. J. H. says, that if the deposition in this case satisfies the jury, it ought to be deemed sufficient; since the quantum of testimony cannot be measured by any rule.

4. D. Com. 335. In one case, a single witness is sufficient, at Com. law.

This case is in a prosecution for beggary.

By stat. two witnesses are necessary to convict of treason. But it is not necessary that both testify to the same overt act.

16 Com. 101. 2 12 283

In this, the testimony of one witness, when opposed by the debtor's answer, is insufficient; for that being given in open court, it is only one witness ag' another.

By stat. no person can be convicted of a capital offence without the testimony of two witnesses, or what is testimonials.

The confession of a criminal is good evidence against him, but a bare confession out of his mouth is not sufficient to convict him.

A confession before a J. of enquiry, must, at common law, be reduced to writing. In P. a justice of peace is permitted to testify viva voce, what was said before him by the accused, but no other person can thus testify.
Of the manner of getting Witnesses to Court.

Witnesses are compelled by sub poena to attend, they are liable to fine or failure. If the sub poena is signed by the Clerk of the Ct. for disobedience may be punished as a contempt. Or C. I. may be signed, either by the clerk of the Ct. or a justice of peace. But a witness cannot be punished for disobedience to a sub poena, until he has been tendered wages for travel, or ought more to support him one day at least, or tendered to him: And after he has appeared tendered as long as the money given him would support him, he cannot be compelled to come longer, unless money is tendered him for his further support while he attends. In Eng. no legal wages being established for witnesses, their reasonable expenses must be tendered.

If, instead a witness voluntarily refuses the money tendered, prevents it from being tendered, or prevents the service of the sub poena, by acknowledging service, he is liable to fine as much as if the service had been completed.

In these cases he is also liable to an action at the suit of the party injured by his non-appearance, to render him liable to this suit, he must be called three times to appear in Ct. and refuse.

When a party has a witness for non-appearance, there is great difficulty in ascertaining the damages. Of some reasonable, that if the party has lost his cause, I can make it appear that by the testimony of the other witnesses he might have gained, his whole damages should be recovered.

At Law, no witnesses were allowed at nisi prius, nor in a prosecution for a capital crime. For county cases, 355.

Lord V. B. they be sworn till the end of June. The they were before March 1300, that shall be examined without oath.
Evidence.

Witnesses for criminals are always examined on oath in C. They are summoned at request made by the prisoner, however distant they may be, before, unless for nearly paid out of the State treasury, as they may be if the prisoner is acquitted. But if the prisoner is convicted, he is to execute the witnesses are made from the profits of the vails made in the prison.

A sub. locus with a times taken commits the witnesses to bring certain hakers which the party summoning has a right to see.

Of Depositions.

It is a general rule of corn law that depositions are inadmissible. But in some cases, depositions can be used, which are depositions taken on a bill filed in Ch. 6. They have been admitted in C. of corn law. But it seems that this was never done without consent of parties.

1. Str. 145. If the vials is dead, or when search cannot be found.
2. 1 Mod. 283. If the whole of the proceeding have been admitted. So if the depositions have been used in Ch. 6. the whole at law, is for the same cause of action, it has been admitted.

In Eng. it is a general rule, that depositions are the only evidence admitted in Ch. But cert.

References are sometimes heard, as when reading a bill in Ch. It is necessary to prove some fact not been contemplated, there is no opportunity of taking depositions.

Depositions to be used in Ch. arc taken before certain commissaries appointed for that purpose by the court itself.
Evidence.

In ordinary cases, depositions cannot be taken, till after suit commenced. But the Ct. of Ols. in Eng. by virtue of a Deemus hotestation, may permit a deposition to be taken when there is no suit pending. This is called a depositions in perpetua re memoriam. These must, however be some particular reason in this indulgence will not be granted, so that the witness is going abroad, or is old or infirm, I think to see De. There are also called depositions de bene esse.

By stat. in C. the power of granting a deemus hotestation is vested in the Supr. Ct. But, after taking a deposition in this manner, if the person taking them, can himself bring the suit in which they are to be used, he must do it within a year.

In C. depositions were used to be testimony were used indiscriminately in Ols. of com. law. & chf. Depositions may be taken in any case where the witness lives more than 20 miles from the place of holding the Ct. or if he lives in a distance of his is sick or unable to attend. If the opposite party, or his attorney lives within 20 miles of the place of deposition, he must be notified to attend.
Evidence.

Of written testimony.

The highest kind of written testimony is the State or acts of the legislature. General or public acts should not clothe in evidence. Private acts must be proved. All their evidence or deposits is the only proper evidence is a copy from the original record, under the seal of the legislature. And the copy is not evidence of the high nature as the record itself, it is always adulterated because the record itself cannot be produced.

If a copy is not under the seal of the or the presumption is that it is not authentic. But on proof that the has no seal, a certificate from the higher officer is received.

If an action is brought on a penal statute the defend wishes to avoid himself of another fact to avoid the penalty, the general must be held, I cannot be given in evidence under the Jencks rule. But a process in the same fact may be given in evidence under the Jencks rule.

Customs must always be proved in En. Glazed.

The law of another State or country must be Mead 1775. The common law of En. is presumed to be the law of another State. The burden of proof lies on him who contradicts this presumption.

Copies of laws, printed by authority of government, are proofs; other printed proofs are not.

Copies, copies, & certificates from the higher officers are entitled to full evidence of what is said. If signed identified to be a true copy by the officer or the higher officer is absent another person may take a copy, but his certificate that it is a true copy is not proof, he must swear that he has
examined the record & compared the copy with it as that it is a true copy.

When an instrument or fact has no efficacy without being recorded, no proof that it was not recorded can ever be admitted, as, in the case of a judgment of a Ct it will never be admitted to be proof that a judgment was rendered but not put upon record. In such case the record itself must be produced as a true & attested copy. But if the instrument is efficacious without being recorded the Ct cannot be held to be shut when record evidence may be introduced to show that it was not recorded. Often other evidence, than the record, may be admitted as proof so that a distinction is to be observed between a record & a thing recorded. In the former case the original exists only on record; in the latter the original is a thing distinct from the record, & in certain cases may be known without the record.

On these principles it seems that a copy of a recorded deed is not admissible unless it be known that the original is lost or destroyed so that the copy of the record is never as high evidence as the original deed itself. But the judges of Ct in C. have decided that a copy of the record is in any case sufficient.

A judgment of Ct is evidence in a cause between the same parties. In a Verdict of Jury, the notice of the verdict was given, may sometimes be improved in evidence. But it must be between the same parties, & on the same point. Or, if the parties in the last in which it is offered were bringing to the one in which the verdict was given, I have an opportunity of cross examining the witness it is as possible.
The petition and answer in Chancery are evidence of the parties respectively filing them, in any other cause.

The petition or answer of a guardian or praecox is not evidence of the mind or infant.

Affidavits made before a Ct. of Law in one cause may be improved as evidence agt. the person making them in another. And in some cases they may be made use of to affect persons not parties to the cause.

But the declaration of Legates of a heir in a Ct. of Law are no evidence agt. him in another cause.

When a Record is proved upon in a declaratory or any of the pleasings, the evidence of the record is secured in the hear of will not record. The question when such a record exists or not must never be put to the jury for the Ct are to determine it upon instruction. But if a record is adnosed to prove a fact, it may go to the jury with the other evidence.

In what cases Deeds must be produced as Evidence.

Generally a person claiming title under a deed must produce it as evidence, and when declaring upon it must make a copy of it.

But if the person wishing to take advantage of a deed is not entitled to its protection, as in the case with a tenant by force, he need not produce the deed, but may resort to other evidence to show his title.

If deeds have been burned or otherwise lost or destroyed, without the fault of the owner, humble proof is admissible to prove the contents, and in this case, the said may be admitted to be lost, without making a prospect of it.
Evidence

If in C. deeds are taken & not recorded the title is not good agt. a subsequent buyer; but as between the parties it is valid; & consequently the land is liable to be taken by the creditors of the first purchaser. In this case parole evidence may be adduced to prove a conveyance; the deeds were not recorded. And to prevent any difficulty in proving receipt of the conveyance, at a future time, a pledge may be made in Chf. to obtain the deeds.

Proof must be made out of the execution & also of the delivery of a deed. For this purpose the subscribing witnesses to the deed, if there are any (and by Act 182 are necessary in C.) are the proper persons. If they cannot be had this proof may be made out by other circumstances, as the receipt of the deed by the grantee is some direct evidence of the delivery.

If one party produces a deed of the other party wishes to take advantage of it he need not prove its execution, for the producing it by the other party is a tacit acknowledgment of its authenticity & validity. But the party first producing it may in the case, impeach it for fraud.

If deeds are in the custody of the adverse party, he refuses to deliver them; every thing stated by the party entitled to them, will in a civil action be taken for truth; but the party claiming them, must prove them to be in the custody.

But in an action on a bond, debt, or in a libel the prosecution, nothing will be presumed agt. the defendant from his refusal to adduce evidence proved to be in his possession.
Evid. 348. If any alteration is made in a deed by the obligor, the deed is void. So, if an alteration is made by a stranger in a material part. Otherwise, if an alteration is made by a stranger in an immaterial part.

349. If an alteration is made in a deed by the obligor in a material part, with a design to detract, it is forgery.

350. It is of no importance. But in Eq, when the right of recovery is founded on the deed, sealing is essential. The Eq, in Eq, will not suffer a deed to be given to the sure, if the seal is broken off before 348. It is produced in Eq, however the breaking may have happened. But if the seal is broken after 348, the seal may be given in evidence.

351. When land passes by agreement, the deed taken 129.117, to be effectual, the evidence of the transfer may be given in evidence, the seal to be broken. And as land now passes by the delivery of the deed, the breaking of the seal does not prevent it from being given in evidence.

352. Formerly, if one only of two or more joint-owners was sued, the joint-obligor could not be given in evidence. Now, the objection must be pleaded in abatement, or not at all.
Of the Law Merchant.

This is not the municipal law of any particular country, but prevalent in the different countries on which the European settlements in all parts of the world, and in the United States.

The Law Merchant was formerly considered as a custom in Eq. This fell called is not treated as such, but as the common law of the land. It consists of a system of rules applicable to a certain description of transactions, not as was formerly thought to any particular class of men, but it regulates all mercantile transactions, not all merchants. These are customs at particular places different from the general law merchant. These are customs in the law merchant must be proved. But the mercantile law itself is never known.

Some of the most prominent differences between the Com. law and the law merchant are the following.

By the Com. law, a man considers it necessary to the validity of a contract, by the law merchant, a contract may be good without any consideration whatsoever.

Trust in the consideration of a contract by the law merchant retails it in some instances renders it void. At Com. law, fraud in the execution of a contract one can be taken advantage of to disannul the contract.

By the Com. law a man can never be subjected to the payment of a debt unless there has been a contract between him and creditor, or unless he has been guilty of some neglect of duty in consequence of which the debt has arisen. But by the law merchant, an obligation to pay may be created without either of these requisites, as in case of an acceptance of a bill of exchange for the honor of the drawee.
By the law merchant, a voluntary payment on the part of the debtor is no discharge of the debt, as it is at com. law. Neither is a release to one joint-debtor a discharge as to the other.

All by the com. law whether the pet be delivered over into the hands of the vendee or not, vests it absolutely in him; but the law merchant gives the vendor power over it until it is actually in the hands of the vendee, or until he has so far exercised his right over it as to make a sale of it. Therefore if the vendor after having sent goods to the vendee discovers him to be in failing circumstances, he may take them in transitus.

In certain cases under the law merchant, where a temporary has been admitted to counterfeit bonds a writing, this law however is questioned.

A factor, who is a servant or agent appointed under the law merchant, to sell goods in a foreign country, has a lien when the goods in his hands, for all his demands upon his principal. As such lien exists at com. law, in favor of a servant or agent.
A Bill of exchange is a written order addressed by one person to another directing him to pay a certain sum of money to a third person named in the bill. It differs from a common order in this, that it is payable not only to the person named as payee, like an order, but to any other person whom the payee may appoint, or in the words of the bill "to the payee or his order."

The manner in which the payee makes the assignment is by an endorsement on the back of the bill, which may be either an absolute order to the drawee to pay the money to some particular person, or it may be a blank endorsement, which is merely the transfer of the payee's name. A blank endorsement is an order to pay the bearer or to any person until the bearer or any person takes possession of the bill. An absolute endorsement is an order to pay the person to whom the bill is transferred.

After a blank endorsement, the bill may be negotiated merely by delivery, and not being necessary for any subsequent endorsement to put his name upon it, but it is usual for them to do it, as it adds security to the bill by making it more secure.

Where there is a blank endorsement, the endorsement may write over the name of the payee what direction he desires relative to the bill. He may direct the drawee to make payment to himself (the endorser) or his order, or he may direct payment to be made to himself as attorney in, to the endorser or he may write a release in his own handwriting evidence can be admitted to contradict such endorsement.

A bill payable "to the order of A" bears the same import as one payable "to A or order," A may, in this case, himself present an action on the bill.
Bills of Exchange.

A bill payable "to bearer" was formerly considered as not negotiable but is now settled otherwise. Such a bill is negotiable by mere delivery without any endorsement.

When a bill is payable "to A" merely, without the words "or order" or "or bearer," A only can sue, but it is not negotiable.

When a bill is made payable "on sight" or "on so many days after sight," the day on which it is presented is construed exclusive. In bayns or the next day answers the tenor of the bill.

Usance is a term made use of to signify a certain number of days, which, however, is different in different countries. In this country viz. Eng. it is thirty days. A bill payable at usance is payable at the usance of the country where it is to be paid, and not that of the place where it is drawn.

Where a bill is made payable at a future day certain, or at so many days after date, an additional number of days, called days of grace are allowed for the payment of it. There also vary in different countries. In Eng. 3 days are allowed.

If a bill is drawn payable on the 1st day of Jan., a payment on the 2nd answers the tenor of the bill. If the last day of grace falls on Sunday, the bill must be due on Saturday. This is not the case when an instrument regulated by the common law, where a day out on Saturday would answer.

In the computation of time according to the law merchant, a month is reckoned by the calendar, i.e., 30 days, a month is four weeks.
Much has been said in the Dog. Co. 133, 3. Co. 41, Co. 39, 115, Co. Car. 9.4, upon the meaning of the terms "from the date," & "from the day of the date." The received opinion, however, was that the former included, the latter excluded, the day on which the instrument bore date; on the ground that the terms "from the date," imported from an act done, it is a rule in such cases that the day on which the act was done shall be included. But

C. 3. 12. 14, it is now settled that these are convertible terms, and that they shall be construed inclusively or exclusively of the day of the date, as will best reconcile justice into effect the intent of the parties.

Chapman.

It has been questions, whether a promisory note payable "to A. or order or bearer" is negotiable at law. 132. 122. 7. 7. 6. 1. 2. 1. 8. 6. 1. is not negotiable at law. It has, however, been decided, both in the U.S. & Eng., that the

Kid. 16. 6. 6. notes at law are not negotiable. Promisory notes are made negotiable by a statute. 13. 132. 7. 7. 6. 1. 2. 1. 8. 6. 1. 6.

The maker of a promisory note answers to both the drawer & drawee of a Bill of exchange. The

Bills of exchange & promisory notes do not resemble each other in their creation, but after the latter has been endorsed over it perfectly resembles the former. The law is the same, with regard to both.
Any person capable of binding himself by a

official contract may make a bill of exchange as homo

nous notes. An infant may bind himself by a note

not negotiable, or he may be bound by it at the negotiable

if not negotiable. But by a bill of exchange he is never

bound, and it is a specially for its creation, the consid

eration not iniquible into.

Bank notes, bankers cash notes, &c., are considered as cash, & other persons who obtain them

by sale, will help them at all events, even if they may

have been stolen or procured fraudulently in any way.

Bankers notes, however, the consider as money to ma

cause, 

no purpose differ from cash. Bank notes in this. That

bills, if the banker who gives them, happens to fail, the holder

may come back upon the person from whom he received

them, if he has done his duty, by presenting them for

payment within a reasonable time after receiving them.

What this reasonable time is is a matter of uncertain

ity; it can be best learnt from the cases themselves.

Nevertheless, it is a matter of law, for the Court to judge, 

not of fact belonging to the case.
Bills of Exchange.

Of the requisites to a bill of exchange, Dr.
There are 1. That it be for the payment of money
2. Not for any collateral thing, and this applies equally
to bills of exchange as to promissory notes.
3. A bill of exchange must depend upon the personal
security of the drawer, and not upon any particular funds;
and if it depends upon a fund, that fund should fail,
I would not be binding or payable at all. If, howev-
er, a fund is mentioned in the bill, not as being one
out of which the bill is to be paid, but merely from
which the drawer is to reimburse himself, the bill
is notwithstanding good for the parties are held per-
sonally liable thereon. But promissory notes, whether
made payable out of a particular fund or not, are ne-
gotiable, as the maker is always personally liable.

3. The payment must be certain, at all events, and
not depending upon a contingency. And this applies both to
bills of exchange and promissory notes. If the event on which they
become payable is one that will certainly take place,
they are good. Even if it depends upon a moral cer-
tainty it is sufficient.

But, the absence of these requisites are wanting.

It does not follow, of course, that the bill is, if no
effect for, altho' it is not a negotiable instrument by
the law merchant, it may be good evidence of a contract
at comm. law, on which an indept., if, will be agt. the

acceptor.
Bills of Exchange. —

No precise form is necessary to constitute a good
bill or note, if it is apparent that it was the intent
of the parties that the instrument should be negotiable.

Sec. 208. 1243. And it is now settled, that the words "for value
received" are not necessary in either:

If the Acceptance.—

There is no express acceptance of a note, the ma-
killing it being an implied acceptance.

An acceptance of a bill may be written or by
havoline; or a written acceptance may be either on the
bill itself, or on a separate paper.

A verbal acceptance has been adjudged to be not
valid, if, within the State of frauds. For this acceptance is fre-
ented to be an undertaking for the debt of the drawer
himself, his being necessitated to have copies of the draw-
er in his hands. And this presumption, as between the
drawer and the drawer, cannot be rebutted, as between drawer
and drawer, however, it may.

An agreement by the drawer "to accept" made before
the bill is drawn, is binding upon him. But it seems that
is not binding unless there exist other circumstances
which may have induced a third person to receive the
bill, or, if the promise of the drawer has been shown
to the receiver of the bill.
Bills of Exchange.

1. Bills may be accepted after they become due if the acceptance cannot be given according to the tenor of the bill, yet if it happens to be so by the holder of a bill is not presented for acceptance until after the time of payment, if the drawer accepts it, he will be liable, even in other cases, but if he does not, the holder cannot resort to the drawer, because he has not given him notice of the non-acceptance at the higher times.

2. Strangers may accept a bill for the honor of the drawer. This makes the drawer an involuntary debtor. The drawer may also accept in the same manner without entitle himself to an immediate remedy against the drawer without the hazard of merely an inquiry as to any previous indebtedness on the part of the drawer.

3. The drawer may accept the bill as to part only, if he chooses, or he may accept it to be paid at a greater length of time, or to be paid in part goods, or part money, or the whole to be paid in goods & c. Yet in all these cases when the bill is not accepted according to the tenor, the holder is not obliged to consider it as an acceptance; he may have the bill protested against the drawer as the three have been no acceptance at all.

4. But by doing this he causes the acceptance entirely, the acceptor is not liable to him on such acceptance.

5. An acceptance may be conditional, i.e., the bill is to be paid if such an event takes place, &c., and this the holder may regard as no acceptance at all.

6. But if the acceptance is given, the condition must also be written & annexed to it that subsequent indorsees may see upon what terms it has been accepted.

7. In acceptance by a clerk is binding on the master, if the clerk has been accustomed to do so, if the acceptance of an attorney binds the principal, if he was authorized to transact the business.
A promise to the holder to accept at a future time, if he be not qualified with any circumstances, implying a condition is considered as a present acceptance, if such is binding. But if there is any condition mentioned, it must be strictly complied with, or such an acceptance is not binding.

Any thing indorsed by the drawer on the bill is considered to be an acceptance, unless it amounts to a refusal. 2d. 1st. N. S.

As to what will discharge an acceptor, see 2d. b.

If the drawer loses a bill that is left with him for acceptance, it is his duty to give the holder a note for the same sum. This note has all the qualities of a bill of exchange; if it is not signed at the holder's name, a new indorsement must be made to the drawer. If the drawer in this case will not give such a note, the holder must protest to the drawer stating the loss of the note. When the party the drawer must make out the bond of the acceptor of the bill by parole testimony as well as he can.

Of the Indorsement & Negotiation of a Bill of Exchange?

On a bill payable "to bearer," which is negotiable merely by delivering without any indorsement, the acceptor & drawer only are liable to the true payee. But at common law the drawer from whom the bill was immediately received is liable to an action of assumpsit, even after failure of pay; on the bill. In this instance, therefore, as the proceedings are at common law, it would be necessary for the holder to show a conveyance given by him for the bill to the person from whom he received it, before he could sustain the suit against him. So on a bill payable "to B. or order"
Bills of Exchange.

A bill of exchange may be endorsed over & negotiated at any time, either before or after the acceptance, if they have sometimes been endorsed before they were drawn, or at least be the tenor for which they were drawn, was inserted. In such a case the endorser is liable to any amount that may be endorsed. And when the maker of a note put in much confidence in the payee as to omit his name blank,PARATOR the payee to write the note over if he was holder to the full amount.

The holder of a bill which has been accepted must resort to the acceptor for payment, if he refuses payment, the holder then becomes entitled to an action against every person whose name is on the bill, either as drawer, acceptor or endorser. He may sue any or all of them at one time. If the time, a full act and one being no bar to an action against another, and nothing but an actual receipt of the money discharges their liability. If the party who paid the last indorsed & receives the indorser immediately becomes entitled to an action against the drawer, acceptor, or any of the prior endorsers, but a subsequent indorser never becomes liable to a prior one.

It is now settled that a drawee is not obliged to indorse, before he can come into the drawee's name, he is obliged to sue the acceptor, tho' he must demand payment of interest.
The negotiability of a negotiable bill cannot be limited by an endorser, unless he endorses in such a manner as to make it appear from the face of the bill that he has not sold or assigned his property in it. Therefore if the bill is payable to B's order, and B endorses it by writing the word "or order" on it, it is negotiable, payable to C's order, for the indorsement alone follows the nature of the bill. But if it appears that the indorsement was not made with a design of transferring the bill, and the indorsement were by B to C, for A's use, it would be no longer negotiable, as if the drawer had signed it with the intention of delivering it to A. A bill payable to C's order cannot be endorsed by B, the cestui que vis. A, the legal owner is the bearer hereon either to endorse it or being forwarded a bill when it. And yet a release from C would defeat.

If a bill payable to bearer, or one payable to order, is endorsed blank, by A, in error, or in any way comes fraudulently into the hands of a person, who afterwards makes it bona fide, to another person, the latter shall recover upon it. This rule is founded on principles of policy, that the circulation of bills of exchange may not be impeded by the fear that they may have been stolen, or obtained in any way, malefactor.

A bill of exchange cannot be endorsed over for a part of the sum for which it is drawn, nor ought it to pass the drawer to a member of the drawer's family.
Bills of Exchange

1. Sec. 510.
2. W. 14 S.
4. G.
5. 1.
6. 2.
7. 12.
8. 3.
9. nd.

If a bill is made payable to a wife alone, she cannot endorse it, but her husband must do it.

If the payee dies, his executor or adm. may endorse it. So a bill may be endorsed to them, asacha.

If the bill is in favor of partners, the indorsement of one is good, but if they are not partners, both or all should make the indorsement.

Engrossment of a bill of exchange by an agent, is for delivery in order to transfer it to the in- 

dorse, but he is not himself liable when such in- 

dorsement, all the other parties to the bill how- 

ever, are liable in the same manner as in other cases.

Engagements of the parties.

1. That he is to be paid at the time or which the bill is payable.
2. That he will accept the bill when presented.
3. That he will pay it at the proper time.
4. If any of these implied engagements fail, the holder does not thereby have any further notice.
5. The drawee is liable to the payment of the bill, interest, costs, or damages. This sum in damages is fixed at a certain rate, according to the distance from the drawer to the holder. Between New York and Philadelphia is 20

precents.
Bills of Exchange.

On non-acceptance by the drawer, or failure of any of the above-mentioned engagements, the drawer becomes immediately liable; the holder is not under the necessity of waiting till the payment of the bill becomes due.

Every indorser is as to the subsequent indorsers secured, as a new drawer, it is liable upon the failure of 2. those who bear any of the above engagements. And nothing displaces the liability of the indorser but an actual payment of the money to the holder. But if an indorser re-indorses to his indorser, the latter cannot recover of the drawer, the former except under special circumstances, specially stated.

If the holder to be taken by the holder to subject the drawer, indorser &c.

The holder must, in order to entitle himself to a remedy, viz. the drawer or indorser, present the bill within the time or as soon as it becomes due for acceptance, whether accepted or not must also be present when sent for payment, if it be a bill on which days of grace are allowed, it is lost if it be presented within the days of grace. It is not a datum in the fourth day early enough.

If the bill is payable on sight, the holder must present it within a reasonable time.

If the drawer refuses other acceptance or says he will only give notice to the drawer or have no remedy as to him, and if he intends in this case also to render the indorsers liable, he must give them notice; for no person is made liable except he has had notice.
The reason why notice is made this particular
ly necessary to the drawer is that the law always
presumes that he has effects in the hands of the draw-
er. If an unqualified or general acceptance of the bill
by the drawer is to be presumptively proved with
this fact that if the bill is accepted for the time being
on a bill of exchange he must prove that he had no
effects before he can be entitled to a recovery. Now as
this is the presumption that he has effects, if he re
fuses to pay the bill, notice of this must be given to
the drawer that he may withdraw his effects out of
the hands of the drawer; for if this notice is not give
the drawer will make his calculations when the idea
of the bills being paid by the drawer, if thus if the
bill is not paid the drawer does not know if the
drawer becomes a bankrupt the drawer loses the ef
fects which he had in his hands. As this is the reason
for the necessity of notice if the drawer in fact had
no effects in the drawer’s hands, he is liable to the
holder without any notice. But this fact that he
had no effects must be proved by the holder and


  1.  2.  3.

  4.  5.  6.

  7.  8.  9.

  10. 11. 12.


  16. 17. 18.

  19. 20. 21.

  22. 23. 24.

  25. 26. 27.

The reason for the necessity of notice to the in
drawer is that he may secure himself by a just as the
drawer who, if not paid soon, might become a bank
rupt. And an indorser who has been notified may
for the drawer before any suit has been commenced
at him (the indorser) by the holder of the bill.

And the indorser before he can be made liable
must have notice, whether the drawer has effects
in the drawers hands or not.
Bills of Exchange

Where an invoice, who had not received notice,

5 Mar. 1794, made a subsequent promise to pay the bill, the O. had

1 Dec. 1792

his promise not to be binding, as he had made it, being

ignorant of his rights, following himself obliged to pay

the bill whether he had notice or not.

When a bill is accepted, sufficient notice must be given, if the holder means, in

any event, to resort to the drawer.

2 18 Dec. 1792

The bill must himself give notice of non-

1 Dec. 1792

acceptance. 6. For one of non-payment after acceptance,

30 Oct. 1792

he must also inform the person upon whom he

intends to make the demand, that he shall look to

them for payment.

Of the Manner of giving Notice.

This on foreign bills is by Protest. On inland bills,

no particular form is established as necessary.

The method by Protest is this. After the drawer has

refused acceptance, the bill is to be delivered to a Notary Public, or if there is no notary public to two or three

responsible men of the place, who himself demands acceptance of the drawer, if he refuse, the Notary notes it

upon the back of the bill, with all the circumstances,

the time &c. &c., and then draws up a protestation that since

these facts, &c., the intention of the holder to look to the

drawer &c., for all damages that may occur. The not
Bills of Exchange.

1. In all cases, the party to whom a bill is made must accept it before it can be presented to the drawer, by the first post. Afterwards, on the day of presentation, the same ceremony must be gone through; only demanding payment instead of acceptance; and after a refusal of payment, it is necessary to send forward the bill itself, not a copy, but the original, to the person in whose hands the bill is. In order to lay it before the drawer, it is not to the drawer himself, in order that the holder may return the bill to the person from whom the drawer means to render account.

2. If a bill is accepted, warranty from the person a protest must be made out against.

3. If a protest is not necessary on an inland bill, yet notice of some kind must be given within a reasonable time, and by a stationer, of notice is given in an inland bill by way of protest, the holder shall be entitled to recover not only interest costs, but also damages as in an action on a foreign bill.

4. Interest is computed up to the time of the judgment, or suit as well as in other cases.

5. If the holder of a bill finds, before the time of presentation, that the drawer is likely to fail, he must, in order to subject the drawer, according to the drawer, security for the payment of the bill, in case he replies, must give notice to the drawer by protest. This is called a protest for better security.
Bills of Exchange.

If A. draws on B., to pay "on account of C." the
drawee may refuse to accept it on B.'s account, but may
accept if for the honor of A. the drawee does. If a bill
has been indorsed before acceptance, the drawee may refuse
to accept on the account of the drawee, but may accept
for the honor of an intestate, and that intestate in this case,
will receive endorsers are liable to the drawer, if he pays
the bill. But in both these cases, a protest must be
made against the drawer, either in writing or in a verbal
form. This kind of protest may be made by the acceptor himself.

In ordinary cases the drawer is not liable to the
1. Wils. 158. drawer, as the latter is supposed to have effects of the
4vo. 254. former in his hands, fleft to reimburse himself for the
amount of the bills. But, if he has no effects or estrayes,
the acceptor accepts for the honor of the drawer, in whose
case he is not supposed to have effects, or if an indorser
the drawee for those honors he accepts, is always liable
to him in an action.

The holder may discharge the acceptor, from his
liability by a express agreement, and it is not necessary that
there should be any consideration to this agreement.

But the acceptor is never discharged by the holder,
accordance to the drawer, nor by holder's actually re-
ceiving bare payment from the drawer. A receipt of

bare, however, from the acceptor discharges the drawee's
endorser. But in one case it is held that a receipt of

bare from the drawee discharges the indorser, and

the receipt of bare from an indorser by the holder,

nor discharges the indorser, or any other person who

is liable.

An Esc. At hold themselves bound, by a decree of a Co
in Italy, which permitted an acceptor to receive his accept,
when his not different from those established in Eng.
Bills of Exchange.

Of the Actions on Bills of Exchange.

An action to recover money due on a bill of exchange is brought on the bill itself, stating it to have been made "according to the custom of merchants." But declaring when it was first an action at common law. It was formerly the practice to state the whole custom at length in the declarative, i.e. this whole law upon the subject; but now it is usual to state only that it was made "according to the custom of merchants." 1.

A common law remedy however may be had when the

1. Wills. 158.
2. Parker. 130.
3. Page 130.
4. Bapt. 52.
5. 19th. between a mere holder of a bill, payable to "bearer," maintains indefeasibly, as against any person that may claim to collect the bill. 2. Wills. 29.
6. 19th. between the presentee and the drawer, and the 3. Mas. 15.
7. 19th. between the endorser and the presentee, and on the
8. 19th. between any one, drawer, or endorser, and the
9. 19th. "across" the drawer, to the presentee, and the
10. 19th. between any one, drawer, or endorser, and the

The common law remedy upon "according to the form of the bill of exchange," not according to the custom of merchants." 2.

A note with these words, "the bearer," signed by one

1. 19th. In 19th. 2. 19th.
2. 19th. Between two or more parties, several, or several, or when one of two or more joint

1. 19th. 2. 19th. 3. 19th.
4. 19th. 5. 19th. 6. 19th.
7. 19th. 8. 19th.

A note with these words, "the bearer," signed by one person only may be held indefeasibly against the

1. 19th.
2. 19th.
3. 19th.
4. 19th.
5. 19th.
6. 19th.
7. 19th.
8. 19th.
In all actions upon a bill of exchange, it is necessary to state, that the drawer drew the bill, that he directed it to the drawer, delivering it to the payee; that he (the drawer) delivered the bill to the payee. In an action at the drawer, it is also necessary to state, that the drawer refused to accept the bill, or pay it, or both as the case may be, likewise, that it was duly protested, that the drawer had notice of the protest. The manner in which the notice was given ore by protest should be stated, but if it is only stated generally that the debtor had notice, at least it may be taken advantage of by special demurrors, yet it is once the truth.

Doug. 576.

If the suit is ag. the acceptor, the acceptance by him must be stated.

May. 308. 578.

If the action is brt ag. the endorser, he must also state, that it was endorsed over, delivered to him, showing that he has a right to demand the pay of it. If there are a number of special endoreses, he must state them all. But if the endorsement of the payee is blank, he may fill it up with an order to pay it directly to himself, although it may have before two hands. Or, if there are several blank endorses, he may erase them all, except that of the payee, if fill that up with an order to pay it to himself.

Plym. 538.

2 Ayl. 128.

If the action is necessary by the law merchant, to conclude by raising an answer, "in consequence thereof, is assumed upon himself, devoted to now," by the

common law this is necessary. Our debt at some din is the same way, but the section of it may be questioned.
Bills of Exchange.

The declaror on a bill must state the bill according to its legal operation, in conformity to the rule that all instruments must be declared on according to their legal effect. Therefore, a bill payable to a fictitious person is considered as a bill payable to bearer if it must be declared on as such.

The holder as has been mentioned before may become his own creditor if all the money is payable to him at the same time. But if any of the drawee's costs or the cost of the bill is paid, the holder is only entitled to the proceeds of the bill, and the costs of the action.

The costs in all the suits are to be paid, as the acceptor is eventually liable. The costs in all the suits proceedings will not be stayed against him, unless he pays the costs of all the suits.

An indorser can never maintain an action as to

The acceptor or drawer on the ground of mere liability, he must have paid the money to the holder, before he is entitled to such an action. For if this were not the case immediately when non-payment of one of the endorsers ought immediately give the drawer a right to an infrastructural effect, it is therefore necessary for the indorser in such an action to state in advance that he has actually paid the bill.
Bills of Exchange.

Of the necessary proof in an action on a Bill of Exchange.

The proof to which the preceding observations refer, is more particularly relative to the cases in which the handwriting of the parties to a bill of exchange is necessary to be proved.

In an action by the holder of a bill, as the drawee or acceptor, the handwriting of the drawer need not be shown, if the drawee is supposed to have the handwriting of his correspondent, or by the acceptance acknowledges it to be a true bill. But, if the acceptor has accepted the bill without seeing it, it will then be incumbent on the defendant to prove the drawer's hand.

So the acceptor's hand must always be proved in an action against him.

3. Rem. 1276.
1. *Pl. 5.*
4. *Pl. 25.*
2a. If the bill is payable "to A or order," it is not necessary for the holder to prove the handwriting of the drawer, for, if that is forged, he cannot recover.

If the indorsements are special, he must also prove them all in this way showing his title thus: the drawer.

If the bill is payable "to bearer," it is not necessary to prove the handwriting of any person, but the acceptor. Upon this ground the courts determined the great title cases.

If bills made payable to a fictitious payer whose name was indorsed by the drawer himself, the courts determined those cases to stand on the same ground.

As bills payable to bearer, therefore, it was not necessary to prove the handwriting of the indorser.

In an action against the drawer, to indorse the handwriting of the drawer, the indorser must be showed.

When the action is by the indorsee against the indorser, the indorsee's handwriting is sufficient in respect to the indorsee a new drawer.
Bills of exchange.

If the acceptor has refused payment & is sued by the drawer, the latter must prove the acceptance by the drawer, either by his hand-writing or in some other way; his refusal to pay the return of the bill to the drawer, being proof of his payment. The drawer in this case is not obliged to prove that he had effects in the hands of the drawer, that is presumed from the acceptor.

When the acceptor fails the drawer he must prove the hand-writing of the drawer, the acceptance & proof by himself, that he had no effects.

The hand-writing of any of the parties may generally be proved by comparison or similarities, but an incoherence in it can never be proved to be a forgery merely by this kind of testimony.

A confession by one of the parties that the bill endorsed by him is his hand-writing is always good proof, against the person confessing, but when such a confession will operate against any other person, it is inadmissible, as in an action by indorsement, a drawer, a confession by the indorser that it is his hand-writing may not be proved.

A protest regularly made is conclusive evidence. In most countries, the bill itself is not necessary to found the action upon, the protest being sufficient evidence of its existence, but in Eng. it has been held to be necessary. The same rule would probably obtain here.

The putting a letter containing a protest into the post-office, is all that is required of the holder. He is not obliged to use any other means of conveying the notice.

When a bill of exchange has been made by a clerk, it is necessary, in order to judge the master, to prove that it is in his business, or that it is usual for him so to do.

When a drawer is sued on a bill of exchange in his capacity default, it is an admission of the existence & payment of the bill, but must not afterwards be produced unless for the purpose of showingRAP, or that have been made upon it.
Bills of Exchange.

If the consider is necessary to Bills of Exchange,

Although it is a general rule, that contracts are good without a consideration, by the law merchant, there are certain cases, in which a want of consideration may be taken advantage of, in a suit upon a bill of exchange. Look at the rule to the test. If the case be such as may be governed by the common law, where there is no necessity for resorting to the law merchant to sustain the suit, it will happen in those cases, where there is a priority of contract between the parties, then, a consid is necessary, but if it is a case governed wholly by the law merchant, it is good without one, e.g., A gives a promissory note to B, without any consider. A dies upon it, then he may avoid himself of the want of consider, for this is a common law action between A. and B, but if A has endorsed this note to C. and dies, A's heir it is good without a consid, for no action at common law will lie by C. ag. A.

Illegality of consider as between the immediate parties to a bill is always a good defense, but when it has been once endorsed, it is in the hands of a bona fide purchaser it is no defense, except in the cases of bills which are nocuous, those founded on gaming contracts or those not held to be void, the bill ag. those signaturee's opposers would be rendered completely nugatory. So, when a bill has been indorsed, after acceptance has been refused when, if the drawer may take advantage of any illegality in the consid.

When the bill is void for illegality, the indorsee who has paid a valuable consid. for it may sue the discoverer of the indorse, the not on the bill, yet that may be used by him as evidence.
Policies of Insurance.

A Policy of Insurance is an instrument whereby a contract is made between the insurer and the insured, whereby the insurer agrees to pay to the insured a certain sum in case the event happens which is insured against. For this insurance the insured pays a certain premium, which, however large it may be, is not insurmountable, because of the hazard run by the insurer.

As between the insurer and insured it is no matter how high the property insured is valued at; if it does not make the contract a more engaging one. An insurance upon property in which the insured has no interest is unlawful as it is a mere wager. This was decided by the court but still it poses that without that it is void as being contrary to the general principles of the mercantile law.

Policies of Insurance are more generally made when these other things happen than when another species of property is insured. And these policies are negotiable instruments, as signed to with the property insured.

An insurance may also be made upon the life of a person. But to prevent wagers in this way an Eng. Stat. has provided that all insurances on lives are void until the person insuring has an interest in the life insured. Insurance of this kind are governed by the common law, not by the law merchant.

Also are insurances of houses from fire. For it is no matter how high the house is valued as the owner pays a correspondingly higher premium. For insurance is not negotiable if the house on which it is made is sold; it does not bar will to sell if there is an express consent or agreement for this purpose by the insurer. For it is a rule, that the insured must have an interest in the house, at the time of making.
the insurance, & also, at the time the fire happens.

Where by the terms of the insurance, the insurer was to be discharged, if the house was burnt "by a military or usurped power." In this case, it was done by a mutiny, he was held not to be discharged.

Reinsurance which is where the insurance amounts to more than the value of the ship goods, etc., is not permitted by the law of merchant, except where there are underwriters. Some of these become bankrupt, insolvent, or die. Therefore, if the subscriptions of the underwriters amount to the sum of the value of the property in the policy, any additional subscriptions are void until some of the former become bankrupt, insolvent, or die.

In case of double insurance, which is where the same property is insured twice over by two different policies, the insured can recover upon one only.

Insurance from a place, attaches from the moment of departure. If it is "at, from," it covers all losses while in the port, &c, if it says "to a long voyage," the voyage contemplated & insured is given by or a condition. In such case, if an abandonment of the voyage, the insured cannot recover back the premium from the insurer, although no risk has been run, as Gough 668.

The general rule is, if no risk has been run, the premium must be returned. But, if the risk insured against is once begun to be run, the premium is to be retained, except on one instance, when only a part is to be retained, that is, where the risk is by a vessel, failing merely from one boat to another, which is the case of rendezvous. When the voyage is discontinued, if the vessel round that she has distinct risks are uninsured, or one from the place of loading to the place of rendezvous for a century, the other from thence to the port of destination, as Gough 669.
When the term freight is made use of in a policy of insurance, it does not mean the cargo of the vessel, but the earnings, the sum that is paid for the transport of the cargo.

If the freight are insured "at from" a port, & the vessel is lost or sunk before any part of the cargo is put aboard, the insurance is not liable for the freight, but if any part of the cargo was aboard, the entire freight to be paid, & he must pay the whole freight.

Money sent in a bottomry or correspondencia bond is not included in a policy of insurance under the term "goods." A person, however, having sent money in this way has such an interest in the vessel that he may insure upon it, but he must specify in his policy, that the insurance is made upon the money thus invested.

It appears from the authorities that formal testimony is admitted to explain a policy of insurance. This is clearly contrary to canon law principles. The justice of the decision may be fairly questioned. So, if the policy has, by mistake or accident, been drawn so various from the statement of the fact, capacity & of the object, that to the insurer, formal testimony is admissible to explain it.

When ambiguous words are used in a policy, they may be explained by the testimony of merchants.
Policies of Insurance.

Of Total & Partial Losses.

Where the loss is a total one, the insurer pays a proqualible part of the sum to insured, or, that in many instances, although the loss is not total, the insurer may abandon, and is called on recoverer at the insured as for a total loss; and in these cases if an abandonment of the insurers take all that is found of the property.

As to the cases in which the insured may abandon, it has been determined.

2 Dec. 1803.

If the amount of the property saved is less than the right the insured may abandon, it being considered as a total loss.

2 Bur. 83, 833.

3 Dec. 183.

If the ship is taken, it is to be considered as a total loss that the insured may abandon. But if the cargo is immediately or is sold by without much duration, sold, or removed before the voyage, the insured cannot abandon.

2 Bur. 1232.

If the insured is not lost they can never abandon.

2 Bur. 904.

If ship in action for a total loss he may file recover on the same declar or an average loss.

2 Bur. 115.

When the property is insured in the ship at a certain value. For partial loss, the rule for determining the sum to be paid by the insurer is the
Policies of Insurance.

What shall discharge the Insurer.

Any kind of fraud on the part of the insured, misrepresentation or even concealment of facts which are material will vitiate a policy. Hence, the insurer.

But a concealment of mere conjectures, or of calculations made from erroneous facts, will not affect the validity of a policy.

So, if the insured makes a large agreement with the first underwriter, in order to obtain his name first, for a letter, or any other thing of the sort, that he shall have a greater appearance of shall not be liable, it renders the policy void.

And so such a policy is void if the loss or being in any way, whether by means of the fact concealed or not, the insurer is not liable.

When a policy is thus void, the party of the insurer has paid the premium, he may recover it back.

If the ship is lost, then the fault of the master or pilot, the insurer is discharged, unless the misconduct was insured against.

A voluntary deviation from the course of the voyage, discharges the insurer. And this too, whether the deviation the ship had land during the time the ship was out of her course and. But if a port is made in such a court, after deviation, on occasioned by unfavorable weather, the insurer is not discharged to it.

As there is a manifest intention to deviate, yet if there has not been an actual deviation, the insurer is liable. But if on insurance be made upon a voyage, if the ship actually sails on another course for a different port, the insurer is discharged even if the loss happen before the arrival of the deviating point in the course, between the two voyages.
Policies of Insurance.

3. Mar. 340. As a general rule, the insurer is not liable on the policy until the insured strictly performs every stipulation or agreement on his part contained in the policy. It is the duty of the insured to perform the contract in good faith, to maintain the vessel in proper condition, and to furnish the policy.

2. Mar. 240. The policy is not void if the vessel is lost while sailing to the usual port of loading, but the insurer is liable for the loss of the cargo.

1. Nov. 325. If the vessel is lost without the consent of the insurer, the insurer is not liable for the loss of the cargo.

1. Nov. 340. If the vessel is lost in a storm, the insurer is liable for the loss of the cargo.

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The vessel usually insured is in a policy:

1. The value of the ship. This comprehends all dangers from waves, tempests, rocks, &c. But if the ship happened to be wrecked by the negligence of the master, the insurer would not be liable, as if the master in attempting to run into a harbour without a pilot, should run aground if wrecked, the insurer would be discharged.

For this reason, it is a proof that the wreck was inflicted by the perils of the sea.

2. Capture. The term does not comprehend partial

captures, neither does the term 'enemies'. It includes captures claimed to be lawful by the law of nations.

3. Baratay, or the master may be insured against.

This is any wrong or fraudulent conduct of the master

without the knowledge or consent of the owner, by which to ensue. The act must be a positive one, not merely

by negligence; it must be voluntary on the part of

the master, if he is forced into by the mariners &c. It is

not baratay.

4. Seizure of prizes, or any other government, by

which is meant a detention of the vessel by an en-

forces the notion for unlawful conduct of the

master, as an attempt to smuggle. But, it was once

held that such an attempt might be insured agt by

 predefined words, but such an idea is repudiated by the P.

manifold.
A charter-party is a contract by which the owner of a ship lets it to a merchant to perform a voyage for a certain sum, which is called the freight. If the cargo this hired, or chartered, is lost, the hire is not liable for the freight, the hire is often discharged or varied by the terms of the contract.

If a certain freight is to be paid on the outward bound voyage, & a distinct hire on the homeward bound. The vessel is lost in returning, the freighter is answerable for the freight in the former. As if the contract had been for the whole voyage entire, he would have been answerable for none.

If the ship returns without any cargo on board, the freighting is liable for the freight if it was this any fault or negligence of his or his people, that returned the ship empty.

If the cargo is missed by the mismanagement of the master or the crew, or if any loss is sustained by reason of the ill state of the vessel, the owner of the ship or the master is not liable for the freight, but he may recover damages of the owner of the vessel.

The owner of the cargo may in such case, a

When the chartered vessel is recapplied, the owners are entitled to a part of the freight proportional to the part of the voyage remaining, the goods become. But in such case the freight

The rule that loss occasioned by the misconduct of the master, viz. to be borne by the owners, has been adopted by our judge, Et. of Cases. By an Eng. Stat. the owners in this case are liable to no greater amount than the value of the vessel. So such Stat in E. 2.
Until the terms of the contract are otherwise, the freight becomes due at the last of delivery; and the master has a lien on the cargo until it is paid, he is not therefore obliged to unload it until the freight is paid.

A whole charter is void unless earnest is paid. And if, after earnest of earnest, the freight returns, he repays his earnest; if the owner of the vessel returns, he loses double the earnest.

If the freight lends the vessel on a voyage different from the one agreed upon in the charter-party, he is liable in an action at common law, and 3. R. 555. in a penalty is agreed upon between the parties to be paid in this event, as is sometimes the case. This will chance it down to the real damage.

The owners of a vessel are liable for every sacrifice furnished her on the contract of the master. Until the vessel is let out for any length of time. The master is also personally liable in this case. And the vessel may itself be pledged for payment, which is called on hypothecation.

The wages of mariners are assignable at every

21st, 1795. A part of delivery, I am under no account to the contrary, 1st, 1795. will be relieved at 4 in E. Freight is paid to be 1st, 1795. the master of wages, therefore if a ship is lost or taken the mariners lose their wages. So, if they rebel or missing not the master, unless they reasonably return; or if they willfully absent themselves, or leave the vessel before she is discharged of her cargo, they lose their wages. — The ship itself it shipped to town for the pay of wages, and 1795. they recover them by a bill, as it before the Admiralty of.
Of the law of Partnership.

As to what constitutes a partnership, see supra, 327, note 2. St. 3, 188, 149, 365, 2, 365. 2, 365. 3, 365. 4, 365.

The estate of a deceased partner vests in his estate, but the surviving partner has the right of suing to collect debts due to the company. He has this right, however, under a liability to account with the estate of the deceased for his proportion of the property thus collected. The liability of being sued also devolves to the partner's estate, not to the estate of the one who is dead, unless the survivor is unable to pay such demands. And in this case, it has been customary to file a bill in Ch. *agt.* the estate of the deceased, that there is no necessity for resorting to that Ct. —

The true reason why the survivor is to bring forward all suits of the company, and pay all claims when then appears to be due, is because he has the absolute control of the joint property, but because of the inconvenience that would result from his being joined in an action with the estate in this case, one would sue in his own right. The other in that of his testator, and the one would be liable to costs; personal assets and other assets liable to each. For these reasons, the survivor is entitled with the right of collecting so much of the joint property as is in action.

With the private property of partners in trade what they hold jointly in partnership, is liable indiscriminately for every debt, whether joint or separate, but when the partnership debt is taken for a particular debt, it is to be paid by creditors, that to one day of it is paid to the buyers, the becomes a tenant in common of the property, with the other partner. The method formerly was to settle property enough to amount to double the sum and (where the partners contemplate shares) other day over one half to the other partner. But the present

...
When partners in trade become bankrupts, the mode of settling the estate is to apply the joint property to the payment of the company debts, and the private estates of the partners in the first instance to the payment of their respective private debts. If then there is a surplus of private property belonging to any one of the partners, it is all liable for the debts of the company in case the company property is not sufficient to pay them. If there is a surplus of the joint property, the deficiency of private, unless of the firm, as belongs to any one of the partners may be added to the payment of his private debts, but not to the payment of the private debts of any of the other partners.

Bom. 2174. Para. 168, in case of bankruptcy by one partner to which the other is not joined, a dissolution of the partnership is to many purposes the same perhaps as all.

If one of several partners contracts as for himself, Bom. 1257. it is without dissolving the partnership. Half of the cost is in fact made for the partners both, proof of this fact, if it was unknown at the time of the cost to the person with whom the cost was made, will render all the partners liable.


A surviving partner may join on one declar. a demand according to him as survivor, He demand according to him in his individual capacity.
Of Factors.

A factor must have his commission signed or he will be liable for any losses that may arise if his commission is a general one. If the commission is given, he may sue when indebted, but if he restrains the use of the commission, from selling upon trust or to whom, it is at his own risk.

   Corb. 251.
   Amb. 234.

2. Byn. 1152.
   Esq. 107.
   But it has been since overruled.

Of the factor pledges goods of his principal, for a bond to stand as his own, without authority to do the same or bind the principal who the goods are to go to, though the goods may be taken without having the bond if they were pledged.

2. Byn. 1153.


4. 294.

5. Dury. 504.

The principal is liable for the fraud of the factor, while the latter acts within his commission.

Amb. 256.
When there are several owners of a ship, the majority are to govern as to the destination & voyage upon which the ship is to go. They may in this case join a bond to the minority, to answer all damages or damages that may arise from such voyage. If this is done the minority can never claim any of the profits of the voyage, but it seems this might of this not be done, even the they objected to the voyage it affected no abstinence in the freight in letting her out.

While the ship is in port within the dominions of the Com. law, the master is considered as a common carrier. But he is liable at all events for losses that happen by his theft or negligence. But when he is when the ship has been governed by the law merchant which makes him liable only for actual negligence, or other culpable acts.

Below U.S. water mark is when large sums of the law perhaps in large navigable rivers, the Com. law is not observed. Transactions without these limits are in the jurisdiction of the Admiralty Courts & the maritime law.
Real property is defined to be that which is perman-ent, and immovable. This definition cannot be removed out of its place. This definition, the poet in the main, is not fully adequate; indeed, it is almost impossible to make a definition which will convey clear ideas of all kinds of real property. A general rule, when we have discovered what kind of property upon the death of its owner descends to his heirs, it is not to be considered as real property.

Land together with the things adhering to it, and the benefits arising from it, are almost indubitably the subjects of real property. This term land in this sense includes not only the soil itself, but also every thing adhering to it, as houses, trees, fences, &c., and not only whatever adjoins to its surface, but every thing above it, up to the sky. Every thing below it, as mines, minerals, &c., to the center of the earth. It also comprehends the water, flowing or standing when it is the only legal method of conveying water is by granting in the deed, if many acres of land covered with water a mere grant of so many acres of water conveys only a right of pleasure.

But the term land does not include personal property lying or being upon it, as if a man build a stable in which your cattle, tho' you would not sell with the land, as cattle lying upon land if not made into fence, do not sell with the land.

As to the certain things may be executed that will not help, the without which exception they would help, as tree, house, &c., when a house is thus executed or when a house standing on the land of the grantor is conveyed away without the land, it is questionable what kind of property it is. One thing is certain, the owner of the land on which the house stands in such case can never disturb the owner of the house.
the enjoyment of the house. So long as it stands, but
whether upon the death of the owner of the house
it descends to his heir, or not, is doubtful. The practice
I imagine is, that the heir should take it—

If A. builds a house on the land of B. without
licence it immediately becomes B.'s house: the structure
A. might be entitled to some part or all of its value.
If A. had licence, the house would still be B.'s (unless
it was so constructed as to be movable), but B. would
be compellable to suffer A. to enjoy it peaceably.

Tenements & hereditaments are words of reach to
some extent as "real property," the one meaning any
thing that may be lodged or kept up in the other and those
that may be inherited, the last to be of the most ex-
tensive signification of any which applicable to real
property.

They are divided into corporeal & incorporeal.
A corporeal tenement or hereditament is land in its above-
signification. An incorporeal hereditament is an estate
not visible or tangible, a right to the enjoyment
of certain privileges or profits arising from a corporeal
tenement, as a right of way of common to—

The estates which may be had in land are for
lands, freehold estates for life, for years, &c. with
the three former only are real property, or real title...
An estate in fee simple is the highest kind of estate that can be had; the tenant in fee being possessed of the full, entire, absolute disposal of property thus bestowed. And this in its original signification it implies an estate laden under no inferior; yet it is considered in law as resembling the feudal allocation which was where the land was possessed by the tenant in his own right and holders of from any superior. In conformity to this latter idea, an estate upon a total failure of heirs in its owner does not descend to any inferior; this provision is made by Stat. in C. that it shall in such case belong to the State.

The words necessary in a conveyance to constitute a fee simple estate are "to one the heirs forever." And it seems that in a deed, all other words in the Eng. language would not answer the purpose of inheritance perpetuity being considered as intentionally necessary.

This, the general rule is not an universal one. The exceptions to it are the following:

1. Where in the deed of conveyance there is a reference to some former conveyance in which the necessary terms were used. e.g. A conveys to B, "his heirs forever:" B conveys to C; gives him a life interest as full as if he had before conveyed to B; here, as B had before granted a fee simple to B, B is considered as granting back a fee simple to him.

2. Where a tenant in joint tenancy and heirs of the latter are granted the estate in fee, one coheir or joint tenant may release to his fellow, his share of the estate without the words "heirs forever," there being in this conveyance to the estate they both had which was a fee simple.
2. In deeds to corporations the word "heirs" is used instead of "heirs"; as a corporation cannot be said strictly speaking ever to have heirs. If it is a compact, aggregate, a dead without either of these words (heirs or successors) will come a fee simple, or at least the corporation will enjoy the estate as long as it exists, perhaps it may be said to be only an estate for life. Upon the dissolution of a compact or the death of all its members, the estate revert to the original donor.

3. In case of devises, the jurisdiction of the rule is by no means exposed. Because, in testamentary conveyances, it is an established rule that the intention of the testator, if consistent with the rules of law, supersedes technicalality of expression. The phrases "of consistent with the rules of law" relates not to the words or form of expression used by the testator, but to his intention, as to the nature and species of estate devised. If, therefore, his intention is legal if the estate he means to devise away, because by law is capable of being devised away. He has power to make such devise, his intention shall be obeyed, expressed in informal manner, even by the "rules of law" as to his language or means differ from that which he intended. If testator having an estate and devise it in fee simple, the devise is not good because the testator's intention is not consistent with the rules of law. So a devise of a house "to A, or the heirs of his body" is not good because the testator's intention is to create an estate not permitted by the rules of law to be created, viz., an estate in remainder. In C perhaps the devise might be good. Since the words when applied to real property in C. is not an absolute necessity in this view of the donor.
... in fact, did you for the intention of the testator would be frustrated by our rule, as much as by the... 

In the following cases the words made use of by the testator have been held to convey a fee simple:

1.食品. 300.
2. C. n. 614.
3. 21. 22.
4. Xcb. 327.
5. 2. 8.

2. Bc. 43.
3. 2. 29.
4. Ch. 73.
5. 2. 43.

2. A. 35.
2. 9.
2. Xbb. 41.
2. 300.

2. 2. 41.
2. 2. 41.
2. 2. 41.
2. 2. 41.
2. 2. 41.

In the following cases the words have been held to convey a fee simple:

1. 720.
2. 720.
3. 15.
4. 2. 41.
5. 2. 41.

2. 2. 41.
2. 2. 41.
2. 2. 41.
2. 2. 41.
2. 2. 41.

2. 2. 41.
2. 2. 41.
2. 2. 41.
2. 2. 41.
2. 2. 41.

2. 2. 41.
The term "heirs" when made use of in a deed of conveyance, is not considered as ever looking out any particular persons who are to take the estate, but it is made use of as a term of reference of the quantity of estate conveyed; thus, when an estate is given to A's heirs forever, it is not the meaning of the grant that the heirs of A are to take any thing by the instrument. Altho' it is expected to be to A's heirs, it may immediately afterwards convey it away. Others define his heirs of it entirely. So the heirs of A by such a conveyance acquire no beneficial interest in the estate, ought the chance they have of enjoying it, after A's death.

In case of devises, however, where it appears to be the testator's intention to point out some particular persons by the word "heirs," they have been admitted to take. So too, in intestacy where the testator's intention the devisees have sometimes been admitted, with the maxim "nemo habet estatute," but this must be where the intent is clear to give it to some particular person under the description of his, not to any person who might happen to be his heir. Therefore, a devise to the heirs of A, who is now living, or to B, the heirs, conveys no thing to the heirs of A. But if the testator by an especial should give the devise to the person who should have an only heir, or by sale, or any other means, the devise to give the estate to some particular person it would be good.
It is a rule established in Shelleij's case, which has been since adopted by that of an es-
set, that 1102.5th be given, in an instrument, to one for life, and afterwards, in any part of the instrument to the
heir of such person, the heir as such, take nothing by the conveyance, but the first taken, it
was expressly given for life, shall take a fee simple, or if it be given to the heir of his body, a fee simple.
This rule applies equally to deeds and wills.

So far is settled law, but it is a question which
is still unsettled, whether, if from other words in

1. this instrument, the testator's intention can be clearly in

2. writing, it may be contended that the first taken shall have only

3. a life estate, if it will not be contradicted by some

4. words in the will, or if the words must be construed

5. to mean that he ought to be the case; while others

6. contend that this ought to be the case, while others

7. maintain that a strict adherence must be paid to

8. the rule, that the "heirs" are never to take, unless

9. the testator is made use of to denote any person who

10. may become heir. Mr. B. thinks that as the au-

11. thorities express the opinion of eminent lawyers in dig.

12. a rule, contradictory to this, is urged in 2 to take the reasonable sense of the words

13. for our law, which holds it to be clearly, that the

14. intention of the testator is, that the

15. or a marriage settlement, to convey to A. for

16. life, remainder to his heirs forever, in the

17. words, which, according to the above rule, would make a

18. fee simple in A. If A. does this make a settlement
to himself for life to it is a full livery, of the con-

19. in only the strictly opposite to the technical

20. import of the words.
When a fee simple estate is granted to a man, his heirs forever, any limitations imposed by the grantor, incompatible with the qualities of a fee simple are void; the estate passes to the grantee unencumbered with such limitations. Ex. A fee simple is alienable, devisable, descendentable to the heirs general, liable to crown, liable in the hands of the owner to be extended for his debts, not liable to be sold for that purpose. And none of these qualities can be taken away by any modification of the grant or devise of a fee simple, if the estate should be given "to one of his heirs male forever." the attempt to render it descendentable only to male heirs would be void, the grantee would take it descendentable to his heirs general.

No legal quality of a fee simple can be excepted in a conveyance, yet some part or degree of such an estate may be excepted, as, e.g., the timber trees growing on the farm. These may also be conveyed without the land on which they grow.

At common law no remainder can be limited after a fee simple for when that is once given away, there remains nothing more to be disposed of. But now, by way of executory devise, such a remainder may be created.
An estate given to one & the heirs of his body is an estate tail: & these words in a deed are essentially necessary to the constitution of an estate tail. As an estate tail is a less estate than a fee simple, the donor, having in fee simple, has a reversion left in him; so that if at any time the heirs of the body of the tenant in tail fail, the estate reverts to the original donor.

In a devise, other words than "to one & the heirs of his body are construed to carry an estate tail; a greater liberality of construction being required in this case, as in that of fee simple. In the words to a man this is not his wife. I devise to a man his heirs male creates an estate tail; a grant in deed in the same terms constitutes a fee simple.

An estate tail general is where the estate is to descend to any heirs of the body of the donee; it being created by the above general words "to one & the heirs of his body." An estate tail special is where it is limited to the heirs of the body of A. by such a wife or husband," as "to A & the heirs of his body by Mary his wife." and in this case none can take but those who are the children of both. P. & Q. herefore, for if she should have other children by another husband, or be, after by another wife, they could not take.

It may also be further limited to the heirs male or female of the donee; and in this case it has been contended that the person to take must be not only of the sex described, but must also be heir to the donee; e.g. in an estate is given to A. Let B. to his daughter, & the heirs female of his body. A. dies leaving a son & daughter, now as the son is the heir, & the daughter, it is said, the cannot take, &c.
for al the she is female she is not heir female to the current of authorities conput with this idea but there are contradictory ones. - if from other words in the instrument it can be inferred that the females were intended to take it will go to them -

20th. Com. III. A person claiming an estate tail male or female must derive his or her title entirely through the fore described as if an est. be given to A. and his heirs male of his body. But if A. has a daughter who at the time of his death is dead leaving a son he cannot take the estate.

See 3d. 3. 300.

Estate tail may be created by implication.

2d. 12 b. 1. This if an estates be given 'to A. and' if he die without heirs then to B. This is an estate tail to 3d. the heirs are the issue in tail. So an estate given

3. 24. 1. 33. "to A. and his heirs for ever. D. if he die without heirs Co. 1. 45. d. or his body then to A.' is an estate tail. But this must be made by way of devise; if made by deed it would not create an estate tail. - 3d.

3. 24. 1.

24: 38.

3d. 3. 301-2. B. if the word were without heirs of his body being

3. 3. 31.

Tenants in tail are not liable for rents.

But if he has paid tenants, if the purchaser has not taken them off from the land during the life of the tail he cannot do it afterwards as the estate descends to the heir with every thing appertaining to it free from. - When his take it without any encumbrances is laid upon it by the ancestor. It is not liable in her hands for the debts of the ancestor.
The wife of the tenant in tail is entitled to the
benefit of a female tenant in tail to his
inheritance in the estate tail.

It is another privilege of estate tail, that if
the tenant attempts to convey away a greater estate
than he has [or a fee simple], it does not occasion a
forfeiture of his estate; but such conveyance creates
only as a lease to the grantee for the life of
the tenant in tail, that being the greatest estate
he can convey away; and it not being probable for
him, as long as it continues an estate tail, to do
any act prejudicial to the interests of the heir.

But he may, by a certain act, demise the
whole entirety of any interest in the estate, under
it a fee simple in himself. This is resisted by
suffering a common recovery, as added checking the
enactment. And it is now held to be an insuperable incident to an estate tail, that it is liable
to be divided in this way, so that it now answers
the purpose for which it was intended by the law,
thus making up estates in certain families), but very little, if any, better than the
fee simple conditional at common law. An estate
that lend was created by the same words as an estate
tail at present, is the heir of his body; but
as it was shown that that was an estate after con-
dition of the tenant having been satisfied the condition
was fulfilled as soon as he had heirs, it from that
moment became a fee simple in his hands.
In O. an estate tail cannot be made to last longer than one generation, for by Stat. a fee simple is vested in the immediate issue of the first divorce in tail, and this alone cannot check the entail for the Stat. itself has prevented perpetuities. Thus effects the object of a common recovery. In other respects an estate in O. resembles the same estate of time, but not in Sry. The wife it has been decided, isilor of the entail, division of which could not be the case of the first tailer look only an est. for life as has been contended.

It has also been doubted by some, if it were a

special entail or whether on the death of the first

divorce all his issue would not be entitled to take it

in fee, but that it supposed that the Stat. owns a fee

simple in the same persons who in Sry. could take as

fee tail. But therefore those only who come within

the limitation of the deed could take.

Personal property cannot be entailed. If

express words of entailment are used the whole pro-

perty vests in the first divorce. But express words

of entailment may by other words be restricted so that

a subsequent limitation will be good.

If words are used which create an estate tail

in real property by implication, they will be read

in a conveyance of personal property, will a life

estate in the first taker, remainder over, executed

the words of implication are sufficiently restricted

in point of time. As if he die without issue living

at the time of his death. Or (what becomes of the

property of the remainderman when effect of the

contingency failing?)
Estate for Life.

An estate for life, like ests in fee simple and
fee-tail, is an absolute estate, but it is not like them
an estate of inheritance.

Any estate (except an est. of inheritance or, at
will) which having no determinate close or
by determinable word during life is a life estate. The
word the happening of certain events it may be determined
before the life is upon which it is given; or, if an
est be given to a woman during her widowhood, it
is a life estate.

Estates for life are sometimes created by obser-
vation of law. Sometimes by the act of the parties. It
may be held either for the life of the tenant,
himself, or for that of some other person, in which
case it is called an estate for antiente.

The estates for life created by an act of law are
the following:

1. That held by a tenant in tail after the
ability of issue whole. This is where there is a
special condition, as to A, the heir of his body by
his wife B. The reason from whom the heir of tail
is to arise, is dead without heirs, so that it is not pos-
sible for the est. ever to descend, the possession of it
is called tail in fact after B. The estate of this
tenant is an estate for life in all respects, except
that he is not liable for waste.

2. Estates by the centenary. This is the estate
which this law gives the heir in the lands of his
wife after her death. Thus the Cog. that is to last
during his life. In C it has been questioned whe-
thou it should last longer than till the children
of this marriage arrive at full age; there has
been one determiner, that it should not. Four things
are necessary to entitle the heir to this estate, viz.
1. Marriage previous to the wife's death; 2. a right to
the benefit of antient; 3. Right of issue capable of inheriting the estate; 4. Death of

The heir is entitled to his centenary in a trac-
Estates for Life

Late belonging to the wife—so too, he is entitled to it in an equity of redemption, where the wife is a mortgagee—where the lands are given to the entire use of the wife, he is not entitled to certainty.

It may be seen in C. whether the tenure by the certainty ought not to be governed by the law of generations. If half the husband has but one half of the wife's lands, what whether she had given or not, the tenure in this state must be according to the custom of the charter. But Alk. thinks this has been held to long been contrary to it, that it has become the common law of the country, being capable of change until by that.

2. Trol. Com. 120.
C. L. 30.
15. 14.

C. L. 32.
15. 14.

3. Powers. This is the estate given by law to the wife in the real property of the husband after his death. It is to consist in the use of one third of all the lands, of which the husband was seized during the coverture, as a slave in law or a right to join in her estate, if she is to inherit the estate, i.e., if she had that issue that she must have been capable of inheriting the estate?

By that in C. it is to have only a third of what the husband died left?—Do this estate the wife has an indefeasible right. The last cannot depend from her mother. She is to be previlged in the enjoyment of it by the husband's children. And in this state, voluntary conveyances by deed made by the husband in contemplation of death have not been Norfolk and a like, considered as acquiring the wife of her property at

C. L. 32.
15. 14. 32.

The wife cannot be endowed of an estate held by the husband in joint tenancy. Nor if an equity of redemption.
The wife loses her dowry if she comes from the husband when he marries or divorces a woman. In the case if the husband is allotted of an estate or house by a woman, a viscus male is also specified or if it is already divided or assigned. But the most usual way in which the court of divorce is by jointure.

A jointure is, in order to be a complete bar to divorce, must be made of real property, for a term of years, as long as the life of the wife, and not her out of the estate. It must be taken effect immediately on the husband's death. It must be competent and it must be expressed in the deed to be in bar of divorce. So long it must be made before marriage, or if it is made after marriage, the estate must be in the hands of the husband. When made before marriage, it is bound under the Stat. C. a jointure may be made of personal property for a term of years, and the act supposed to alter the common law.

The case may also be learned by the husband's reason.

1. & 2. 18. giving in his wife personal property or in lieu of dowry, but in the case the wife has it at her option to take or decline. The jointure given her is not. In the common opinion with the common people, that a wife is not entitled to certain words of a husband, and therefore frequently given their wives one third of their real goods. With not injuring it to be in bar of divorce, yet may be.

147. 1. 148. 2. 2. 27.

Come an interesting question, whether this wife should have this together with the dowry, or only one part of the estate? The practice of the Ct. of Ombate generally is to give only one third half.

So is the method of the wife obtaining her dowry for the Stat. C. 45. 6.

"If the husband in such case, in his will, and all the rest of the book, was not not afford into his intentions, that the wife should take only one third for life?"
Estates for Life

As particular words are necessary in a deed to convey an estate for life. Any words which do not convey an estate of inheritance, or which do not affirm a determinate period to the estate make an estate for life.

2 Bl. Com. 122

The general qualities of an estate for life, (for life created by one's own act, or by the act of the heir) are. 1. The tenant is of course entitled to reasonable exertion. 2. He holds the estate for his life, or of the lives of himself and his issue for a greater term than he has as in fee, tail, or for another's life. In this case the grantee takes nothing. 3. The tenant for life shall never be prejudiced by the sudden determinations of his estate for as it is determined by his death which is an act of God, the maxim applies that "actus Deus immuni jure iniuriam." Then the act of an heir for life is entailed to the emblements only growing on the land at the time of his death. If, however, the estate be determined by the act of the tenant himself, as if a tenant during his natural life, marries or if the estate is forfeited for waste, the above rule does not apply, the emblements to be, go to the reversioner. And yet in this last case, if the tenant for life has issued out the estate to an under tenant, the latter shall not receive any prejudice from the determination of the estate by the tenant for life.

C. 3d. 12. 153

1 P. N. 348. for life, without referring for those lives, is generally understood to be for the life of the grantee; but in joint case if the grantor has only an estate for his own life, or an estate tail which gives him power over the estate only during his own life, it shall be construed to be an estate for the life of the grantor.

An estate for life, therefore, may be holden by the tenant for his own life; or for the life of another person. In the last case it is called an estate for another's use.
Estates for Life.

If the tenant dies before the certain person during whose life he held the estate, no provision was made by the Common Law for the disposal of the estate. It could neither go to his heir or executor, nor could it revert to the first donor, or escheat to the Lord of the fee; it was therefore given to the first accouchant. The Stat. 2 & 3. Car. 2. has provided that it shall descend to the Est. 1 & 2. Mar. 3., Stat. 11. 3. was enacted 'that after paying debts, personal effects, and any other personal property, there is no Est. concerning it in Est. that thinks the provisions of the Stat. 2 & 3. would be adopted by the Courts.

The maxims of the Est. law 'that a freehold estate cannot commence in future' is vacuously abrogated in Est. by a Stat. 1. the provisions of the Est. have deprived it of all operation.

If Estates for Years.

2. Bl. Com. 111. Any estate which has a known, fixed, determinate period is an estate for years. An estate for 20 years, if 20. to long live, the whole estate may not live 20 years. Therefore, the estate may be determined before the expiration of 20 years, yet as it is certain that it cannot last longer than that time, it is an estate for years. 

This estate must also have a certain

2. Bl. Com. 111. saying. If no time is mentioned in the deed, when it is to commence, it commences from the date of the deed.
Estates for Years

So if the time of its duration does not appear certain from the deed, yet if by reference to any other instrument &c. it can be made certain, the estate is good.

The words generally made use of to constitute a lease for years are "lease, demy, &c. for years," but these words are not necessary.

The word "term" makes use of in a lease, denotes not merely the time for which the lessor holds the estate, but also the interest he has in it; and if by any means he forfeits his interest in the leased premises (as by committing waste, alteration, &c.) his term is also forfeited.

Tenant for years is of course entitled to covenants.

An estate for years (which is generally denominated a chattel-rent) is personal property. Upon the death of the lessor, it goes to his legal owner.

It cannot be created by parole (except for three years or less) either by contract or by grant, but it may be created by other writing than a deed, i.e. by writing without a seal.

If the termination of an estate for years is due to the lapse of the time of forcing his crops, those crops if standing on the ground when the lease ceases, are to go to the remainder man. But if the lease is for the duration of some event, which was not occasioned by the lessor himself, by which he could not have known he would have crops, he shall be entitled to them. But the remainder...
Estates for Years.

Lease laws are frequently made in C. 32 of estate under such laws, he is no tenant of the estate, it being not to render the estate illegal, but merely to prevent him from gaining any interest by the lease. If, in this case, the lessor after having entered into the estate, marries, he is not bound by the same to pay that duty on the ground of enjoyment, because it is liable to the lessor, as on a quit-rent, to the lease, and the lease agreement, as to the payment of rent is admitted to be a more binding and 2 of the value of the lease.

If an owner of land makes a lease agreement with another to give a written lease at a future time, in consequence of this agreement, the tenant enters with the land of the owner in the case of the lease, but when has done anything to benefit the land, then he will acquire a specific interest of the land, and the interest of the lessor, and the other. And the other cannot eject the lessor to whom he has thus agreed to have his land, or when one is considered in this to be any act, as the owner here is to make a written lease, he, hazed not at any time himself of having omitted to do it.
Estates at Will.

This is merely a licence from the owner of land to another to enter, enjoy, and use, but not to be called an estate. It is describable both at the will of the lessor or lessee, and this too even if it is expressed to be "at the will of lessee."  

Co. 1 El. 35.

Any act of ownership exercised by the lessee over the land, incompatible with the lessee's tendency, is a sale by him determines the estate. 

1 Vent. 3 Ed. 3. 217. a sale by him determines the estate.

On the last of the lease any act inconsistent with the duties of a good tenant is a determin. of the estate.  

1 Ed. 3. 57. Ce. the duties of a good tenant is a determin. of the estate, and if he commit any act which in other tenants would be a breach of the tenancy, it is a determin. of the estate. The lessee is liable in an action of waste, the lessee is liable in waste. In an action the lessee is liable in waste. In an action the tenant at will determines the estate, as does the death of either of the parties, as it is not a descendent's estate.

After the est. is determin. the lessee may recover the
1 Vent. 2 Ed. 3. mains in holds, is a term before the est. is determin.  
S. B. 6. 1 Ed. 27. notice in the lessee he must have notice of it.

But he is always entitled to sue in ejectment, for he may recover all his emblements both at the estate is distributive to the lessor in this he may maintain such an action.
2 Bk. Ch. 150

Emblements.

2 Bk. Ch. 122

Emblements are those rents which are annually
raised by the labour of the occupier of land, as corn,
or, but not such rents as are permanent. Pears,
or by annual labour as most kinds of grasses, the fruit
of trees &c.

They are sometimes considered as real, sometimes as personal because thus they have in a state of
land without being named. If not that is that
there, here they are considered as real lands, but they
always descend to the estate that to the heir, like per
sonal goods.

When the termination of any estate whatever
of that determination was effected by the act of the
tenant himself or if when he sold his estate he knew
the estate must be extended before he could reap them
the emblements go to the receiver or remainderman.
but if it is determinable when an uncertain contem
pany not declaring when the tenant himself, he
is entitled to the emblements when its determina

2 Bk. Ch. 150

An estate at difference differs from an estat
at will only in the manner of its commencing.
It is where a person who has been in possession of
land by a legal title or by a lease for years, remains
in possession after his title is gone, after the lease is
expired. Its incidents are the same as those of an estat
at will.

In C. as every person who has a right to lands,
is considered as being in kedge; it may be questionable
whether this estate can ever exist? If, however, it can
exist from notice must be necessary to the tenant
before it would become a thing kaged.

Emblements.
Emblements. Timber trees.

As a tree for years whose estate is to end on the 1st. day of July, for crops which are planted at that time, which cannot be made till July, he cannot then take them, they will go to the reversioner. So if an est. is given to a woman during her widowhood, if the marriage when there are emblements growing, she is not entitled to them. Let it be her own act, but if the husband dies, the est, being held in an undivided, he cannot not be entitled to the emblements by her marriage, for he is guilty of no fault or wrong act.

5 Co. 16, 110. On the death of one joint tenant the emblements go not to his co-tenant, but to the survivor.

1 Co. 16, 24. When land is recompensed from a defecror by the devisee, the former is not entitled to the emblements.

Timber trees when sold, become personal by the act of the land, if they are cut, they also become personal by the act of the land. If excised in a lease for life, they remain real for 40 years, as they belong to the freehold over, while taking the exception. If in this case the lessee or after a lease is for the grantee, her husband the trees then become real again. If they are set to a tree for years by a lease, they become personal by the act of the land.

Where a defecror has taken the land, this estate is liable to the deficiency for all trees that he takes, but he cannot be considered as a wrongdoer, but is looking for them to come in revenue.

The words "without embalement of waste", in a lease

327. 1 Co. 152. To donate a "sale of the trees to the lessee, if the lessee chooses to take them."
Of Incorrigible Anecdotes.

1. A right of way is the right which one may enjoy of crossing over the grounds of another. It may be absolute, or it may be appurtenant. If one sells a lot of land which includes his own lane, the law allows the grantee a right of way to that lot, over the lands of the grantor, even in the case as this, the right of way is attached to the land to which the way leads, descends with that to the heir, not by itself alone. It cannot even be assigned by degree.

2. Offices of a ministerial kind, the title are considered incorporeal, and may be granted in remainder, or assigned in fee, are not regarded as lands, i.e., if an officer dies before the expiration of his office, it neither descends to the heir, nor goes to the next.

3. An annuity is a charge on the person of the grantor, payable annually. But, this is a charge merely personal, yet it may be as to the grantee an estate of inheritance, descends to his heir. Its distinction is the only thing that distinguishes it from fore? e.g., it is not subject to curtesy or dower. Annuiti descendi is an annuity to one of the heirs of the grantor, in a fee simple, conditioned, at common law.

4. Rent is an annual sum reserved by the lessor of land to be paid by the lessee. It is rent before delivered to the heir, or when the rent is all paid, in goods at the time of making the lease, this is not real estate. It is only growing rent, that is, obligations given at the time of making the lease. *Viable, at fixed times, as a full and final, for the rent, are not regarded as rent.* It is only growing rent that is real rent, that which has become due. It is paid by a release of all demands.
Conditions annexed to a grant, are precedent or subsequent. A precedent condition is one which is to take place before the estate is to vest; a subsequent condition is one when the estate after vesting is to be benefited.

If a precedent condition be impossible to be performed, it is determined by the act of God, or by the acts of the parties or by the nature of the estate, the grantee can take nothing: the estate never vests in him. If a subsequent condition be impossible, unlawful, or repugnant to the nature of the estate, the condition itself is void. The grantee takes an indefeasible estate.

2 T.R. 133. "A promise or cession in a lease, "that if lessee becomes a bankrupt who may enter" is good.

2 T.R. 133. "A condition that lessee of a term shall not assign, or if a lease is made to one, his or her assignee is a condition on the lease." 2 T.R. 140. 125. "It. that is, shall not assign, good. The assignee is liable for the payment of syncing charges on the estate.

If one holding an est. for life is on condition that he be not alive, a sign. or encumber it. attempts to all. one the by a deed which proves to be absolutely void for want of legal requisites, his est. is not forfeited.

A difference exists in the Eng. law between a condition and a limitation. If an est. is granted away the condition annul ed that it shall become the grantee, when a certain event takes place, the grantee may still retain it. Only after the condition is performed until the grantor receives. But if the est. is created with words of limitation, the est. vests immediately on the happening of the contingency without any entry.

2 T.R. 135. "I. "If lease, "while" until, are words of time, i.e., contes tion in law. "Upon condition "a that," whenever, are words of condition in deed."
Of Mortgages.

A mortgage is a pledge of land as a security for the payment of a debt, and the • in form it is a conveyance of a part of the land to the mortgagee. If he has a legal title to the land, he can sell it, or if he has only a mortgage, he can compel the sale of the land and apply the proceeds to the payment of the debt.

Mortgages are now generally limited to the property of the mortgagor. The law as established in England is very flexible; it is similar to the other estate with the same security. Before the debt is paid, the mortgagee has a mortgage on the estate, which is considered as a lien on the estate. If the estate is sold, the mortgagee has the right to receive the proceeds of the sale.

And indeed, every essential beauty, the interest of the mortgagee, the lack of laws, is an absolute fee simple, and a personal estate. If the mortgagee has no mortgage on the estate, he cannot sell it, unless by the express agreement of the parties. If the estate is sold, the mortgagee has the right to receive the proceeds of the sale.

The mortgagee, as you have heard, has a mortgage on the estate. If the estate is sold, the mortgagee has the right to receive the proceeds of the sale, unless by the express agreement of the parties. If the estate is sold, the mortgagee has the right to receive the proceeds of the sale.
A mortgagor in salvo is a tenant in a real to the mortgagee only, but he is not liable to pay rent, because instead of rent he pays interest on the debt due to the mortgagee. Yet if turned out he the mortgagee may at any time, if he is not entitled like other tenants to the estate and premises, the mortgagee takes them, but he must account for them to the mortgagee. And if the estate is being rented the mortgagee has an interest in the estate, and if the interest is not entitled to the estate, the mortgagee takes them in accounts.

In these respects this mortgage while in being discussed as a tenant at will for a term in most cases, the estate of the landlord, but the estate of the mortgagee in this state turned out by the mortgagee may maintain his case against a stranger who disturbs him. With respect to the mortgage, the mortgagee who seizes the estate and premises can recover of him the mortgage for the estate, and in case of default the mortgagee cannot recover them if the debt of default the he may have discharged himself. From analogy it would seem that he ought not to recover them.

"It is settled that he cannot recover..."
Mortgages.

of the term which he has actually paid to the mortgage. If the rent were to be continued, the mortgagee cannot recover any more rent than the former, because the tenant is not liable for rent, the consideration is a tenant.

Parr. 304.

I can be the mortgagee also obliges to hold as before, the lease, and an interest in the land that he may recover. In this case however, his lease is not merged, but the latter becomes lease.

Parr. 350.

If mortgagor can give an express agreement, that he shall continue in holding for a fixed term, or till the day of payment, he is ten years, otherwise he is more faith, as is illustrated above.

It has been held by the Circuit Court in New York, that if after the mortgage made, the mortgagor is permitted to remain in holding; this furnishes circumstantial evidence of an implied agreement that he shall continue in holding till the day of payment.

But will issue an injunction to stay waste or stop in decay. The tenant will be heard as an infant, and will never be removed.

The recollection, however, of a mortgage is to consider different: if O. C. P. that the parties themselves cannot be any concern, they may make to the time of making the mortgage, under it invalidable. An interest in the land, O. C. P. has to carefully watch over the interest of the mortgagee that they have been not bound by an agreement to sell the county of reverent interest, at the time of making the mortgage. But he may make a document, to give the

Parr. 353.
When the mortgagor has by consent given to the mortgagor for the security of the mortgagee, by the equity of redemption to the mortgagee. If this agreement contains a condition that the mortgagee, when the whole is paid, shall, at a certain time, if this last agreement is not absolutely complied with, the mortgagor will not receive.

So it has come to be settled in Ch. as a maxim, that "once a mortgage, always a mortgage," for which is meant that once a mortgage is once made, it will continue until redeemed. To this maxim, however, there are some exceptions, as

1. In cases of family settlements, where near relatives, or persons of the same family, for the benefit of making a settlement on another, give him a mortgage: there is no agreement that he does not redeem it during his life; so, it shall not be redeemed at all, unless it is distinctly declared.

2. Where the mortgage is made by means of a defence, or condition, or benevolence from the deed of conveyance, if the mortgage lies to a benevolent purchaser, an absolute estate be acquired by the purchase alone, not subject to the mortgage equity of redemption. Yet, even in this case, the mortgage is not in abatement, or tender, commendable in Ch. to recovery, or have a validity, but this estate will not be double the value of the land as it is usual, but only a little more than its value, because in most cases it will be impossible for the mortgagee to recover the mortgage.

3. It is an absolute right of redemption of the mortgagor, not having the mortgagee's right. Because, not being adverse to the mortgagor's claim, it is not within the rule of law that the mortgagee has for 20 years in Dom or Dom. to recover the estate, and he owes the absolute estate. And so, the estate will be considered as absolute. In the case mortgagee is considered as adverse.
Mortgages.

But it will not in this case be a bar, if any count has been from the past of the mortgage
394. The mortgagor knows that he has liability
395. The mortgagee has to the mortgage within the 20 or 13 years. That 396. The mortgage retains the obligation to the debt, the mortgagee is no bar to redemption. — Liabilities to
397. The mortgagee in the case of infancy can prevent the attachment was to bar rescission. — If the statute
398. Has begun to run on the mortgage, an entrenchment
399. The mortgagee does not have the bar arising from the mortgage. — When mortgage remains in 185, even after
400. Forfeiture, the statute does not attach.

In case of a Welsh mortgage, i.e. one capable of a
401. Indemnity in such a case as the same one in any subsequent the utmost revenge, to any degree of time, the mortgaged and by one such circumstance as recovery of interest the mortgage is no bar to redemption. In these cases the mortgagee takes the rents and profits in lieu of interest.

It has become a question in this country whether sales of land reseemable within a certain time of taxes are mortgages after that time or not. Such sales in the State of Vermont have been very frequent. It is believed that they are totally void. If this opinion is just the former owners have clear the taxes were due are entitled to their surplus of interest.

The words of the Statute, that unless they are redeemed in a certain time, the lands &c. shall be absolutely vested in this purchaser are the same as those used in the defeasance of a mortgage.
Of the effect of Tender in Mortgages.

Payment or tender of payment to one in default before the day entitles the mortgagor to an action of ejectment at the former; or, if mortgage bonds remain in his hands, the person in whose hands or tender is a good tender after the day fixed for payment, a Court has no way, but in Equity, of the sum to be tendered is certain or can easily be ascertained. The mortgagor will give several months notice to the mortgagor, a tender will be the interest from the time it is made. But if the person to be tendered is uncertain or if the mortgagor does not strictly comply with the terms of the notification it will not have that effect. The mortgagor must also in case of such a tender swear that he has been made, always since the tender to lay the money in that he has not used it for his own benefit. If in the notice the mortgagor appoints a place for payment. This object is made by the mortgagor at the time, tender at the place appointed is good. In other cases the tender must be made to the person of the creditor unless it is out of the realm or within a place of foreign is fixed in the court. And in such cases some name or the person of the creditor is not established the law that the mortgage appoints a place of payment in mortgagor.
Mortgages.

If in case in which has laid or tendered a sum, the he does not like, refuses to receive, O.K, will cause him under a penalty to make a recompense. And if he is in bank, that a penalty can have no effect upon him, O.K will quit claim in his bonds, so that the can never afterwards be disturbed by me.

In ordinary cases, tender refusal takes away the payer's claim to the land only, if he still has a remedy upon his bond for his money. But in cases, a voluntary mortgage, tender refusal not only destroys the mortgage on the land, but also discharges the mortgage debt. For as 20. 9. John in the effect of the tender is a destruction of the lien, he leaves the mortgage no other remedy than that arising from a former debt or duty. For in this case, there was no precedent debt or duty whatever, the mortgage has no remedy left.

Barnard C. Top. 30

If after the day of payment, the payer says the mortgage demand is doubtful, whether such of law may not give relief to the former upon motion of constant in the latter's refusal to receive. In 10 Edw. 3rd. the court had refused relief to a mortgage in such a case, and it was said that there have been similar decisions in Eng. contained in other reports. There is no doubt that O.K will relieve or not, in this case.

Partly how the burden of the debt for which a mortgage has been given, is paid towards the debt or bond by specially. Is it not good even in this case, in O.K?
Mortgages.

Agreement liable to an injunction at law. And that the mortgagee does not divest for such an injunction yet on redemption or account account for waste committed. If the estate pledged is an outright security the mortgagee cannot grant such an injunction. If he in his life is ready and able to take action at law. If he in his life refuses to make necessary repairs the mortgagee may in Chancery compel him to make them but at the expense of mortgagee.

If mortgagee has a defective title at all, at the time of making the mortgage afterwards becomes a good one, the mortgagee avails himself of this subsequent title on the mortgagee himself the mortgagee goods he cannot.

If proof of a mortgage is adequate evidence...

It may be taken to be an absolute and conclusive not to handle to any be proved to be a mortgagee or in other words, direct evidence is not admissible to prove a condition or compliance agreed upon.

Fifth, if the issue between the parties. But if there is an agreement to make a mortgage in fraud accident or mistake an absolute deed is executed. Ch. 32, s. 320. Ch. 32, s. 320. Ch. 32, s. 320. Ch. 32, s. 320.

2 Tern. 228.
Mortgages.

deserves, let a parol agreement to make a
written declaration. In parol, house of a trust,
of circumstances, the existence of which is in-
consistent with the estate being absolute in the
grantor, but which a will vesting absolute title to
induce a careful consideration and no
idea of it being a mortgage is admissible, there to
to consider the conveyance as
a mortgage for it proceed to be an absolute deed,
and the levy do upon the ground of it being in
trust between the parties.

Of the Equity of Redemption
which may claim it.

In equity of redemption on a mortgage in loc.
as a basis in equity, the not at law, D.X. will de-
crease, if it in bugg, of debts.

The recovery of any claimant on a mortgage for
years is legal while it is a may go any there to
be leave made accidental. But if the term made
is all the words the mortgage has in the hands
the equity of redeem is only equitable a better.

In equity of redemption as a cause, the parol act
may be second to that for the signet of debt. In
behavior is the same a better. Or second to an X
for this because were brought known to be legal at
sets to it is now little otherwise.
The mortgagee is the person first entitled to the estate of redemption. After the death of the heir, the right of redemption vests in the heir. If the title of the heir is not clear, the mortgagee may acquire the estate by adverse possession. The estate acquired by adverse possession is subject to the same rights and duties as if it had been acquired by the original grantee.

In the case of a leasehold, the right of redemption vests in the heir at law. If the heir at law is not the original grantee, the mortgagee may acquire the estate by adverse possession.

A devisee of an estate is not entitled to the estate of redemption. If the devisee is the heir at law, the mortgagee may acquire the estate by adverse possession.

If the devisee is not the heir at law, the mortgagee may acquire the estate by adverse possession if the devisee has no interest in the estate.

The rights of the mortgagee are subject to the claims of the heir at law.

The heir at law is not entitled to the estate of redemption if the estate has been acquired by adverse possession.
Mortgages.

As to the right to redeem, see Bag.

A piece of land may be mortgaged several times to different persons; a subsequent mortgage may always redeem a prior one. Why? Such redemption he holds to be land as a security for his own mortgage, also for that which he has paid. He also holds such redemption to be a prior one to any intermediate mortgage, not only for the sum he has paid to the first mortgage, but also for his own mortgage.

Presence of a bankrupt mortgagee may redeem.
To be creditors of mortgagee to redeem in certain cases mortgage.

Where one made a voluntary conveyance of land to another, which he afterwards mortgaged to the mortgagee being ignorant of the conveyance, it was held to be void. For the conveyance to the voluntary grantee, yet the latter had acquired such an interest in the land that they let him in to redeem.

Prior creditors have a right to redeem before action. If one makes a mortgage which hebelieves to have a mortgagee, all his present creditors demand. Voluntary mortgagee is liable for both. Still a creditor without notice may redeem, without paying those debts which are subsequent to his own grant, tho' he must pay those which are older than his. In case of doubt, would be the same, if there was no such clause, of he had notice of the clause at the time, his debt was contract. He could pay successive ones, perhaps.

2d ed 353 1 Ed. 4th.
1st ed. 335

1st ed. 335

1st ed. 141

1st ed. 141

1st ed. 141

1st ed. 141

1st ed. 141

1st ed. 141
Mortgages.

If, upon a mortgage, the mortgagor fails to redeem, the mortgagee has a right to sell the estate mortgaged and apply the proceeds of the sale to the payment of the mortgage debt and all costs and expenses of the sale, with interest on the unpaid balance from the date of the sale, and the mortgagor is liable for the deficiency, if any.

It is a general rule that if the mortgagor is in default, the mortgagee may enter upon the lands, take possession, and bring and maintain suit to have the mortgage or any other debt for which security has been given, be foreclosed and sold, and the act shall be filed in court. The sale of the property shall be held in accordance with the provisions of the act, and the mortgagee shall have the right to receive the proceeds of the sale and apply them to the payment of the mortgage debt and all costs and expenses of the sale, and the mortgagor is liable for the deficiency, if any.

If the mortgagor fails to redeem the property after the expiration of the redemption period, the mortgagee may sell the property and apply the proceeds to the payment of the mortgage debt and all costs and expenses of the sale, and the mortgagor is liable for the deficiency, if any.

The above rule that if a mortgagee sells the property, he is entitled to receive the proceeds of the sale and apply them to the payment of the mortgage debt and all costs and expenses of the sale, and the mortgagor is liable for the deficiency, if any, is applicable if the mortgagee has a right to sell the property, and the sale is held in accordance with the provisions of the act.

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If the mortgagor fails to redeem the property after the expiration of the redemption period, he is liable for the deficiency, if any.
Mortgages.

... discharge on demand, in the immediate lien, even if the mortgage itself be not ... is personally liable for the other debts due to the mortgagee.

A mortgagee may redeem without paying any 
a specifically debt due from mortgagee to mortgagee. Otherwise, 
to a judgment in the hands of the last-mortgagee. This 
is considered as being a lien on the land of mortgagee 
and mortgagee must pay it provided the last-mortgagee who owns 
that no notice of the subsequent mortgage.

If mortgagee returns for foreclosure, the above rules 
do not abate. The mortgagee is then not obliged to pay 
any other debts than that for which the land was 
actually mortgaged until the mortgagee obtained a writ. 
That it should be a security for future debts and mortgagee 
is obliged to pay other debts only when he returns 
to redeem.

Where there are several mortgages on the same land, 
the last in a lawsuit one may in many instances by 
order of the court or by purchasing in his title. Assuming 
the purchase in the price of the first, we will then, by 
looking at the last mortgagee has thus purchased in, 
the land at the intermediate mortgage a security not 
only for the first but also for the mortgagee's own debt. He cannot redeem 
out of his hands without paying both. But in 
order to enable himself to this advantage, it is essential 
that he should have had no notice of the intermediate mortgage at the time he 
loaned his money and took his mortgage; for if he had, he cannot tack this way.

Tenure was in force in the thirteenth century.
Mortgages.

1. Lec. 57. 25s., where there is equal equity, he who has the legal title shall be preferred. But the subent 3/2 is considered as having equal equity with the intermediate one, and knowing of their incumbrances, he is referred to them when he has thus acquired the legal title.

2. Lec. 351, 182, 323. See what happens when a preference has been carried so far that the first incumbrance is in a subject one, that is one which has been made as if it has been held to protect the Purchaser, and have a preference over an intermediate incumbrance, and it has been held that where the first incumbrance was secured he knows that the subject one must cancel himself. In fact, he is entitled to the benefits of intermediate incumbrances. 2 Vend. 357.

3. Lec. 104, 351, 182, 323, 325. In a deficiency in any legal mortgage, it will be of no avail to the subject one.

Cor. 8, 10, 104, 351. In Eng. as a judge, is a ten when the facts, the same law is applicable with regard to that as to a mortgage.

Law. 104, 323, 325, 327. It has not been settled in Eng. whether a subject one may look to the beginning of intermediate incumbrances. In fact, he might not be allowed to look because of means of the public records, he cannot, unless he have notice of the intermediate ones. Are the records to consider as a conclusive notice in such cases? As the new being conscious of the law, he can take not to be, but this may be so the ground that the practice of looking is not there universal.
Of the effect of notice in Mortgages.

In case of a mortgage that the lessees shall be held for any future disbursements, to be paid by the mortgagor, as have notice at the time of and after the sale.

If the mortgagee commits an act of bankruptcy, and having notice at the time of the purchase, the purchase is valid.

Where a forced mortgage has notice that a second mortgage is about to be made for the same debt, and it is to be paid, it is his duty to give notice to the mortgagee at his prior encumbrance. If he has no notice of the second mortgage, it may be made without notice of the first. The second mortgage will be preferred to the first. But if he has notice that a second mortgage is to be made, he shall not give notice of his own lien.

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72. 74. 76. 3. 2. 6. 12. 4.
73. 75. 77. 3. 2. 6. 12. 4.
74. 76. 78. 3. 2. 6. 12. 4.
Mortgages.

Notice may be either verbal or written, given to a person presumed to have notice of the contents of a deed to which he is a party, but this may be rebutted by evidence to the contrary, as in the case of a person containing the necessary notice is found in the execution of the hiring entitled to notice, he is presumed to have noticed.

After the death of the payer, the payer's descendent takes the land, but to the creditor, the money must be paid to the assignee. But if the same descendent to the heir, the heir if no redeem is made, the heir be compelled to go to convey to the creditors collected.

The debt is expressly known in the matter that

1. So 2. 3. 2. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120.
But of mortgage the heir does the 2d. of the mortgage
is entitled to the assigned right, for the assignee is con-
sidered as having made an absolute purchase to en-
courage his property. Not like the mortgage as having
taken by the conveyance of the mortgagor's property for money lent.

If mortgage devise the heir does not the 2d. of the de-
ces will take in the death of the latter, if it appear to have been his intention that the estate should pass as real. If by money secured to mortgage is entitled to be
paid out in land it will go to the heir.

Among joint mortgages there is no just necessity, except
in the case of heirs' rights.

It has been decided in 1. That in mortgage the
lender if assignment by mortgage the mortgagee must
make a protest to the sheriff as well as assignees whether he
has been in execution or not, if he considers may
be included in the decree. In Eng he is not made a
party unless he has been in execution.

This Eng. a lender, mortgagees only in 1/3 in an
action of goodsment on p. cannot deny that 1/3 of title on
the ground of a prior mortgage. But, if the first mortgagee
and the last have title-deeds the latter may defeat the
first action. In this case however the last mortgagee is he
instrumental in backing the subject's incumbrances out of
his hands must account with the latter, whereas, if he resums
for the whole he is in the same as the he has one more. In this
mortgage however in this case no harm to. 2d. the
first mortgagee's title attaches. But the latter may be attached as
in 1. Incumbrancing mortgagee's defence. On title, 3d. 4th 5th
action. If mortgagee has a defeitive title or owns not all of the time of making
the mortgage, defendant becomes attached. The mortgagee may avoid himself
of the whole title of mortgage himself, because he still is not to interfere to
induce borrower due which began to mortgage, but of strangers the same
will not work the mortgagee.
Mortgages.

Of Account over between Mortor & Creditor.

The mortgagee when he enters into his possession of the mortgaged estate at any time after forfeiture shall account with the mortgagee for the sums paid or profits. And the general rule is that he answers for all that he has lost for what he might have gained. This rule, however, does not obtain when he has conclusively negatived or transcended to the rights of the mortgagee that case he must account for the real annual value.

Where it must make much more basis or lose the value of the profits which a tenant the rent man would have made upon the land and for which he has no adequate security, in which case the mortgagee's case is to be allowed in settling the account.

In the lease out the land he is answerable for the rent. If he leave it unreasonably low he is answerable for the real value.

If the lease is made by the mortgagee and circumstances to one day a bad debt or fearence to take care of the land he shall have a reasonable allowance from moneys for the benefit of the land. But if there be an agreement between the parties, that the former to be at the expense of paying a bad debt or being close to the latter yet if he does not enter on there is nothing to be allowed him. And if the agreement be that person shall pay moneys for his own trouble in recovering the benefits the agreement will not be allowed.

If mortgagee's interest in the estate without an additional sum he is liable for the sums pledged as to the assignee of evidence is insufficient or unable to show.
Mortgages.

Subsequent mortgagees cannot compel first mortgagee to enter and take the benefit of the est. Violence to his own debt, but unless he enters himself. Banks (v. 2.) he cannot prevent them from entering. Stacking the horses, etc. If he lets the mortgage remain in force, he will be answerable to the former mortgagee for the rents and profits when they came to redeem. This is where he has notice of such subsequent circumstances, if he has not notice he will not be liable for the rents and profits.

Then a subsequent mortgagee, when the last mortgagee of the latter can produce a settlement between himself and the preceding mortgagee, must allow the balance finish due to the last mortgagee. Such charges being binding upon all subsequent mortgagees unless it can be impeached of fraud. And if mortgagee afterwards obtains must allow the same out to the mortgagee who redeemed, and no advances between mortgagees, etc. A mortgagee is not bound to render to the mortgagee that occurs before he receives the est. To apportion.

Where mortgagee has put the mortgage to great expense by retaining not to have a title by reason of an encroachment X. But was finally defeated mortgagee was allowed all the costs he has been put to being considerable more than his legal fees were taxed at mortgagee compelled to pay them before he could redeem.

The rents and profits received by the mortgagee, the settlement of the account are always the thing. The interest accruing on the debt are from mortgagee amount to any thing more, they go to fund the principal. Annual rents are made at the beginning of the year. The profits deducted from the principal each year, if they amount to any thing considerable, the make of setting the debt the mortgagee is entitled to the claim of it is much the most advantageous to him as it operates.
Mortgages.

constantly as a sinking fund when the principal. The
other mode of accounting, which is the most advantage
ate to make it, which is adopted when the excess of
profits over the interest is kept, is effected by long-
the whole and of the profits into an aggregate sum
subtracted from the bonds of interest, interest them
converted for the whole time on the whole original
principal.

Of Foreclosure.

The object of a foreclosure is to set a time within
which the mortgagee must redeem or forever lose his equity
of redemption; this is done by a lot of the property
by mortgage. If mortgagee does not redeem within the time
prescribed, the title becomes absolute in the mortgagee.

1. In Eq. 315. 2. In
235

When there is joint mortgage the must all join
in a petition for foreclosure.

On a bill for foreclosure the title of the mortgagee
cannot be questioned, but is it to be invested
upon as if he has no title, the foreclosure will give
him none; that is, to buy the mortgage right
of redemption.
Mortgages.  Foreclosure.

1. He may have all his remedies ag. the 
oper at the same time; he may then sue for 
foreclosure, an action of ejectment, an 
action on the bond or note, &c. at once. But if he 
obtains his foreclosure first, & goes into ejectment, it is a 
charge of his other actions. Yet he may refuse to 
go into & left off, after having obtained a foreclosure
the latter will be enough to answer the debt for other 
reasons. Then the foreclosure is but as to his debt
on the bond. So if he has actually recovered his 
money on the bond, he cannot have a foreclosure
for his debt is paid. But if he has only recovered 
punishment, that obtained his money, he may still sue on 
the bond. And however well secured he may be 
to be allowed to retain his money on the bond because
it would be getting his debt twice over.

Yet, if he recovers in ejectment, he may still sue 
on the bond or petition for foreclosure, or after 
a recovery in ejectment, he still holds as in the former,
may still redeem.

After obtaining judgment on the bond the
nepo may take the land mortgag in eq. as well as 
any other property if he chooses.

Any part of the debt, however small, remains in 
hand, the nepo may foreclose or eject, nor can the nepo 
in case of ejectment recover back what he had before 
he must either redeem or lose what has been paid.

If, however, after first paying a foreclosure is obtained,
and it appears that on becoming the nepo entitles 
to recover back what he has paid, once in that case
he is considered as redeemed from a second debt; in no 
other case, actually is it. Hence if this is the case as the 
foreclosure is considered and bought of the debt the nepo 
has paid all that he paid towards a redemption, with
out any concern.
On the death of the mortgagor a bill for foreclosure must be brought by the mortgagee by his agent or by his heirs. If it is brought by the heirs it is a cause of demurrer to the bill. But the heir may join the heir with him in the bill if he has title to the estate. If the mortgagee has not the bill for foreclosure brought by his heirs.

3 Pet. 333

But if a foreclosure is obtained by the heirs or a representative being made by mortgagor in account of the breach of the covenant the heir obtains the land only as trustee to the mortgagor to convey it over to them the heirs if the heir charged he may pay the mortgagor the money. He will then be entitled to retain the land as his own.

After the death of mortgagee a judgment committed to the most beneficial lands the heir is the better heir to the land not the estate. If the heir will not pay these he is to be held for the estate which he has. He shall convey this heir on a bond of indemnity given him to lend his name to the court thereon.

2 Pet. 97, 2 Ch. Co. 100

The time limit in a decree of foreclosure is to be computed by calendar weeks and months.

2 Pet. 97, 2 Ch. Co. 100

In a bill for foreclosure these persons only are foreclosed who are parties to the bill. If there be other security in the way of incumbrances who are not made parties it does not operate as a foreclosure to them. They may still redeem. This leaves it to the rule whether foreclosed mortgage had notice of the subject incumbrances or not.

2 Pet. 97, 2 Ch. Co. 100

When an estate of reversion reverts to an intestate he must be foreclosed, but the heir has 6 months allowed him after the coming of full age to unacknowledge the decedent, when he can show any good reason it will be set aside. This
1. Sec. 2. If mortgage sells a part of the mortgaged premises to a third person who is in fact debtor, and there is still enough left to satisfy mortgagee's claim, the C. will foreclose only as to the remainder, but not including it in the value, the part that was thus sold.

A foreclosure will sometimes be opened by a C. of Clr. Thus if a case for foreclosure has been obtained by any praed, or unauthor'd conduct, altogether by means of the deponent of the mortgage, the C. will always open it. This case, it has been obtained by the C. in Eng. 44. C. where mortgagee having become a bankrupt, mortgage obtained a foreclosure to defend mortgagee's creditors, it was opened.

In C. m. 37, when going after the money to redeem, within the time limited by the decree of foreclosure, selling stock was promised to wait a month after the expiration of the time, but afterwards refused to accept the money within the month, the C. opened the foreclosure.

In case of an issue between the value of the land & the debt due to the mortgagee, foreclosure will sometimes be opened, or the time fixed in the decree for redemption will be lengthened out.

Barnard. 372.

There is a remarkable case of this kind, where it was

Barnard. 372.

Another case, three times, notwithstanding the mortgagee having been twice at the cost of saving the mortgage, that he would not ask for a further enlargement.
Mortgages. Foreclosure.

Or in C will never own a foreclosure for a distribution between the value of the land & the debt, but where the distribution is great, they will refuse to foreclose, unless such reasons exist as in Eng. would induce a C. to refuse to own a foreclosure for this cause. In this way A. & C. enjoy the same end as the Eng. C. by different means.

After the mortgage has been in possession a long time, they will refuse to own it, even if there is an inequality between the value of the land & the debt; the no wise rule can be laid down about it. In the case in Dan. where there has been some dishonorable conduct in obtaining the foreclosure, it was obtained after mortgage had been in possession 15 years; in another case it refused to own after a lapse of 5 years. It seems, however, that after 20 years they will not own for any cause except fraud.

There is no instance in which a foreclosure has ever been opened in favor of a mortgagor.

A foreclosure obtained by a first mortgagee may be opened in favor of such second mortgagee if the land be afterwards conveyed by the first mortgagee to mortgagor, so that the court can again into mortgagor's hands, receive the second mortgagee.

It is not customary to foreclose a mortgagee for years. The custom practice is to admit to C. a term for a device to sell the possession to D. In such case, if the mortgagee may however, take any other be foreclosed. But a decree to sell is seldom granted in case of a mortgagee, unless the determination of the particular estate is considerably distant, as if the mortgagee is entitled to a decree, he must obtain to have it. But the money applied to paying the debt, as far as it will go.
Of Interest on Mortgages.

A mortgage is a security for money, it is within the
law of every State of this Union. If more than lawful interest is reserved
on the original debt, the mortgage is affected by
it and rendered void. If the mortgage is held
in judgment by the mortgagee, the est. being perfected, he may
find the general issue, I give the interest in evidence; it
will then defeat the est.

2. 310 2 50.
3. 4th 52d.

If there be an agreement made between mortgagor
and mortgagee, that the former shall pay 5 per cent. interest if
the payments be not punctually made, that it shall be
sufficient to 5 per cent. That is considered in law, as an ac
nature of a penalty, will be relieved and so that the mortgagee
will be held to pay only 5 per cent at all events.

2. 13th. 1st. But if this additional one per cent. be secured by a se-
parate covenant, the mortgagee will not receive at all.

3. 18th. 10d.
3. 5th. 520.
3. 12th. 42d. 380.

If the agreement be to pay 5 per cent. with condi-
tion that if the payments are punctually made 5
shall be received, the condition is good, as if the same were
with 5 per cent. will be allowed. But the lower pre-
mium 5 per cent. in the case that must never exceed
the legal interest, because if it does it cannot certainly
be recovered, as it would be useless.

3. 2d. 16s. 5.
1. 17th. 632.

In some cases where the mortgagee has given the mortgagee
in addition, an additional rate of interest has been al-
lowed, but not in that case, so as to raise it above
the legal interest.
A written agreement subject to the mortgagor's
unequal and bound interest is good at the transaction if
he: I understand it. With circumstantialities of a breach
such an agreement made at the time of making the
mortgage will never be carried into effect, but the
same statement of an account between mortgagor
and mortgagor does not carry interest, or interest, without some provision or a
9e of that intent.

The rate of interest reserved in a mortgage may
be diminished by a subsequent bals, agreement, but
there is no evidence how the interest has been
mixed on such an agreement. This rule seems to be an
exception to the rule that a coast under it cannot
be altered by a balse agreement. Such an agreement
however is considered as a waiver of the breach of
the written contract, which waives an obligation in some
cases is allowed, that to make an in circuit, suit
due he drakels. So an obligation has been order also
be bound as a balse waiver of the forfeiture of
the penalty of a bond. It is on part not for more
than giving effect to both agreements at the same
time, thereby inventing a circumspect course of justice.

A mortgagor who acquires the mortgage with the
agreement of the mortgagee, the assignee will be
entitled to interest on the whole sum due at the time
of assignment from the mortgagee, which will be
paid in the bond. To bond due, but he is not obliged to pay into the bond, which
occurs after the assignment. The above rule does not
hold unless the assignment is bond free with the con
Mortgages. Interest.

The whole sum found due, when a mortgage by a Master in Chancery is a bill to redeem or foreclose, carries interest from the time of the confirmation of the Master's report. This rule admits of an exception in some cases, where the interests of the Tenant, as subsequent mortgagee, is concerned. So, if the mortgagee be not held an infant in title. But where the mortgage is held in tenurial estate, as if the relation to redeem nu. V. a notice in the mortgagor is made to conform, this will carry interest in his hands when the interest is due. In such cases, the interest on the mortgage is due, or error. So if the mortgagor agrees to allow interest on the mortgage, or on the principal. This devise to himself a benefit, he will be compelled to pay it.

Reasonable improvements made by mortgagee in his lot become principal and carry interest. So if he has been at expense in defending his title, the interest of it is greater what he has thus advanced becomes principal and carries int.

If one mortgagor for redemption, when the purchase exceeds the value of the bond he must have the whole or lose his redemption.

Tenant for life of an equity of redemption may be compelled by the remainderman to pay one third of the interest. Principal due at the death of the interest, or to quit the premises. As for, in case of a tenant in chief, he cannot be compelled to keep rent any part of the interest. Tenant for life must see to all the whole interest, occurring during his estate.
Mortgages.

A tenant has perfect title of the land from age 18. (28:138.) To erect the former will be justified in buying him the whole thousand. If he has only the monthly need that is considered as giving him power only to receive only the interest.

As the effect of tender when the interest is due. (28:238 a. 6.)

Mortgages as it respects husband & wife.

A mortgage by husband after marriage does not, in 30:3:18 (3:8:23:33), affect the other right of dower unless she joins (3:8:23:33). So the conveyance given him by power in which case she cuts off her dower. But she may remain after the husband's death having her part of the money.

If husb. settled a present on his wife in mortg. the wife may redeem. Was the heir entitled in the bond to his life only yet if, on his death, the heir claims the bond? Fitted as her co-joint he must say her representatives two thirds of the re-employment money advanced him or they will lose it in her case. But the wife jointly or in succession as heir must pay the whole, i.e. as the jointure is other than the mortgage. This goes the ground that a life estate is worth something as much as a fee.
Mortgages.

2. Ten. 583.

If the husband lends money to his wife, she on his death takes it by survivorship, she this can never be done to the using of creditors. (In C. she would probably take one half only, there being here no jus accrescendi.

Pour en. 3174. Yet on a bond taken in this manner by the husband, he may sue alone, of course, in whole and a bond would not deserve to the wife.

Pour en. 1285. If the husband lends money in fee before marriage, the wife is not entitled to enter in them.

1. 6th. 1262. 2. 1240. This rule is confuted in 2. Pitten. 1. 91, is well clair.

Pour. 320. 'Law. 323. 2. 91. it was established when the wife of a man in fee had a right to asser. But there is no good reason for continuing it since the magn. est has been return'd to be merely personal. This is, however, no

Anw. 583 Obs. 2. 91. a direct case, in which it is decided that the wife of

Pour. 1401. 

1. 6th. 703.

It is also settled, that a husband may be tenant by the curtesy of his wife's lands mortg'd in fee before marriage. All the reasons that would lead to the decision, it would seem would go to give the wife desc.

Pour. 199. 4. 1184. 13. 326. 2. 91. If the husband's lands are mortg'd for life or years before marriage, the wife has power in the equity of re- demption to may redeem, because in this case as the re- venue remains in the husband, he is entitled during coverture.

Pour. 30. 2. Pitten. 27.

Pour en. 303. 2. Pitten. 27.

If the joint in one, with him, in mortgaging her

Pour. 338. 1184. 4th. 338. 2. 397.

Pour. 341. 1988. 1. 2 Ten. 23.

Pour en. 100. 2. Ten. 23. glued however to the use of her husband personal estate, in re-

Pour. 397. 2. 358.

Pour en. 3175. as mortgage was by the husband of the wife's land is paid as

Pour en. 397. 2. 358.

Pour. 250. 3. 250. The same is the case of any debt, in the just time has been paid and part of the debt. The

Pour. 250. 3. 250. The same is the case of any debt, in the just time has been paid and part of the debt. The

Pour en. 300. 2. Ten. 358. being considered as a creditor for this purpose as the debt is paid to other creditors.
mortgages.

The interest of a lien or mortgage at the time of the
marriage is considered as a chose in action in the law
when lien was very nearly a deed to her mortgagor a
mortgagee in the mortgagor's suit her justice.

Proc. 180. 1. Why does not a creditor of the husband have a right of a mortgagees, do a
settlement made when his before marriage by the
husband considered as a purchase of his estate in the
mortgage, unless it is expressly to be in purchase
some part of his chose not including the mortgage?


So to the husband, during coverture, may a lien
be made on the wife's estate, in a mortgage, as upon other personal estate
of the husband. The taking of such by a bond to his creditors is considered as a
removal of it from her.

If the husband is a bankrupt, his estate in the
hands of a trustee, he will not give them to be
the wife mortgaged without making a settlement
thereon.

If the husband has abandoned the wife's mortgage to
his creditors, they will hold it without making a
settlement: the case is the same in effect, of the husband
has contracted to a sign.

The signature of a bankrupt in the case just men
tioned must make the settlement in this ground.
1844, p. 382 notes that they cannot obtain the wife's mortgage without the aid of Ch. I. Hence if they ask for equity they must do equity. It has been considered equitable that when the husband takes her mortgage from her she should make some provision for her. But when the assignment is already made by the husband, the wife has no need of a benefit to Ch. (2d). If the husband has agreed to assign for a valuable consideration, Ch. will consider the assignment as executed.

This reason will also exempt the husband creditors who take the wife mortgage as legal proceeds from any obligation to make a settlement on her.
Of Estates in Remainder.

An est in remainder is defined to be "an estate intended to take effect when enjoyed after another est is determined." The gen town upon the grantor may be seen in 2 Bl. Com. 157.

Remainders are either vested or contingent. "Vested... who the grantor himself takes out of the grantee's hand at the time of making the grant. Contingent rem... when the grantor does not vest in the grantee until the happening of some contingency, or may be vest if this contingency does not happen."

It is a rule of the Eng. law, finally adhered to, that no prebodet est can be granted, to commence es. Also, it must commence the moment the act is given. Therefore where an est is granted to one for life, remainder to another in fee, the act of the latter commences at the moment in which that of the former does. The majority of the est. is postponed until the death of the former.

When this principle is that the particular est. to benefit a contingent est. must be a prebodet est. for as the prebodet passes out of the grantor, the contingency does not vest immediately in the act that vesting in him as tendering when a contingency, the person would be in advance unless it were in the event of the particular est. But in this case it is observable that the prebodet vest immediately, yet the fee grant in rem is in advance, for that is not in the land of the particular est. It is not yet vested in the rem. man.

The rules for the creation of remainders are the following. 1. There must always be a particular est. annexed to the remainder. 2. This must always be made at the same time with the rem. 3. If the particular est. is created before the rem., it is grand away, the grant would be of the remainder. End of this rem.
Remainders.

And the remainder cannot be granted before the particular set as that would be granted a precedent in future. — 2. The remainder must vest in the greater during the continuance of the particular set or the moment it determines.

3. Therefore the contingency when which a contingent remainder does not happen during the continuance of the particular set or the moment it determines the

remainder is lost, as it never be limited to A, B; during their lives, to the survivor in fee. It is paid for, in the moment when one dies, the remainder of the other takes effect, but if it be for life, to the eldest son of A. A has no wife during A's life, the remainder is void.

A remainder may be contingent as to the event, whereof which it is to vest, or as to the person in whom it is to vest. Thus if it be to A if the person to the chief son of B, then unequal; this is contingently as to the person for however B may never have a son. Then the remainder cannot be as to the person, if it be to A, or the son to B, of the survivor A, here it is contingent as to the person if B surviving A.

4. A contingent remainder always becomes vested during the existence of the particular set. if the contingency takes place, when which it is limited.

The contingency when which a remainder is limited must be such as to leave a residuary estate. That is such a contingency as a most improbable one. Thus if the set be limited to A, for life, to the heir of B, he must not being them being, that is considered too remote. for B must be born, have heirs, other wise in the life of A, which is very improbable.

Any remainder is vested as if the particular set as that would be granted a precedent in future. — 2. The remainder must vest in the greater during the continuance of the particular set or the moment it determines.

3. Therefore the contingency when which a contingent remainder does not happen during the continuance of the particular set or the moment it determines the

remainder is lost, as it never be limited to A, B; during their lives, to the survivor in fee. It is paid for, in the moment when one dies, the remainder of the other takes effect, but if it be for life, to the eldest son of A. A has no wife during A's life, the remainder is void.
of the particular est. is paid in its creation, or if it is invaded by the tenant for life or for life of another, or in any way destroyed, the rem. would vest in the contingent feoff. as lost with it. - From this principle originated the absurdity of creating trustees to receive contingent rem. - In est. a given "to A for life, to B during the life of D, rem. to C forever." In this case if A dies before B's death the contingent est. would vest in the remainderman. B's rem. would vest in the ultimate owner, during the life of D. For A's death B's rem. would take effect, but between the time of the operation of A's death and B's death the est. is in trust for C until the end of the life of D, after which time it reverts to D, as he might dispose of during his life, but even in this case B's rem. would vest on A's death.

18th Apr. 1754
In Secrecy devise is an est device 2 Bl. Com. 173.

16 Ed. 3. 2 Bl. 222. 2 Bl. constructed to be the device by which the devisee is to receive the estate. The devisee is not to know of the devise until it is dead. If the devisee dies before the devise is executed, it will be considered as an est devise.

2 Bl. Com. 173.

16 Ed. 3. 2 Bl. 222.

In Secrecy device differs from a rem in three particulars:

1. No notice is necessary to effect the devise.
2. It is a device for life only.
3. It is not to be executed until the devisee's death.

2 Bl. Com. 173.

16 Ed. 3. 2 Bl. 222.

The doctrine of est devices was created by the 16 Ed. 3. 2 Bl. 222.

3 Bl. 413.

The doctrine of est devices was adopted by the 16 Ed. 3. 2 Bl. 222.

3 Bl. 413.

3 Bl. 413.

The doctrine of est devices was adopted by the 16 Ed. 3. 2 Bl. 222.

3 Bl. 413.
When an estate of freehold is created by way of auy en
decease to commence in future without any contingent bar.

In the case of a future estate limited on a joint contingency
when the life of the ancestor, or the joint contingency
shall arrive at 21 years of age, and the estate shall be vested
in the legal representatives, the word "after" must be read as
"after" the 21st birthday, unless the contrary is intended by
the will of the testator. And if according to the terms of the
description of the contingency, the heir should have attained
a certain age or had taken possession of the estate at a
more

5.

13.

3126.

[]

When the term of a chattel interest is limited after
a life, at the ultimate renvo man must be in the

[Page 3126]

[]
A rem. when once vested, the never enjoyed, is descendable to the heirs of him in whom it was vested. According to the law, unless this appears to be clear, the devise is irrepealable. According to the rule of law on this subject, the devisee's interest is not transmissible.

As to the two first kinds of devisees, viz. when a fee is limited on a fee, when a fee is given to commence in future, it is settled that they are transmissible; the not enjoying of the devise does not affect the devise. If the devise is transmissible on the contingency, the devisees, even though the devisees died before it happened, consequently before the interest vested in them—whether this is not applied to the third kind of devisees, when the remainder of a chattel is limited after a life estate is not settled in any except adjudication. If the devise is not contingent, there is no doubt that it must be devest.
A reversion is the interest which one has in an estate to commence after the termination of a particular estate granted on it to him. It is always created by a termination of law. In every case where one having an est. grants out a life est. to another, as if ten in fee grants out an est. for life the reversion is in him. He takes the est. after the est. for life is determined. If ten for 21 years grants out an est. for 21 years there is a reversion which remains in him. When a fee is limited on a contingency it remains in the grantor until the contingency happens.

Reversion is a title in the hands of the heir to which it may go at his accident. The reversion, except in a fee tail, is in the heir so remote as it may be used at any time in the tent converted into a fee tail that it is not worth or esteem valuable.
Of Joint tenancy.

An est. in joint ten. is always acquired by pur.
chase or either by deed or decree. No bill of all joint
Ten. must es dispose their title at one and the same time, by
one of the same consents. They must have all the same inter.
est in it & hold of the same kind & con
dition. These are the four unities requisite to an est. in
joint ten. & Any of them be divided, this is no est. in
joint Ten. - The accident of an est. in joint ten. are
inherently from the above three ties. Thus an omission
by or any joint ten. respecting their joint title, the mort.
all be joined. P. as the int. of a joint ten. is considere.
that of both, they cannot maintain it against one.
other at law. They must maintain one against the
other but in that there are permitted to institute in
both cases an eject. or account. But the
principal distinguishing incident of an est. in joint ten. is
the jus accesorii or right of survivorship that takes
between the joint ten. whereby when the death of one
the whole goes to the other. This is expressly declare.
on C. It may be questioned whether an est. in joint ten.
is answerable by the law of C. In New York it in
stated that in order to make such an est. the words
be of tenes in bar of the other which conveys in
est. given to several as a joint ten. in which the words
by indicate a contrary intention.

An est. in joint ten. may be adverse to any
thing which exists in any of the unities which consti.
tutes it an alienation of his part to one of the joint ten.
or partition between themselves which may lead that one
may compel the other to make.

Wife of joint ten. is not entitlle to inverse or have
the curtesy.

Of doubt. Joint ten. cannot be ass
signed without consent of the one over the joint ten.
Real estate may be acquired either by the
chase or by Incumbrance. Purchase commitments every
other method of acquiring it except in the
Secure, in Sec. or by Execution.

1. Of Purchase or Process.

2. 1st. Com. 312.

The right of dower existed among the early
but was abolished by the feudal system. The right of
dower real estate, as it now exists in England, is in
the Act 32 & 33 Geo. III. 8. The latter of which
contains the clause, and the Act 12 Geo. II. which by
converting dower into greater leases, gives a title
further back to the former as convenient, if real
free.

The Act of 1796, the right of dower in real estate
was partially transferred to the husband, but had become established to
however, was subjected to gradual removals under the fe-
udal system. This in its original vigor, admitted of a

2. 2d. Com. 312.

The Legislator of C. has enacted the Stat. 2. & 3.
substantially the same that of 2. 2. 2. 3.
construction on these points is generally adopted here.

By the
stat. of C. all lessors not legally disqualified may sell
any interest in a freehold estate. By reasons legally
disqualified are meant, who had been, lessors or were
incapable of holding tenancies (i.e. reversion) by

law for the "life" can only be to nothing but conti-
ut also. Certain for 30 years was deductible but not reversionary.

By the Stat. 2. 2. 2. joint tenants are not permitted to alienate
their estates, but in the State of C. under the general terms
all lessors having lands to may sell. They are includ-
ed in 2d. This therefore a right to secure of joint
by demise, the right of succession is cut off.

The State of C. and the State of C. comprehend also
not only estates in fee simple, but those in remainder or some
Devises.

Any disposition of a man's estate to take effect after his death, viz., what he made in the form of a deed he delivered of such wills may be written at different times before the death of the testator, as the same sections of the will be in execution in distinct sections, all of which will form one will; but if there be any inconsistency between them, the latter must be void, if it be considered a revocation of the former for a new will is never only a novelty, but shall be a complete void of the whole, and it cannot be effectual in the testator to make a new copious all the generall, and it makes us to say, at least it is never only a novelty, but shall be a complete void of the whole.

Wills may be written at different times before the testator's death. If a new will is written, it is not considered a revocation of the former, for a new will shall be a complete void of the whole.

It is now settled that a contingency created with an interest, may be devised before the interest exists, or if an estate be given to A. to the use of B. if he die without issue before the age of 21, then C & D in fee simple. If B. die before the death of C, D. may receive his estate in this case, before the death of A. But if A. die before the death of B, D. may receive his estate in this case before the death of B.

States, but this must not be a non-reservable by Stat. 21, Ex. 3, nor by Stat. 21, Ex. 3, all a man's intestate is entitled to any simple or more estate, unless he die without issue, and so forth. A. & B. C. & D. and such an est. I. is devised in fee, unless there is a special contract, but an est. to B. for the life of 13 is not be

A. & B. & C. & D.
Of the requisites to a devise of real property.

If the devisee is in a foreign country in order to

secure lands lying in Eng. must be executed according to

the laws of Eng. A will made in Eng. the of the devisee according to the laws of the country where the land lies it is sufficient.

Where one has given another a power to enjoy

of his lands by devise, that the devisee, the devisee,

which is the execution of it must have the requisites of a will, the final devise. in this case being considered

as taking by virtue of the devisee.

The requisites to a good devise are that it be in

writing signed by the testator himself or by some one in his

presence authorized by him. Filling in three or more credible witnesses, the three described in his

presence. These requisites were made necessary by the

Stat. 29. Corp. 2. which is adopted in Eng.

The name of the devisee written by himself is

and part of the will is a necessary. Even taking by

the will has been made to be a full signing, but to

the devisee, as to be filled after the

Stat. 31. Corp. 2.

This is the case.

An acknowledgment by the devisee to the devisee.

be himself, that his name in or dedicated to the will was written

by himself will be good. The as a devisee within

the will.

Proof of the devisee as this by devise. This is con

will. It is not sufficient evidence of signing until the

witness is proved to be act in his own handwriting,

this also proves the end of every will be sufficient
A written declaration made at the bottom of the will by the testator, "that he knew the same," is good unto a bound, not for bound to a will of signatures if it be proved to be the hand-writ of the testator.

In Eq. a publication of the will, distinct from the will, was necessary under the Statute. The will not make a requisite by the Statute. A will is sufficient to be the act of a party not to declare in the testator's name. Deliberately alone, has also been held a gift. Public.

The subscribing witnesses are to attest not only to the act of the testator signing, but also to the identity of his hand. It marks the names of the subscribers at the bottom of the will is not sufficient. He was of a bound mind, but it is his means of the will. They may be addressed to the subscribing witnesses themselves, to show that the testator was present.

The whole of a clause which is to be authenticated by subscribing witnesses must be present at the time of their subscription or the act will be insufficient. The presumption will be that it was present until the contrary is shown.

The witnesses must subscribe in the presence of the testator, e.g., in his visible view. It is not necessary that the testator have seen them, if they were there at the testator's subscription.

An act done during the lifetime of the testator who is not sufficient? If so, the testator never witnessed before the will is attested by the witnesses, the act will not alone be sufficient if subscribed in his mental, as well as corporeal, presence.
When the witnesses to a devise are all deceased, proof of their handwriting only is a sufficient authentication of the instrument. This, however, is admitted from necessity, for it is no proof that they subscribed in the presence of the testator, this fact is not to be inferred by a nexus.

The number of witnesses to a devise must be three or more. If the devise is signed by two, a subsequent codicil by two more, the codicil is not sufficient, unless the will itself is present at the execution of the codicil. And even in this case the codicil is not valid if the codicil is not subscribed.

If there are several sheets of writing, subscribing each on a distinct sheet, or all on the last, the latter is good, provided all the sheets are present at the testator's death. If the will was written in different times, how is the same. If the will has no codicil, the codicil has the same, yet the devise is not good unless it was present when the codicil was attested. The latter relates to codicils at any time.

It is not necessary that the witnesses should be present in the presence of each other, but it is most advisable that all were present together that the will cannot be altered, and while one is leaving the hand-writing of the other cannot be known. If therefore, two are absent, then the one called is to be kept. If not, either in his presence or at his will.

It was often by the Eng. Ch. under the Stat. and that if a devise or bequest was a will to a man he could not testify to authenticate it. For, there is no witness to the testator, and he is not to be made to authenticate it. But it has been a much deliberate question, whether a devisee, in testimony to substantiate the will of the testator, was not made the business of the legacy, release, &c. The witnesses are directly called to the duty, there are two occasions in favor of the opinion that he might, does direct it, but the number of
Devises.

1st. Revocations of Devises.

Wills before the death of the testor, are not to be ambulatory i.e. in an unrevocable state. The death consummates the devise, and nothing of the devise, not even the receipt of the devise, is to be recalled or revoked.

Deviors are revocable or irrevocable. Before the death of the testator, the whole devise can be recanceled as a whole, or any part of it. If written devises were made, and according to that devise, nearly the same circumstances are necessary to an effective revocation as to an estate itself.

Wills of more than one person and mutual devises, if not in a resolution, or in a case where such no. or any other circumstances which occasion a fraud, the deliberate resolution to revoke would be a revocation.

Page 310a.
Debates.

Regulation.

Expressions of an intention to revoke in future did not amount to a parole revoc. at common law.

Our imitation of the Stat. 29. Cn. 2. has been done for no expressness of an explicit revoc. of a lease. Thus there has become a question how far a com. law revoc. by parole Ht. is good in C. Vo. 482; how revoc. under this imit. 32.


Verb. 2. 2. Alb. 653.

1. From a change or alteration of the total human relation. 3. Bait. 216. 115.

4. Alb. 216. 115.

3. Alb. 216. 115.

The residue being what the issue evidence since it is but an equity.

The residue, to whom such marriage to the heir of a child are determined to effect a revoc. seems to be.

Not any actual intention. 4. Alb. 216. 115.

That no man would wish to die, leaving a family provided for. Therefore, the test. named after her deceased made his test. Thos. no children, this is no revoc. because his wife always remained for his executors; but if in no case, he has a testamentary child born of a wife in this case, no extent to revoc. he can in her will. to have exist. in the test. name for he might not have known that he was about to have children.

Debt of Ht. 4. Alb. 216. 115.

If a woman sole devises, then married since born, her husband, her devise is of course revoked. But if she.

Presumes her husband, her will stands good unless she revokes it.
Devises. Revelation.

1. Be sure to make it clear, that it is not
so.

2. In short, Reade may also beeffected by a
subsequent cause of the first inconsistent with the last.
So the last will be resolved of it, if inconsistent with the first, if Reade a reason of it, and it is
false that if a subject will be partly inconsistent with the last, it is a total Reade; at offering evi-
dence that the last was not Reade with the former
or well I meant to make a new description of this
body, join it to this branch; the if this resolves
the context of the 99% in most cases will be the
same and the first will hold true, because if the 99% is
only partly inconsistent with it, it is as to the rest,
consistent with it. Part the difference will be that the de-
reese will take by the 99% will instead of the 99%.

But of the two wills are consistent (throughout)
this stand together. 1st: Devise in one part of
the instrument to 99% the same 99% in a distinct part
to B. A B take jointly.

In case in which the two found that the last made
2nd will inconsistent with the first, but in what bor-
er they know not, it was finally established that

But a partial inconsistency between a devise to
a cedled, is a residue of the former devise to only, i.e., the
whole devise is to land except that so far as the allotment
made by the cedled goes, as if the devise lands in fee
to A; afterwards if a cedled gives the same to B, for
life, A and B take jointly, the devise would be a residue of the first to B? For if there are not out of
facts no evidence of an intention to the devise, to make
a new devise of his or it is in fact inconsistent
with the first.
Deuses. Revelations.

If a lessee is induced to make a second
well or cistern, inconsistent with the first, by a suit
impress as to force the first well found to yield to
the second, and to prove such false impressions
bystander evidence is admitted. But an erroneous claim
as to a well of law will not invalidate the 2d

2. Rev. 21. 2. 25. 3. 26. 29. 3. 30.
3. Rev. 41. 42. 43. 44. 45. 46.

3. An alteration of the estate devolved away, by
the devisee after the devisee in an implied sense of
the devisee, or tenant for life, after having devolved
the land should come to another, take back a conveyance
for half the value of a reversion. As if after having me-
2. 1st. 3d. 1st. 4th. 5th.
3. 2nd. 2d. 3d. 4th. 5th.
4. 3d. 3d. 4th. 5th. 6th.
5. Rev. 59. 60.
6. Ex. 18. 19. 2NG.
7. 3d. 3d. 4th. 5th. 6th.
8. 2d. 2d. 3d. 4th. 5th.
9. 3d. 3d. 4th. 5th. 6th.
There is an exception to the above rule in the case of a devise made subsequent to a devise, to the devisee himself a total revocation of the devise.
A conveyance of the legal title to be made by
some person, who has or holds in trust all the
estate, giving rise or basis for a technical attack
of the est. does not create a former devise of the est.
the issue. But a devise of the est. by him who has
the legal title is a new; if of a devise made by him.

In a mere partition of an est. held in common, a
conveyance made of a former devise of the same est.
and the conveyance by which a partition is effected has
not the same effect as for its object and other, its position than a mere devi-
tation of the est. it renders the former devise.

A lease for years over to a third person only
an est. before devise in fee. is both in law, equity, a
sever. for the term only because, that being so specific
charge of sum of money to be raised, it cannot be as in
case of a mortgage for years a sever. pro tanto. If the lease
be made to the devisee himself, to commence after the
death of the devisee, it is a total sever. for such a lease
is wholly inconsistent with the devisee taking a fee
under the devise.

A conveyance of a devisee est. to trustee, to pay
est. by 15. 12. debts is a sever. to the amount of the debts only, the
the devisee may in this case, if he chooses, pay the debts
make the est. for, the conveyance is for a special
purpose only. (But how can it be reconciled to the rule?)
An intended alteration in the disposition of
the estate devolves a reversion of the devise. This goes on the
assumption of intention on the part of the devisee. If he would not have thus disposed of the devise if
he had not intended to deprive the devisee of it, it is,
a bargain. A devise not executory according to
law, because not effectual is still a reversion of a former devise of
the same kind. The effect is the same in an alien, the
real estate is alienated, all thwart being excepted at
common law to complete the devise, or if sufficient were made
without livery, as if the conveyance were voidable.

Page 302. 1 Pet 34.
32d. ante.

Page 303. 607.

Page 304. 3 Pet 39.
1 Pet 57.
1 Pet 17.

Page 305. 205.
183. 311. 1 Pet 51.
Express rescrows under the Stat. 23. Car. 2. must be
affected, either by a subsequent will or codicil or other
writing declaring the test's intent to revoke signed by
him in the presence of two witnesses or by burning,
cancelling, tearing or obliteration of the will. This
does not affect implied rescrows as they stand as they did
at com. law.

Burning, cancelling etc. are rescrows amounting at
common law, as they are under the Stat. 23. Car. 2.

Express rescrows are rescrows of the test's will, in order to
affect the rescrows of a prior will, if it was intended to be the
test in a codicil, the test's will, for such an instrument
must be duly executed as such, or it will not work as the
former one, the test's will, and the instrument being
being signed by the test in presence of witnesses,
shall have the effect of a codicil, and is not
subscribed by witnesses in the presence of the
test, it will not work as the test's will, for such an instrument
will not work as a rescrow unless it is both
subscribed by the test in presence of witnesses, which, if
it did not contain a substitution of one by another, is
merely as a rescrow, would be insufficient.

Burning, cancelling etc. are rescrows amounting at
common law, as they are under the Stat. 23. Car. 2. in
effect to discover one's own desire, it is necessary
to discover one's own desire. For this is the test, but
the will is admissible. If there is the animus
rescendi, the slightest burning, tearing &c. will effect
a rescrow. And if the deviser intends three
rescrows.

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test, it will not work as the test's will, for such an instrument
will not work as a rescrow unless it is both
subscribed by the test in presence of witnesses, which, if
it did not contain a substitution of one by another, is
merely as a rescrow, would be insufficient.
October 4th, 1802.

The estate of a widow declared a waste in 1802, pursuant to the instruction of the court, to take as one lot:

1. The land north of the line of lot 20.
2. The land south of the line of lot 20.
3. The land east of the line of lot 20.
4. The land west of the line of lot 20.

The court also declared that the devisee has a right to the whole of the land included in the line of lot 20, as follows:

1. The land north of the line of lot 20.
2. The land south of the line of lot 20.
3. The land east of the line of lot 20.
4. The land west of the line of lot 20.

The devisee has a right to the whole of the land included in the line of lot 20, as follows:

1. The land north of the line of lot 20.
2. The land south of the line of lot 20.
3. The land east of the line of lot 20.
4. The land west of the line of lot 20.

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3. The land east of the line of lot 20.
4. The land west of the line of lot 20.
A republic? may be such a republic as if
2nd, or 2d, 0th, 3d, 1st, &c. sects, and is a respond to make a former one. 2.
when it is the republic, one, it would be an im-
28.
bridge the republic one. But it would be an im-
bridge, it would be a republic.
24.
2d, 0th. 2d, 0th, 2d. or 0th. 2d, 0th, 2d.
1st, 0th, 2d, 0th, 2d, 0th.
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1st, 0th, 2d, 0th, 2d, 0th.
Devises. Debublication.

must be only in cases where the will & codicil take effect wholly as distinct instruments. When the codicil is not considered as a part of the will, the will will not be void when the codicil was executed. Would it not be a good reason of the will? Cath. 38, 39 220-221, 21 Cl. 8.

A devise made by an infant may he confirmed in execution after he attains full age. But of such confirmances there is no rule. It will not be left...

Debublication the same in equity as at law.

If the Probate of a Will.

The probate of a will in En. St. the Spirituals &c. is causative as to the personal, but not as to the real estate or interest of heir. There is indeed no need of having a deed of real estate at all in the will, if there are...

All wills are in the Deeds of Deeds, but from their contents all deal lies to the Act. The rules of proving wills &c. are the same in the En., in the Probate, the Probate, &c. in Eng. At the opinion of the Act, as in an actal, connected with the decision of the Deeds, as further proceedings are had. If otherwise, the will &c. is revindes to Deeds, with directions to the judge to conform to the decision above.
The judgment witnesses to the well must always be called upon to prove if they are true or incorrect in any other testimony. But the court of one of the witnesses, both according to the law, and practice, that it may be true to the best. The other evidence is additional of the last. The preserver witnesses must testify to the last instance, but may not be called on to prove the other evidence that he was not aware of.

...The in knowing a devise within the will of the witnesses. I, D. 129. 130, the will not devise a will to be made within the last instance, and even if one is beyond this, but in such a case that will correct an error at law of devised not now.

A bastard made by the State in Flanders among the real owners or an old ancestor or descendant continuing when then asks the maker each one is to take a part of it can be shown to be wrong. It is a deed delivered to the public. It is not conceivable to have any objection as to the title. It gives no title to any of the persons to whom it is a delivery, but only such as to whom each one is to take if any. They are entitled to it. And if any person is entitled to the Ot of the estate it is not even necessary that it be saved from the possession of the Ot of the estate. It may in some cases be an action of ejectment immediate, and in others to whom it has been sold. There's a great deal to determine whether they are entitled to it or not. Dec.
Devises.

If done with power to devise.

By that Stat. 8 Ann. 5 time coverture is expressly made to devise. The statute of 1 has given the power of devising "to all free men, not legally incapable," still, in an actual inchoate estate or who at common law could not deed such lands as was reasonable. But it seems as a com. law could devise all 30 of her estate over which her husband had no power, if it was in her nature both as in the case of personal goods given her for her better or at her discretion. For one cannot assert that the rule of a time coverture is not generally good, because it is of the next 5000 Act of Lords. And your act and it seems as a principle that part or may devise her own lands.

His objects that the Lord to declare his capable of devise only "with her husband". But this rule applied only to cases of her devising personal goods belonging by the marriage to her husband. The statute, at common law before her choice or action, for unless he habitually make them his own during coverture he has no title to them. Since she has been allowed to distrain for her debts, she may clear person of her own lands, except that she cannot devise it in Part, if it consist of lands, being expressly disavowed by Stat. 32d Hen. 4. It is objected to the inference drawn from the law replacing infra se parte by the word in Part, she is regarded as Sec. But your cannot be the reason of allowing her to devise such lands. For if she were, she would thereby be allowed to devise her liberate real goods.

The statute 31st Stat. 1. and

Stat. 20th Stat. 30th 1. and

2 Pet. 10d. 2. Pet. 10d.

From all these facts it most evidently appears that the is, in the nature of coverture, not hers to prevent a wife...
from devisors, but that on com. law some courts may devise whatever is in its nature, is desirable, provided the devisee does not infringe the heir's personal rights. And if some courts are not exercised in the same way, they are not the same gathering with regard to deviseable property as com. law and by act of 14 Geo. III. is made deviseable. There seems therefore to be no good reason why, in this state, the same court may not devise for our friends may there be made, but used to commence in future aliens for real 6th. saving the heir's monument.
Deverses.

Devers given do one to another to become set or declar.


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of the party are of two kinds: 1. Where there is an


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of the Devise.

In general all devises not under the personal estate may be under a devise.

In devises not under the personal estate, the devisee must be designated by his name and description.

A devisee cannot be held to the devise unless he be designated by his name in the instrument.

Even in this may be devised limited estate of a devisee may be imposed upon a devisee that it is to be occupied.

The devisee must be so described that there may be no uncertainty as to the devisee designated by the testator. But although at the time of the testator's death it may be uncertain what is a sufficient amount to become certain the devisee must be so described as to where the devisee was to reside his surviving daughter who was his first marriage and within five years it was held that if any she did marry and live within 15 years the devisee would take.

A devise "to such a family" devolves as a devise to the heir of that family. A devise to "any relative" goes to the heir.

A devise "to the next of kin "to the testator's "to his next relative" or "his relations" to his "his relations" goes to each of the relations of the line and all others, as would take under the will of the testator. In what a devisee of lands would in such a case go according to the will of the testator? the devisee under the devise.

The devisee not to all estates but to such "his devisee" as well as the personal estate is here distributed according to the devisee.

If at the time of devising the devisee was not under the devisee. Though if the devisee was married at the time of making the devisee.

All these cases have been before the acknowledged principle of intention was open to observation.
1. Eze. 21. 8, 10, 18
2. Lev. 23. 13, 14, 19, 20
3. Jer. 3. 19, 22, 23, 24, 25
4. Eze. 3. 3, 4, 5

**Deoses.**

A deases sufficiently describes the wrong named may take the device, but not the device. As, if a device is made to the person of God the name of the son being C. and in case of this kind "broad proof of truth" and circumstances may be introduced to identify the device. But even in case of a device if the named erroneously made use of another person, the device will in fact not be concordant.

It has been a question of great notoriety in the case of a child, not in the case of the child to be a device made by a verb in one of the words in the word. That as such a child was not in any nature, it could not take. All agree that a device made by a word, which does not that the child shall take other case is good. But the script shows that the child had the account of the case. All agree that the case of a case in which the device is made to the device with the intendment of the device. The fact is that there will not lead to the device.

But it is easy to see that such a case will never occur, that this language is used only to avoid uncertainty and useless tedious._

See on 2. 2. 23. 14

1. 2 Eze. 23. 15
2. Lev. 23. 1, 2, 3, 4, 5
3. 2 Eze. 17. 6
4. 1 Pet. 320
5. Tit. 3. 30
The rule which regulates the admission of parol evidence to explain any ambiguity or remove any uncertainty in a will is this: If the ambiguity or uncertainty is not so great as to render the will meaningless, parol evidence cannot be admitted to explain it, but the devisee must show by extrinsic evidence of the will that of itself being intelligible, though the devisee's hand may be admitted, as if a man swore two sons of the name of John, to devise land "to his son, John," parol evidence may be admitted to show which one of that name he meant.

In certain cases, parol declarations, measurements of the land, or the terms of any agreement by which the will was executed, may be admissible, and the general rule is that they cannot be given to show either the will or vary the natural intent of the will. They may be admitted:

1. Where the words make use of words of an equivocal

2. Where the words are not of equivocal import, but such as have a definite legal meaning, yet parol evidence is necessary to explain the circumstances, and the devisee's hand may be admitted to explain the devisee's intention as to the estate he would have in them. Where the devisee's hand is not in the deed, or the words are not in the deed, but according to the construction uniform, is adopted, it is to be read only as a will for life. It is read thus:
Devises.  

was tenant in tail of the
Bell lawyer. After the husband had sole the
reversion in fee so that it must have been the intention by
these words to give an estate in fee simple to B. The

But the case who

3. Where the meaning of the word is.

of it is clear and determined, yet its, or a reason may be

laid down, or attached to the word of the situation of the

of the estate or deed. Even if a deed or a title of

life, after his death or the issue of the devisee, the word "children" is a word of

may take an estate, and the word "for

life" having nothing to do, if there were used instead of

"children." But if he had children at the time of the

devise, he would take an estate, for life, remainder to them

for life, with an intention to give the child a life

as a tenant for life. But if the devisee, the word "children" being in this last case

considered as describing a particular

If an estate is
defined to A, and his children, he having children at the
time, he they would take together as joint tenants for life.

But if he had no children at the time, the devisee would convey an estate, or

therefore, these words receive

different constructions, in cases differently circumstances.

shall prove if the circumstances of the devisee or to give

at the time of the devise, is admitted to explain the uncertainty.
But it is a rule that *barele testatum* cannot be admitted in constraining a will in all cases to counteract fraud... in the case this now may be admitted contrary to the next rule, even tho' it does not stand with the latter.

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Devises.

Devises may also be admitted to show that a devise in a will was intended by the testator in future of a settlement or other provision, he was by an article in the will, or in other way bound to make. This may throw some light on the question in this state, whether a wife shall take under a devise of the testator's estate in accordance with the will when it is not expressed to be in bar of descent.

A devise to one of that which he would have taken by descent, is void, provided the devise be of an estate as great or less than he would have inherited. In this case, he shall be taken to be in the descent, not in the devise.

The rule is of importance in this: for if an heir should take by devise instead of descent, what he would have inherited, the part being obtained by purchase would be considered as part of the estate. Antiquity has such would go next to the paternal heir, and the maternal heir, whereas if he was by descent the estate would go on his death. Where one of the heirs who are descended from that line of ancestry from which the estate came, A C. the rule is of no importance for an estate devised by devise from an ancestor will be intestate in the same manner as if it had descent. A form of agreement lands may take by devise, what they would have taken by descent. Because by descent they would take as co-owners by devise as joint-tenants.
Devise.

A devise contrary to the rules of law is void, as if one
make a devise of personal profits to A. If the heir of the body
this is void as to the heirs for an entailed cannot be created
in personal profits. So a devise of a see simple not attainable.

A devise to "A for life the his heir forever," gives all a fee
simple. For the word heirs not being describable persons the
heir of A cannot take as husbandman, but if at all as heirs i.e. by descent from A. If however it can be coll-
tected from the will that the test: uses the term "heir" not in its legal technical sense but as it is used in common
parlance to describe some particular person to the heirs of
B who is now living, it will be taken as describable sense-
me. The last intention carried into effect, according.
II. Of Purchase by Executor.

3. XII. 12. 3. 61.

It is common law that to the fee of lands could be given in the lives of an earl. He must that could to serve was to have it extended in a manner to the ancestor for a certain length of time until out of the same. It fits he had written the debts. Lands in the hands of an heir would fall for the debt of the ancestor in the same way would not be taken. A devisee of such in fee to the status for his own


The common law of property, common law for estates, the land of this lordship. The last for the last act or any manner owed, the last for the last act or any manner owed. But to this 3373. 2 the execution is to continue clear, other than that the land were the land of the estate of the estate as the receiver shown.

3. XII. 14.

1. The executor goes out a main court with the keeping of the own estates. Lands, such as inclosures of any. On this even the goods are set up and the lands of the estate must be taken in the end himself in consideration. Deeds might be taken by this order. By buying it when the lands of the estate in the hands of a to be. The executor of such to be done. When the letter becomes clear and to pay the rents to the end. If after such notice be paid to the executor and agrees it in his case any. May become better to pay or again to the end.

3. XII. 15.

The executor goes out a main court with the keeping of the own estates. Lands, such as inclosures of any. On this order of goods. The goods must be taken in the end himself in consideration. Deeds might be taken by this order. By buying it when the lands of the estate in the hands of a to be. The executor of such to be done. When the letter becomes clear and to pay the rents to the end. If after such notice be paid to the executor and agrees it in his case any. May become better to pay or again to the end.

1. 30.

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8. XII. 12.
3.32. 44, 3.4. 14.

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In short, an act of covenant is a contract to do or not to do a certain thing in consideration of a benefit or detriment to the other party. It is a promise to do or not to do something in the future. The act must be in writing and signed by the party making it.

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Terms for years are taken in C. as a right, and in a manner different from the Rig. law. It has been customary to let in them while growing, at any time of year. Having pc- arose. The process by knowing the officer or other person in the proper form, having this reduced it to a personal bond to be filed at the court. As to the legal of knowing or going in this manner, there has been some doubt. No. however, it has been supposed that goods may as well be taken in this manner, as aments, & c., & c., able to be the proper remedy in this case.

The Stat. of C. has made no provision for taking a recession in bond the proper remedy seems to be the sale for knowing, which the recession, claim to rent may be transferred to the creditor.

It has been decided in C. by a decision that that money may be lived when by an eron. And questions the propriety of such a decision.

A sale at auction by a sheriff of property taken in an ejector, vests the property in the purchaser, even though the goods did not belong to the person for whose benefit they were taken. The case is the same if the ejector on which they are taken is reverse.
Of Purchase by Deeds.

The tenants of lands during the early periods of the seel
ed system in Eng. had no power to alienate without the con-
sent of the Baron. The first grants by the barons
themselves, who had a power of alienation, were for life only.
Hence all grants to one, in general terms, not specifying
the quantity of interest, is a life estate.

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By a variety of statutes in Eng., which have gradually exten-
sed the power of alienation, the law is now fixed that
all barons, in general, may alienate, if in fetterferon, but not
in seisin. 1 Br. 304. 1 Br. 305, otherwise. But the real owner out of seisin may sell to an
in seisin for such alienation is not the owner. In the grantees
out of seisin considered as the sale of a quittance, but rather as
the settlement of one. With this exception to the rule, a sale
of lands by one out of seisin is a sale at law. The Ter-
rial of E. is also by the Stat. 4 & 5. 1 Br. 304. According to the Stat.
of C., the alienation of land by one out of seisin to another,
the grantor forfeits one-half of the value of the land. A
sale in such case, the grantor was liable to a fine.

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Contingent remainders may be devised, but not a less
1. Plowm. 37. 1 St. to be not better whether a contingency is alienable by deed.
2. 15. 15. 54. Contingent estates with an interest descend not necessari-
All. Co. 20. 53. ly to those who are heir at the time of the alienation.
3. 3. 3. 12. 2. but to the lessor who is heir at the time of the contro-
cnt. 18. 18. 33. 3. 10.
Pursuant to my belief in the law, I rely upon the fact that the offense of attempting to violate the laws of the Commonwealth of Pennsylvania is against the public welfare and public interest. This offense has been committed, as is evident from the record, by the defendant.

... cannot alone, for the same reason that they cannot make other contracts.

Even in cases cannot alone, except by a judicial conveyance, a case can be made to show that the reason of their performance or only possible. But it will not be shown where the existence of a consideration is denied.

... the counter. The counter is not able to deny the existence of a consideration that he may always in some way or another. A subject cannot in a given case make of the same for the general subject of evidence without.

... one is unable to make the counter. The counter is not able to deny the existence of a consideration that he may always in some way or another. A subject cannot in a given case make of the same for the general subject of evidence without.
If there is no consideration, either in the deed or in the actual object of the deed, it is not a good consideration. For, if it is to a stranger, there is no such consideration. In this last case, therefore, the grant is made to ensure to the benefit of the grantee. This was established in Co. 2., where the law of estoppel did not hold that the legal title vested in the grantee, the use which was the only valuable for 500 pounds in the common, as the statute says. Here the title to the estate given was such a grant cannot now be of any effect, but in Co. 2. where the statute of uses never opens title, there is no statute similar to the Eng. Stat. of Uses, there seems to be no reason why the benefit will not vest the legal title. The grantee takes in such case.

Parchment is always admissible to show the illegality of the consideration of a deed, but it does not in any case prevent the face of the deed. If it does, there then the instance is totally new. Parchment no title.

The quantum of consideration, expired in the deed, would become mere evidence of the same actually received. Parchment, letters, may be admitted to show the true facts.

If there is a consider 2d is expired in the deed when there was none, the deed is still good as to the grantor, but it may be void as to the creditors of being a benefit to the grantor. This leads to the consideration of what is a consideration.

Compensating conveyances will out of sight. 1. When one for the benefit of another. Parchment of damages for a trust not to be enforced. A creditor may refuse to consent. A trust is a creation.

Numbers 160-487.

The quantum of damages for a trust not to be enforced. A creditor may refuse to consent. A trust is a creation.
Deeds. Fraudulent Conveyance.

The conveyance is void, &c. The grantor thus represented himself only as to creditors or bona fide purchasers, in either of whom the grantor cannot the grantee to execute his first trust. Given them in conveying the bond back, &c. Indeed it may be a question how the grantor can, for aught we have passed whether any one or more bills relative to lands can be excepted even when there is no fraud in the case.

A conveyance may be fraudulent when made to a use even the estate of none of greater value than his debt, but this is only when there is some evidence that the conveyance is not actually in satisfaction of the debt, but that only the conveyance is not actually in satisfaction of the debt, and that the use in question is not a legal trust above mentioned. As if there be a grantee to a use, for the full value of the same bonds, it is done with a view to avoid creditors &c. The grantee is, as in this case, it may be questioned whether this would not be fraudulent.

A conveyance is such as the grantee's interest in the premises is a separate and distinct from the title to the property is to be held by him. The grantee has no title but a defective one.

With regard to a case like this, a subsequent to
a voluntary conveyance, the law may be different. For the act of
selling it again by the grantor after such a conveyance car-
ries no evidence that the first sale was fraudulent.

The case of 1 Mer. 123, 124, or made in some trust, for if this were not the case, why
should he attempt to sell that again which he had once
before sold to whom he could have no claim? — The

Con. 7. and 8. 26. 26. 27. 28. 27. 28.


Law. 3. 26. 27. 28. 29.

Co. Litt. 10. 26. 27. 28. 29.

Note, If sale to A, then sale to B, or if sale to B, then sale to A, as giver may prefer, and will hold, as was before

Con. 14. 16. 20. 20.

Vol. 58.

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For the Requisites to a Deed.

Any writing which is false, vague, or ambiguous, is not sufficient personally in a deed.

A deed to convey real property must be written, in ink, on paper or parchment. The other requisites are notice, if desired, of any of the parties, an adequate description of the premises, delivery, and attestation. The following:

A mere clerical mistake in writing a deed, either in the description, or in any other particular, will not prevent a sale from operating according to the intent of the parties. Such a mistake may always be explained.

A description of land conveyed in a deed may be either by metes and bounds, or by lines extending certain distances in certain directions, or by a statement of the number of acres. When two or all of these modes of description are used, the first in case of inconsistency governs, to the exclusion of the latter, if the latter is more than the former.

If lands conveyed are described by metes and bounds, no action lies on the part of warranty even when the number of acres is less than were mentioned in the deed. But if the grantor desired the grantee in this case as to the quantity, the latter may have an action of quiet title.

The law is the same of the description is by lines. The grantor, if there is entail on the estate, warranty of the lines or metes, except as mentioned from the one lines or if one the grantor of acres contains within the lines is left, the remainder is to be an action of quiet title.

But where the only description is by a mention of the number of acres, an action on the warranty is in case of deficiency.

If grantor conveys the "farm of land lying west 18 J. containing 100 acres," he is liable on his own warranty in case of deficiency. Yet, if there be more than 100 acres, the grantee will hold the whole.
If one sells a specific piece of land containing a certain number of acres, more or less, the words "more or less" are considered as words of attenuation. And in this case, the grantor has no action of warranty, in case of deficiency. Is he not have an action of fraud, if he has been intentionally deceived? In this case the "more or less" has been omitted, and action would lie on the warranty.

A quarter interest in land is an annual sum in rent of real; the reservation is of real property. Upon the latter, otherwise the action is of a true in rent in gross.

Of the delivery of a deed. The delivery of a deed must be to the vendee or to his authorized agent. If the delivery is made otherwise, the vendee loses interest in the deed, or the land, as the case may be. The delivery is made by fee简单e. In the event of a fee simple, the delivery is very simple, as the words "will deliver" or "will deliver." In case a delivery is not required.

A deed executed in one, on behalf of himself, another in the presence by the authority of the latter will bind both.

An act without words may be a good delivery. A wise course.

A deed which is delivered to the grantee, as objection is raised in objection, and does not become the act deed of the grantor, till the objection is satisfied, or the event that upon which it is delivered, but after that it relates back to the first delivery.

It seems to be set forth by the current of authorities that a deed cannot be delivered to an assignee to the grantee himself. It has been so decided in C. by the judge. C. Several authori
Deeds.

2 Oct 25.

Cities however, maintain a different doctrine, and it is said that where, on delivery, the grantee is to do some concurrent act (as delivering his deed), the mere delivery of the deed should not be considered as a legal delivery, unless such concurrent act be performed. For the purpose of such concurrent act is forever in the hands of the grantor, where the deed is to be delivered upon some future contingency, than seems to be no reason why it should be delivered to the grantee as an esoter. In such case, always be delivered to a third person.

2 Oct 25. 2. Bns: however, actually makes & delivers one, after the removal of her in a wholly rebinder, as the undeniable aspect of the fact. Otherwise, if in the first instance the delivery is as an esoter because, here, the assumption of an errant back to the time of the first delivery when she was incapable of making a valid deed.

This rule is confined in both its forms, where the incapacity to convey in the first instance is not general nor necessary combined with the character of the grantor that one of accidental. As delay of convey cause. After it has acquired the power to deliver the deed, it is void as to any obligation to convey to the last deliverer. And if the act of deliverance occurs in the first instance, it would be easy to see the reason of these distinctions.
Of Exceptions in a Deed.

Signorini may except any thing from a conveyance, which did not go to defeat the grant or any part of it, as a building, timber, barn, etc. But an exception which is pregnant to the grant is void, as if in a grant of land, the grantor excepts all that he receives by the conveyance; then it is as if there were no other. So the exception of a thing certain from a thing certain is void, as if the rule is sometimes laid down of the grantor grants away the land be an appurtenant, then except as an appurtenant, the creditor, as void, as if against be made a devise as excepting one, or of a house. Thus except the whole.

It has been questioned whether if a house be reserved the fee in the land on which it stands is reserved by the exception. It has been decided in G. that the right now to the land continues no longer than the building lasts. The exception of timber, trees, etc., from, would make them personal property, the thing has not been decided. It is clear that timber trees taken fell by the owner on a lease land, they have become free. B. 67.

A deed must be read of any of the parties not capable of reading, before it. If it be wrong or read, it is void as to that party as is not bound by it. Ethics are as well at law as in equity, for it is a fraud on the execution. If it is read, come to collision as before to make it void, it is binding the defendant to it.

A deed by a deed the usual, is not necessary, for it is only prima facie evidence of the actual time of delivery of the deed, but the proof is admissible to show a different time.
Deeds.

Dealing is absolutely necessary to a deed in Eng. from

so that if a deed be taken, it destroys the validity of

the deed. Where there are words given off by the one

who was able to be entirely invalidates. In C. a deed is not ne-

cessary if not given among the requisites of the deed, the

same is called to effect one.

There are no competent witnesses are required by Stat. The deed ap-

pears to be as void without them as before.

It has been questioned whether a greater can himself

take advantage of the want of witnesses to a deed. The

law permits can exculpate themselves of such a plea is a par-
take. But Mr. Edw. holds that the greater cannot seeing

such a deed be considered only as evidence of an agreement to

convey it is in for binding on the party making it that

he is controllable in Cts. to make a good efficient convey-

ance. (See notes for cases in which greater

and third persons are exculpate to infringe a deed. They have

generally greater force in making the deed, or have tra-
granted some land, and therefore not entitled to the use after

In these cases also, the formalities required in making the

deed have always been held to be observed, when that is a

case, and the case of a deed not recorded which binds

the greater and deed not bind the third persons on the grant

of their property unless. Mr. Edw. himself observes that

a purchaser must avail himself of the omission of such

only that he had notice of the former conveyance. But

that greater equity would such a purchaser have

than the greater himself?

It has likewise been a question: Does not to be. If

whether the deed has not two witnesses, the greater may

not be on the conveyance contained in it? There seems to be

no good reason for it. Why he cannot. He ought not a

deed on the case of which no action may be maintained.

to be good as a deed by analogy to the rule of law in case

of a deceiving. Proceeding well?
Acknowledgment before a justice. Proceeding by the town-clip is necessary to make out a complete consequence in C.

In the title completely falls out of the sharpest sleights in the grantee before recording, that is made necessary for the benefit of a later purchaser. In this, if the deeds are exhibited in evidence, both in all cases for a future grantee to make out the title of a prior one.

Title deeds for receiving in C must be on file to show that they may be seen by those who would examine the records of the town clerk. Neglect to keep them will ruin whatsover, and by inspection, it may be made liable to an action by a subsequent purchaser.

The town clerk can never legally deliver even to the grantee or grantee of any title abstract of a deed once lodged for recording, before he has actually recorded it. If he fails, the solicitor of the grantee having attended the best services in the deed might by collusion be defrauded of their fees. For if he directs not to keep it without recording all further instructions, he might not be able to restore the lost claim to its position.

The deed first recorded will tend to the exclusion of a prior deed of the other grantor has been at all negligent.

Hence, if he has not due diligence, if a town clerk is known of a prior deed not recorded, he shall not hold us. The first grantee over the last deed is first recorded. On the other grantor takes his ease and satisfaction, equally for an unaided debt. This was decided at our last to make no difference.


Seeds may be marked in Oil, in the ground of
inaction, treatment not amounting to legal damage ac
& this either in whole or in part as courts may require

For the different kinds of conveyances of real
bodily under the Eq. law see 2 P.R. Com. ch. 20. Those
most commonly in use at the present day are the
lease & release. The bargain & sale, the latter of which
must be completed or vacated within 3 months
- a conveyance by lease & release, is effected thus: The
grantor lends the land about to be conveyed to the grantee, who
thereby constitutes the land as in tenor & grantee. Being in
his interest, the grantee retains them for himself &
addition, the lease acquires a complete title. A
lease might always be made at common law of the freehold
to any tenant having a good estate, as an evil for
possession to a tenant at will, but it was necessary that
the tenant be in possession to be capable of receiving a
lease. A release may be made to one not in possession.

Of Uses and Trusts

2 P.R. Com. 32

A use at comm. law was those lands were granted to
one for the use of another. In this case the grantor holds
the legal title of the land but the cestui que use has
equity of right to the rents & profits. He all the bene
ficial interest in the land. The interests both of the grace
of the cestui que use descended to their respective
heirs on the death of each respectively. If the use was ad
paid to be divisible it being the only kind of real profit
prescribed that grantor that it was not liable to power or
canny & to be taken on estate or cession or to be futilized for
cession or settle. The grantor might alien his title.
Uses & Trusts.

I was, at an instance without notice of the use, the use is, 
discharge thereof. The use, if the grantee was also liable to 
defer, whereby, and in a manner or manner too, shall it dis- 
charge of the use, as, as the land or the future—
The state (Acts 2, 1054) but an estate too, as by 
executing the use in the execution we, she, being made. 
by that fact, the usual power in all cases, as well as the 
legal estate of the use. As from the technical enforces 
of the doctrine which in the construction of this fact, 
held that it did not extend to cases limited or cases, as 
where an estate is given to A for the use, B in trust for C, 
to terms for years, as if a term for 60 years be given to B, 
for the use of B, now to land given, to take in trust to 
receive B over the profits to another, as the doctrine of uses 
and their names for uses to create of clause or limitations in either of these three ways. 
these three ways, being held not to be within the fact. A's law or 
existing to enforce these trusts, or they always but all 
uses, event, was necessarily, and to C's, where which was 
afforded by enforcing them whenever they were created 
in either of those three ways. And in this manner, the 
old doctrine of uses is revived. Indeed, in this only, 
they must be made in one of these three methods which 
take them completely out of the fact.

These trusts, however, as enforced in Ch. 3, are free in 
a great measure of reality, since the state of modes 
from the mischief which were connected with the 
old doctrine of uses. They are made liable, in Ch. 4, for the 
debt; the covenants of trust, are equitable, which are all-
abled to remedies. As, a real, not as, B's, are liable to 
coprison, the not to be covenants to be held. In, and 
particular answer to the valuable bar uses of legal estate, 
the trustor being deprived of those unreasonable ad-
varates which the sheriff to new forms to be probate.

The covenants that may in Ch. 4, be left the trustor 
to convey to them the legal estate, which it appears that 
such conveyance would be contrary to the intention 
of the person who created the trust, or unless it would 
be hazardous to give the covenants that the rights an-
were to the legal estate. The existence of this hazard.
This injury can be committed only by tenant for life or years. It is a kind of substitute for theft which cannot be committed by tenant in possession. It can, however, be committed only by a tenant for life who has never tenancy in several tenancies in the possession of the same tenant in several tenancies in the possession of the same tenant. It does not, however, extend to all tenancies for life or years.

A tenant will not commit waste that would be waste on a tenancy for life or years is left by him in tenancy. The absence of a lease is usually for waste.

The objects of waste are, house, lands,nuiffs, &c. It is either voluntary or involuntary. The former is where it is effected by some portion of the tenant, the latter is where it is occasioned merely by a want of care or negligence.

The effect of buildings here is to make a tenant for life or years to have injuriously altered or turned over to his own use. In such a case, he is not entitled to recover from the tenant for life or years for such alterations.

The tenant for life or years may make alterations on land which has no timber.

The husbandry mostly of such is not waste but the following acts in addition to the neglecting to repair, have been considered waste. Converting one kind of land into another, with the intention of converting future into arable land, the kinds of conversion wthout it were actually injurious would be deemed waste in (Q). Taking away soil does not belong to the tenant as tenant unless taken for re-builing his house or that of others when he is not entitled to so doing.

In waste, a house or other building. If a tenant after having built at the tenancy.
The tenant is liable for acts amounting to waste, even if they are committed by a stranger. The recovery, however, of damages being the action of trespass as to the stranger, the bringing of this action as to the stranger does not charge the tenant—this is in the case the lessor may declare on his own petition, so has none.

If lessor himself commits waste, ten is not liable for it, nor for any omission or neglect which is the natural consequence of such waste. If lessor destroys the tenor's crops, is not liable for neglecting to repair.

An injury done by the tenant himself is that which is excepted from the lease; is no waste; but to which, for of this the ten is not in Nicholson.

A tenant may be evicted by the terms of the lease from liability for waste, but no other word than these: "without impeachment of waste" well affect this omission. And even in the case of such a lease, the law, the tenant can do any act amounting to waste, with impunity, yet this well inhibits malicious or wanton waste.
It has been decided in C. that ten owners of wild lands, who had cut timber for sale, had a right to the land as waste, for the law is the only method in which the courts can for the lands and profit. Thus, the land in C. will grant an injunction of necessary to prevent unreasonable waste, in such case.

If a пользу, sufficient fences of to secure the reversion, may or dedication to the County of a closure leave to repair them, may hold the land till redeemed for his trouble.

The action of waste can be sustained as the ten, only to the intermediate revendor or remainderman. If his not after the death of the ten, ag. his B. or heir of the tenant.

Single damages only, were given in this action instead of the Stat. of Pennsylvania, which enacts that the jury shall recover treble damages, also the thing wasted.

In the action, if states his ownership of the intermediate lessee or ten, is titled. If, right to damages the thing wasted. In the County, unless, however, neither the damage nor the thing wasted is demanded. It may have been issued for only single damages, deeds, as at common law. notwithstanding the Stat. of Pennsylvania is an ancient law, might be considered as binding here.
II. Of Quister

For this title in 2 Bl. Com. 151. The term "quister" is used to denote an interest of the freeholder - "difiinction" an interest of a tenant for years.

3 Bl. Com. 149

3 Darm. 265

2 Bl. Com. 203.2 Bl. 615

Of Payment.

As soon having a right of entry, may either enter in his hands or eject the lessee, as he pleases. A person having a right of entry may give notice to enter alone, if he can do it peaceably.

The action of ejectment at first was used only for the purpose of recovering a term for years when the lessor was bound to quit rent, and if it was nominally met in the same manner that he has been long since, almost the only act known to the trial of titles to land. This goes to set at the fictions which it is deemed necessary to make use of in actions of ejectment. In Fig. and as nothing except damages were recoverable originally in the lessor, for being desirous of his term, it was that if he in the particular case recovers nothing but nominal damages. But as this term is established by this action, he may afterwards bring ejectment for the value of the above prior. And the judgment in favor of the def. in the action of ejectment it is conclusive that he is entitled to all the profits accrued since the demurrer. But the time of the demurrer may be 6 months. The length of the demurrer should be proved.

If the def. fails in one action, he may make a new fictitious case, as the parties being the word we cannot agree to the same, as before. To manage with another action, the former not being a bar to it, he may thus bring as many actions as he chooses, the def. should unreasonably harass the def. Ch. 3. El. 4, would grant an injunction.
In ejectment is a real action in which there is no
feasibility which may be done immediately to recover a fee or
a term for years. Where there is no actual ejector, but a
trespassing act committed under claim of title, the owner of
the land may, if the court consider himself as entitled to
recover, institute a trespass. But no trespassing act which
falls short of an actual ejector, will of itself, raise, furnish
sufficient presumption of a claim on the part of the
trespasser to warrant the owner in bringing ejectment.

If this be true, then, in all cases in which a mere trespassing
act, but no ejector is committed, it is necessary for the
plaintiff to prove a claim on the part of the deft. But
whether the deft. claimed or not, trespass will be.

A trespass, if not, must state, in ejectment, that he is
out of the title.

II Co. 55. Co 27. 322
1 Chit. 254.

An ejectment was great accuracy was formerly necessary
in the description of the subject matter, the lands in the
plaintiff's hands, it was necessary to describe the quantity of the
land as well as the quality, i.e. whether arable, meadow, pasture.
The
rule was that from the description itself without any
extrinsic information the sheriff might know that he
sent the plaintiff's lands. This rule is now much relaxed.
Theplaintiff must point out the subject matter at his
plead.

It has been customary in E. as in Eq. to bring an act
for more profits, distinct from the ejectment. But there
appears to be no sufficient reason for this practice, since the
plaintiff is very often from the Eeq. But as the more profits
might as well be recovered in the ejectment, this usage is
probably contrary to the reason that the law allows a mul-
titude of suits. So Eq. the act is brought as an addition
Ejectment.

...ector, ag. when it would be unreasonable that damages for the same profits should be recovered. The claimant is made a party to the suits of action on which the action is founded, was intended to give no other damages than for the defective injury of ejector; the recovery being by suit ag. the several ejector only. And it is observable that in Big. before these suits were introduced, the term itself was not recover'd in ejectment. All the time spoken of before that time only damages, full damages were recover'd. If the action is brought, the real wrong does without the intervention of fiction to recover the land. If the court demands that the real damages, i.e., that the main profits may be recover'd in ejectment, is not probable. But the question is, whether the usual practice of bringing two actions ought to be tolerated? If being established that the main profits may be recover'd in ejectment, the practice cannot be defended or tolerated. But as it has so long prevailed, it will probably be continued.

The defendant, in this second action, may recover damages for profits accruing before the suit. [Title in the ejectment, if however the

If the defendant be so that the defendant contest his title, as far as to

Voids the main profits. Then after the ejector he cannot contest because the right in ejectment is conclusive as to them. But it

Seems that in contesting the main profits, the defendant, on the same defect in the title, on which he is, is not entitled to the ejector. But suppose that the defendant, in the first action, pleaded in his title, which the

Seems not to have existed at the time of the ejector might have been good before that time, may be not in the case to be

Seems in the action of ejectment, on the same

...
One tenant in common may bring action on another, not indeed to recover the other's land but to let himself in. He may also bring an action of ejectment for more injuries; for the tenant in common cannot maintain ejectment against his cotenant yet this action for more injuries is in effect merely an action of account.

III. Of the Right to Enter

There is the right to enter in one case on another's land without lawful authority, causing some damage, however not considerable to his real property. If a person enters lawfully and afterwards abuses his authority or license to enter, he shall become a trespasser at equity.

Entry on another's property is sometimes justifiable as in the following cases: Tenter may go on to the land of his enemy to take his enemy's crops. Tenter may go on a farm to take his opponent's crop. Tenter may go on the land of another to take live stock. Owner of cattle may go on another's property to take their when they have got there by any default of the tenter or deficiency in the tenter. Tenter does not enter the lands of another to avoid some great calamity or injury that would otherwise befall him. If one who has lost cattle goes without leave or license was driven into the house of another to search for them, he is a trespasser unless he finds them there. As a trespasser or not according to the event.
The action is founded upon trespass, in many cases, when that only. And in order to maintain the action the defendant must have been his trespass. In some cases it must be an actual trespass. The defendant must have made entry upon the land. In other cases to the tenant's injury, it is not necessary that an actual entry should have been made.

And for life or years may maintain this action at the
2 Pet. 531, 534, et al., himself, if he encroaches upon them, but ten at will. If
211, 2 Pet. 123, but once cannot bring this action at the time his or her
4th 551, 531, their emblements, whether the other party have the action against
4th 551, 531, any person for any injury except it be to the emblements, to
4th 551, 531, be injured enters upon ten at will. In some the inheritance,
4th 551, 531, the other alone can bring the action. But here for life
4th 551, 531, or years may have this action at the time of the
4th 551, 531, stranger or occupier as well as the lessor, because the one is liable to 
4th 551, 531, liable to lessor for such injury committed by a stranger of the lessor chases, 
4th 551, 531, tenant instead of going against the lessor. But the
4th 551, 531, lessor agrees as well as the other, because the one is a 
4th 551, 531, act of the lessor, but the other, does it in a nuisance of the lessor's liability. In this case of lessor's fault before lessor the lessor is the lessor of the 
4th 551, 531, action at the time of the lessor, but if lessor has the right to bring 
4th 551, 531, the lessor may still have an action at the time for the 
4th 551, 531, civil damage he may have received.

The owner of grain, herbage &c. on the land of another may bring the suit for an injury done to them.

A lessor whose house is injured under claim of title, the lessor, defective it may be, may maintain trespass at every house except the true owner. And whereas he may maintain it even after he has been turned out by the true owner in an action of ejectment, for a trespass committed while he was in possession, because he is himself liable to the lessor for the injury done, this committed by another. As a more true helping lessor in a lessor without claim of title cannot maintain trespass.
Dissent cannot lie a stranger for trespass committed during the plaintiff, nor can he lie a trespassor, for the
the trespass is, after verdict, considered as having been
conducted in respect of the action seems to be regarded as
intended to give lisence a remedy ag. defendant only, but
the reason assigned for the rule is, that the defendant
himself takes. The rule is the same, great advantage to
a defendant of a defendant, but yet the property of what has
grown on the land belongs to the defendant, and so, 2d.

Sec. 51

If trespass be done upon land, before action, that the con-
eflit it, shall he may have the action for, he has sustained
injury so much as if he had not done it, as if he could not bring
the action, nobody else.

Where land has been let out after leases, as a common
practice in C. it has been here decided that both lessees
may maintain the action together. If the other must bring
it alone.

For trespasses committed by cattle, an action lies either
of the owner or regtise. It is good defence to this action, that
the cattle go beyond the field own deftice, none on to his land.
If they get thus the deft line, whether it were defective or
not, he is liable. If they enter from the high way, the deft
is liable, even if the high fence were defective, provided the
cattle were not conmionable. As any beasts may be made
conmionable, by the bye laws of the several town. But unless
the owners comply with the conditions imposed by such bye-
laws, they are liable as at common law.
1. Damf. 503. Trespass is a local action. It does not lie for an injury done to lands in a foreign country.

2. 2 El. 323. 2104. In bringing actions of trespass, injuries distinct in their natures are not to be included in the same action. Distinct injuries of the same nature may be included in one action. If in the last case the several injuries are terminated in themselves, are individually remedied, and the mode of declaring it is to charge the defendant having done the acts at divers places at different times with a certain person. But if the several injuries are a part of the same injury, and the defendant is liable to all the injuries, the plaintiff must state that the injury was committed on a certain day, and by continuation of the same act.


When in an action of trespass, matter of aggravation is alleged in addition to the principal trespass, where such gives an answer to that which is the gist of the action covers the whole action. And if it relates to the matter of aggravation, he must give a new action.


The damages given by this statute are of the nature of what are called damages in lieu of treble damages. They are the expenses of procuring evidence in cases which do not arise from the principles of the contract. Where the method of proof of a trespass in a case of that sort is such that no other evidence, in the most urgent necessity, could have sufficed for it, he shall be entitled to recover damages in lieu of treble damages. Provided the same shall be assessed and levied on such damages. The court may assess and levy such damages, provided the same shall be assessed and levied on such damages. Provided the same shall be assessed and levied on such damages.
when double costs of action being charged with the costs paid by the defendant, he will prove himself clear. The remedy for selling trees on another’s land is by the Statt, whereby the party wronged, and a trespasser guilty of the theft, the Owner have, however, decided that if the theft is on the Statt, he may, in the same action recover on common law principles, if his proof is sufficient for it.

This Stat. extends only to voluntary thefts, not to such as are unintentional. 4. If an injured occasion damages to another by selling land to its owner on his own land, he must bite his hand with common law. An action in this respect is conformable to common sense.

When a theft in the book comes to be a justice, the justice binds him in a bond of £100 to do his duty at the next County Ct. in the county in which the land lies. The most obvious construction of the statute at this point is, that the defendant shall commence a suit against the owner. This practice, however, has been for the defendant to produce at the next County Ct. a copy of the judges’ order of the original suit, with the verdict, and to make this defense in the case by forfeiting his bond unless he adheres to the plea of title. In this case the defendant in removal of a cause from a lower to a higher jurisdiction, may change his plea (provided he does not go back in the order of pleading as from a plea to the action to a defect plea). If this bond is lost before a justice in a County where the land does not lie, the defendant tithe, in consequence of which title the action immediately becomes local. The action cannot be lost after the Court, it in the manner just described. So title to real property must be tried in the County in which the land lies, but the record of the justice can be lost to the County Ct. of that County only in which the original suit is lost. In this case a Stat. furnishes that the plaintiff must commence an action of ejectment in the proper county, to try the title, for the bringing of the action before the justice is sufficient to warrant the defendant in sacrificing himself, etc. — The Stat. further provides,


A nuisance is defined to be that annoyance or obnoxious person in the enjoyment of the land by the


A public nuisance which is one that affects the public at large as the knocking of a negro.

4 Blom. 35. 3 Blom. 35.

Private nuisance are those which affect or are

4 Blom. 35. 3 Blom. 35.

Private nuisance are those which are not or are not to any individual. They are of various kinds

93. 93. 115. 115.

such as encroaching on's house obstructing ancient

93. 93. 115. 115.

Obstructing ancient lights you are there any ancient lights in the country.

93. 93. 115. 115.

Obstructing ancient lights you are there any ancient lights in the country
The remedies for persons injured by nuisance are of two principal kinds: the first extrajudicial or by mere act of the party injured, the second judicial, by law. If the fault is by abatement, any person injured by a nuisance having a right to destroy it or abate it, but this abatement must not be by a violation of the peace, any person may abate a public nuisance. Judicial remedies of which there are three, the most usual now is by an action on the case, in which damages only are recovered. The averse of nuisance, the quick reprieve, and the mortgage, are however, still in force. The lift may bring his action on the case, as often as he pleases, till the wrong does removes the nuisance or not removes of a nuisance after action that is considered as a new excitation of it. The lift in this action are never to give damages for any future injury that may arise to the lift, that is to be redressed by another action.
Of Forcible Entry and Detainer.

If, in law, a man might not only forcibly enter in a public place but also forcibly enter into a house, forcibly enter in his beat before. But, by a statute, which combines the substance of the Engl. Act on the subject of forcible entry, whether the person making it had a right to enter or not, as also a forcible detention of the person making it had no right to detain is a public injury. A public offence. A forcible entry, either an actual entry or an attempt to enter, with the entry or attempt is made or accomplished by words or a noise which have a tendency to terrify. A fraud, contrivance, or circumvention, to get back: amount to forcible entry. A mere forcible attempt to enter is when conceived as a crime merely the same as an actual entry, but to constitute the civil injury of a forcible entry, there must be an actual entry. The tenant of the lessor.

So that whether the less in behalf of, against the lessor, for his use, or not, even if he has no right at all to detain it, the lessor is for all intents and purposes, that the true owner may not thereby it to gain the lessor, which he has no right but he must resort to his legal remedy. 26. If a person should have his house merely on a visit or journey & return and a person should find an intruder in it, might he not enter by force? would not this be regarded rather as a forcible detainer, than an entry?

Forcible detainer may be then in two cases:

1. Where there has been a forcible entry, for after a forcible entry, even the make by the real owner, a detainer is not a sufficient remedy, the law not allowing any advocate to be gain'd by force, where force is not linked.

2. Where the tenant in behalf, having no right, let
In the action of wrongful detention, if the defendant has been detained by force, however the wrongful act may have been obtained, if he has a right to the property detained by force is not unlawful.

A forcible entry by a forcible wrongful detainer may well happen at the same time, both parties being unrighteous. If a tenant in bad faith, but having no right to distrain by force, ejects out the rightful owner who gains or attempts to gain possession by force.

The corollary to be derived from this, properly understood, contains the substance of the law on this subject is this: A person rightfully in possession may become himself thereby a forced tenant and the rightful owner, and if he has no right to the property, which he holds, such detention by force is unlawful. But a person out of possession is legally entitled to the property, can never in any case be justified in using force to obtain it.

The question of forcible entry is best under the Act of 1872 prescribed, under the direction of the judge, in deciding what is called the possessor's court. In this trial, no inquiry is made respecting the title, but the parties are placed in the same situation in which they were before any force was used, were left to try the title at law, and in the action that the rightful owner has been turned out, the defendant receives hereon damages in the action of trespass. And verdict, given in the possessor's court, is conclusive evidence in the action that he was turned out.

It has been decided by the High Court in 1872 that if a wrongfully having a right to a house forcibly enters, detains and forces the person held out who has no right to the house, may still maintain trespass for such entry, detention, but the damages in such case must be merely nominal.

When the action is best merely for a forcible detention without entry, the right of detainer and the right of detainer, he has a right to detain forcibly.
Of the Stat. of Limitations, as to real estate in C.

Under this Stat. it has been settled by adjudication that a complete title to land is gained by 15 years'占有 before. These adjudications are founded on the open and actual occupation of C. that B. who had the title to land has the benefit in law, still when the legal benefit is lost, the title is lost with it.

But this benefit must be an adverse one; therefore, if A. agree to own a piece when what they hold there to be the true beneficial owner, a mistake is made in consequence of which one holds lands belonging to the other for 15 years as title to which benefit for it is not adverse.

The one who has been in benefit 15 years is not obliged to himself of the Stat. of Limitations of an error. Whereon in such case of the debt of the person in the benefit a good title is acquired in the name in the error. One of the lands is lost to the persons held the vendor may to an action, but by the real owner, to the debt of benefit of the vendor may be done.

If another remain in benefit after ejectment, title by merely 15 years, it has been adjudged in C. to acquire as title. It well presumes that he was or as just as well under mortgage, if in the case the land had been held by the mortgagee nothing else to the equity of redemption would have failed.

If one is not knowing if must he purchase the land of the mortgage as benefit 15 years it has been a question either the real right is not barret 24. Are not the Records C. constructive notice to such purchaser?

A Stat. of Limitation enables any person to take a possession over in the highway, any time within 15 years after its erection. It has been generally understood that the owner who is known or in a part of the highway, thus obtains a possession again not under the Stat. by 15 years both, but that after the expiration of that term, he is still liable to an action. In a late case, however, in which this case was collateral mentioned, a part of this Stat. B. held a contrary decision.

A. gave into benefit of lands belonging to B. 15 years before. B. gave into benefit of C. the remains in the Stat. of 15 years, but in ejectment by B. can be defend himself under the Stat. of them.
Of Public Wrongs.

Of Felony.

FELONY is any crime which at common law occasions a total forfeiture of goods or lands or both.

Sedate to rest was formerly considered as proof of being a cleric or clergyman. If the benefit of clergy was extended to all who were able to rest, but women being by reason of their sex excluded from the clerical office were never entitled to the benefit of clergy. The statute of Anne extended the benefit of clergy indiscriminately to all persons guilty of cleareable offences.

All these offences which in this are called crimes go under the same appellation as C. the forfeiture is not a consequence of such crimes as if it in one.


1. Arson is the malicious unlawful burning of the house or out-house of another person. This is a common law felony, & one not entitled to the benefit of clergy.

Out-houses the burning of which is arson must be within the curtilage of homestead, or adjoining a dwelling house. This applies to out-houses 201. which are empty, if they are filled with corn or hay the burning of them is arson whatever may be their situation.
Public Wongs. - Arson. - Burglary.

1. Sect. 105.

in the burning of stocks of corn, i.e., to set fire to the fence of a dwelling house in danger thereby.

Cis. 3. 37.

The wilful burning of one's own house, is also arson; provided another house is thereby burnt, a more
exposure of another's house by burning one's own is no arson. If a house is burnt, the wilful burning of it is
either by design, or design is arson.

1. Sect. 106.

It is not necessary that the house be entirely consumed, the least burning is enough to constitute
the crime.

The burning must be wilful & malicious.

Negligence will not make it arson. If the burning was occasioned by negligence in the pro-

secution of lawful business, it is not arson.

The Stat. on C. is the same as the comm. law on

Set of C. 182. 185.

the subject of arson, except that by this Stat. the burning of any consequence of one's own house, is arson. The
punishment is Aggravate except when prejudice or injury
happens to the life of any person; in which case it be-

comes a capital offence, it is punished with death.

2. Sect. 221.

2. Burglary, is the act of breaking and enter-
ing into the mansion house of another, in the night
hour, with an intent to commit a felony.

1. Sect. 81.

Not only the forcible breaking of a door &c. to
help to 32. 30. 6. been considered a breaking, within the definition, but
also picking a lock, unlocking a door, lifting a
latch, coming down a chimney, the entering a house
by stealth in the day-time, breaking out in the night. It also the entering a house in the night, by force, or if the door shall be opened, the burglar then run in, have all in their persons been adjudged to be a "breaking," so as to constitute burglary. — If a door or window be open, so that he can go in, and it is not burglary. Yet if, after having entered in this way, a door is opened, it becomes burglary. But it must be the door of some apartment; the opening of a chest, or a keys, or a首饰, not being sufficient to make it a breaking.

Breaking by one of a number combined is a breaking in all.

4 B. Co. 227.
As to what shall constitute an "entry," it has been decided that this including in it only a part of the body, a hand, a foot by which to draw out anything, is an entry. The turning of a key has been once decided to be an entry, but usually on the principle that one end of the key was within the house.

4 Co. 40.
It must be "a mansion house." This has been extended to include not only dwelling-houses, but also any other buildings, which are within the curtilage.

4 B. Co. 228, 229, 231. In case a portion of the mansion-house, offices, or 2. D. 507, 509, such as would, in which any person usually sleeps, the principle which governs in this case being, that the actual breaking and entering, should be such as one as has a tendency to terrify others from a person.

The breaking of a door containing goods, but remote from the dwelling house, is made burglary by Stat.

In the indictment, the house must be stated as belonging to the tenant, if he has any interest in it; if he has not, so that he be tenant at will, it must be stated or belonging to the proprietor.

The term "night-time" comprehends in it not a moment of time which intervenes between the evening and morning twilight.
"With an intent to commit a felony." It is no means for what kind of felony the presumption is that the breaking and entering is for the purpose of committing some felony withal, otherwise known.

Punishment, in Eng. death, in P. Star-gate.

3. Larceny under the Eng. law is divided into simple larceny: Simple larceny is the felonious taking and carrying away the personal goods of another when the property thus taken amounts to more than 12 shillings in value. It is called grand larceny, when under that sum it is denominated petty larceny. In consideration between these offences arises. In P. for there is no difference with the punishment, grand larceny being a felony, petty larceny only a middle offence, which has to with entreating and break.

It is "a felonious taking," i.e., it must be taken sans la force, not by violence. "Taking," means without the consent of the owner. Under this he raised this question, whether a bailiff could be guilty of stealing the goods he seized. So having obtained his possession of it, by the consent of the owner. If he were held that he could not, but now if one took any land having proceeded a bailment with an intent to commit theft, actually burials the goods so obtained, he is guilty of theft. The bailment being extinguished by the
Public Things. — Larceny.

...fraud. But if the intent to steal is subsequent to the delivery, the returning same is not theft.

There must be "carrying away." This is any, the last motion of the property from the place where it was with an intent of carrying it off; as if the thief be discovered, he keeps it in quiet larceny.

Larceny must be committed "in personal goods." Things that are not objects of larceny, as apples on a tree, cannot go in this Act. Theft of these is simply a larceny. The distinction, however, is very nice, if the act of taking is not one continu- ed act as if after kicking the cow it should fly, to prosecute any other offenses, then afterwards taken, would be theft. And thinks this will destroy rather favorably, what it would have been more rational & consistent with principle to have determined all such acts to be theft. A variety of theft in Eng. have reached most of these cases of help. As if I made them theft, but in C. there are no Stat. of that kind. It is the common law still prevails.

At Comm. law theft could not be committed in choses in action & evidences of debt, they not being considered as having any intrinsic value, it has there for been necessary in Eng. to make debts covering this species of property. In C. there are no States in this subject. But And thinks that the principles of the comm. law will reach it without any Stat.

As to animals for nature he, in auth: magis. It must be an animal which has been reclaimed from its Savages State, become tame; & also an animal of your use for food or clothing. Stealing of dogs & cats therefore is not theft.

As to husband's liability for the theft of his wife see 3d 15.

For larceny of theft in C. see Stat.
Robbery (which is one species of mixed larceny), is the felonious forcible taking of goods or money, to any value, from the person of another, by
violence or putting him in fear.

There must be "a taking." An attempt to commit a robbery, therefore, as common law does not amounts to the crime of robbery, unless there has been an actual taking of the property. By Stat. 6 Geo. II, it is made a felony punishable with transport. As there is no Stat. concerning it in C. it remains here as a C. law a misdemeanor.

A restoration or restitution of the property, by the robber, after a taking does not purge the offence. Taking "from the person" is construed to mean taking in his presence, therefore if one should be seized or putting him in fear, drive away cattle from before the eyes of the owner it would be a robbery.

The "violence, or putting in fear" necessary to构成 a robbery must be previous to the taking—Actual force is not necessary, putting in fear is sufficient violence. As, if the defendant, by menace elicits an oath from the person attacked, that he will deliver his money at a future time & he does deliver it, this is robbery. So, if a robber beg aloft, but does it in a way which terrifies the person committing it is robbery.

All persons present, aiding & abetting before the fact, in robbery are principals.


Privately stealing from the person (i.e. by forcible
way the pocket) and stealing from the house in the
day time are the other kinds of mixed larceny. In com-
mon law they are both crimes like simple larceny. But by
Stat. in Eng., they are made felony without benefit of clergy,
As Stat. in C.
Homicide, or the killing of a human creature, is sometimes a crime. Sometimes not. The law in distinguishing between the criminality or innocency in this case principally regards the intention with which the act was committed. Homicide may therefore be justifiable, accidental or excusable, manslaughter, or murder.

1. Justifiable homicide is where there is no guilt at all in the slayer, or is the case of an executioner in pursuance of a legal sentence. If a man to death.

2. Accidental or excusable homicide, is where a person kills another, this accident or misconception.

3. Or, without negligence or a want of care. But in this case that general or negligence of the human nature. Must, at the time of the accident, have been casual, or if a man enquiring with an axe, the head falling off, broad hit another. He cause his death, this would be excusable homicide. As a parent or master, by a moderate degree of correction of a child or servant. Should unfortunately occasion his death, it would be excusable homicide. So, if a man in defense of himself or his property. If he should kill another, in case a robber who attacked him, or a thief who broke into his house in the night season.

Under this head is included what is called chance, medly, which is there one when a sudden quarrel, beast.
or affect, is attacked by another, having no other way of defending himself, with the other. It is frequently very difficult to distinguish this from manslaughter: Blackstone has pointed out the distinction as clearly as possible.

3. Manslaughter is the unlawful killing of another without malice aforethought and is of two kinds, voluntary and involuntary.

Voluntary manslaughter is where the killing was done in a sudden fit of passion, excited by some kind of provocation. If one kills another without provocation, malice is always in this: but it is murder.

As to what is sufficient provocation: it is difficult to lay down a rule that will reach all cases. Alice, words of contempt or approbation, will not do for justifying a man for killing another, with an instrument which would naturally cause death, as a sword, for instance, as to render him guilty of manslaughter only, but it would be murder. But if in consequence of such words the person should strike the other with his foot or a cane or deadly weapon, it would be manslaughter. But no provocation however great will excuse a voluntary killing to manslaughter if between the horns. Is the act of killing there has been sufficient time for the passion to subside? This question whether there has been sufficient time or not will be frequently adjudicated in case of deaths. No general rule can be established but each case must rest on its own circumstances.

Involuntary manslaughter may happen in two cases:

1. When a person in the execution of an earnestpell act, occasions the death of another, it may, according to the Exp. Decisions, be either murder or manslaughter according to the nature of the act in the doing of which the death was occasioned. If the act were a thing natural in le, & a felony, or, if in attempting...
4. Murder is defined to be "the unlawful killing of a person of sound memory and discretion of any reasonable creature in being, with malice aforethought, either express or implied."

I must be a "killing." It is not necessary that the death should be outright. If it happened within a year and a day by the Eric law, it is murder.

"By a person of sound memory and discretion." 4 M. B. 25.

Gross intoxication, the absence of temporary insanity, is no excuse for murder. But habitual debility of mind produced by a long course of intemperance is a "Jeff. excise."
In fact cannot be found guilty of any crime, nor can a lunatic, except for those which he commits in lucid intervals; for even in these cases if he becomes insane, before arraignment, he cannot be arraigned, and if an offender becomes insane in any stage of a criminal proceeding against him, or at any time before execution, the proceedings must be stayed. Child.

1. Botw. 41.

Under 7 years of age can never be tried for murder.

Those of 12 upwards are never excused, the want of age.

Those between 14 and 17 years of age may be found guilty or not as they appear to be, or not to be, delinquent.

Any degree of coercion exercised by a third person (as by a husband over his wife) to induce the commission of murder, is no excuse for the crime. And yet, there may be cases of this kind in which it is only natural to desire malice aforethought.

If any reasonable creature in being. The killing of a child in want of care appears not to be murder, if a person, intending to kill a child in want of care, inflicts upon it a wound of which, after being born, it dies within a year to day, or is guilty of murder.

The Stat. 21st of Geo. I. enacts, that if the mother of a bastard child conceals its death, he shall be accounted guilty of murder, unless she can prove by one witness at least, that it was born dead. Of this Stat. that of C. on the same subject is substantially a transcript. But Cts. of law have to construe the Stat. both in Cts. & C. so as to transfer the onus of proving from the mother to the child to the prosecutor, by requiring evidence before the conviction of the mind that the child was actually born alive. It is observable that the Stat. of C. was made after the construction was given to the Cts. Stat. It is clear that the words of mother of the child will warrant this construction.
Public Wrongs. Murder.

The last step for the most inhuman part of the description is that it be done with malice aforethought, either express or implied. Malice whenever used in law always implies nearly the same thing, a bad will, wicked motive, unjustifiable when and wringings of hourly or consciences; a disposition which has its preference to be devoid of all Local feelings or interest for the fellow creatures. 

Most of the cases in which there is difficulty in distinguishing between murder and manslaughter are those in which there has been a provocation; the question being whether it is sufficient to justify the killing of the person owing it in the manner in which he was killed. For, if one merely make mouth or ridiculous gestures at another, if the one murdered should take a gun and shoot to otherwithin him, it would be murder; for it would show him to be a person of such an unstable temper, that he could not allow for the lives of his fellow-men as to destroy those when the least provocation that could be dangerous for him to remain in society.

Be Car. 121. Psalm 34. 5.

2. De C. 24. 87.

The case in Coke has induced an opinion that if the one who kill the other gives the blow, consigns the other, it will always be murder; but this is not the case, as he may kill the other in self-defence.
Public Usurpations of the Right of Life

If the design was to murder A, by mistake B is killed, it is murder, although there was no malice towards B. So, if the design to kill is not directed towards any particular person but towards any one who may chance to be injured it is murder, as if one should discharge a gun among a multitude, or let loose a wild animal among a number of persons, none should be killed, it would be murder.

Where upon consequence of agitation to an officer either to or of his agent to be killed, it is murder not only in the person who actually did the fact but all those acted entitled him, so, where a person attempting to arrest two who were fighting in order to prevent a breach of the peace was killed, it was held to be murder.

If an officer should attempt to arrest a man for a felony with a true warrant, if should tell him in doing so it would be murder, if the warrant was true on the face of it, otherwise not.

Where a garter most inhumanly confined a few
Nov. 556.

one in the same cell with one who had the small pox, by which he caught it, and this was held to be such an evidence of malice as made of murder.

Dec. 564.

May. 1898.

The punishment of murder is Exo. 21 is death, with forfeiture of goods & chattels.
Public Wrongs

Of Perjury

Perjury is defined to be the crime of giving, wilfully, absolutely, falsely, in a material matter, to the issue or point in question, under a true oath administered in some judicial proceeding.

False swearing before a Court of record, was formerly held to be no perjury; it is now otherwise.

Subornation of perjury is the procuring a person to commit perjury: and in order to render the Subornation a crime, the perjury must have been actually committed.

The swearing must be wilful: if it was done, this inadvertence, misapprehension, etc., it is not perjury.

Swearing according to the best of one's belief, is not such a qualification of testimony, as will exculpate the witness from the crime of perjury; if it appears that the witness did it wilfully, with an intention of testifying wrongly.

It is not necessary that the fact sworn to be false, should be absolutely false; if the witness believes it to be, or if he knows nothing about it.

If the point sworn to is wholly foreign to the cause, it is not perjury; but if it can affect it concisely as to cause the loss of the damages due, it is.

Whether is of opinion that it ought to be considered perjury, if the witness thinks it material to the cause; this it does not.

The oath under which the witness testifies must be truly administered. If it is extrajudicial, it is not perjury. But it may be made be

1. Ex. 129, 2. made by way of affidavit by a party in his own cause, or by a person offering himself for that purpose, his testimony is greater than it is, fact or

31
Public Manners. — Perjury.

The false swearing must be in some judge's proceedings or it is not perjury. But it is not necessary that it should be before a Ct., as it may be before arbitrators, auditors, commissioners &c.

The breach of their oaths by a jury is not perjury to constitute perjury, the thing sworn to must be a fact, not a way of testimony. A breach of an officer's oath therefore is not perjury, but a high misdemeanor.

Stat. 1723. 2, 3 & 4 1257.

The punishment of perjury. Subornation of perjury, in C. is punishable, 5 years in Newgate, forfeiture of £20, disability to be a writ court., unless in case of inability to pay the fine, with sitting in the pillory. The Stat. of 1723 mentions £20 of £200, but Black supposes that was a pen. law. perjury was intended. It is, however, still punishable in C. at common law, viz. by fine, imprisonment, and disability to be a writ court. But this is happy; at common law, cannot be in Newgate, except on convictions in Chancery county, in which county Newgate is a public prison.
Forgery is the fraudulent making
or altering of a writing, to the prejudice of another's
right.

At common law, the crime of forgery consists only
in the altering or of instruments of a public nature,
such as records, deeds, and wills. The altering therefore of
instruments merely of a private nature, as notes, bonds,
was not forgery at common law. The common law punish-
ment was paying a nominal fiddle.

But by a variety of Statutes the crime of
forgery has been extended to almost all instruments
of a mercantile nature, such as notes, bills of exchange,
currency, letters, book-bills, lottery tickets, etc.; but the
altering of any instrument not composed in any of
those forms, was included under the common law would
not be forgery.

The State of O at forgery is made with refer-
ence to the forgery, but in the same subject-matter,
the same as forgery, as are made by the forg-
er, Stat. 12, "any other writing to prevent equity or justice." This clause involves the question what alters to have
a fraudulent injurious operation.

The alteration of an instrument without a
fraudulent intent is not forgery, but if made in a
material part of the instrument it vitiated it.
But an alter made with a fraudulent intent, in
an immaterial part of forgery, if forgery, written in a material or immaterial part always vitiated
the instrument.

An alter made for the purpose of conforming
the instrument to the terms of the original cont-
f is forgery, if made to benefit the person, who makes
the alter.
The act must be done with an intent to defraud, & to the prejudice of another's right; therefore, the alteration of a sum contained in a bond, & by the obligee himself, or favor of the obligee, is no forgery. It may here be a question, whether the amending a legacy by a will, by the executrix, purposely would be forgery or not. Locke thinks it would. Especially if there were a residuary legatee who would be benefited.

Another act to defeat another's right is inserting a new legatee in another's will, as is also the fraudulent insertion of a legacy to one's self in another will. The latter act would probably destroy only the legacy, but the whole will. Writing an obit over another's name accidentally written, is also forgery, if done with a fraud design.

The uttering or publishing a forged instrument, knowing it to be such, is punished by the Stat in the same manner as the forgery itself.

In C. this offence is punished by that act with intent to defraud, & to the prejudice of another's right, & to the party injured, & besides ability to testify to.
OF RESCUE, \\

Rescue is the act of forcibly removing another from arrest or imprisonment.

It is true, the person rescuing is accounted

2. Hark. 139. guilty of the same offence with which the person rescued was charged. But in this case as in those of voluntary escape, the offender is not punished till the principal or person rescued has been convicted.

If the principal is not caught it is not the rescuer is punished for a misdemeanor only.

In C. a rescue in all cases is only a high misdemeanor. 

Assisting a prisoner to escape from Newgate is punished by confinement in Newgate.

Assisting criminal process or assisting one to avoid being taken for a crime, renders the person so assisting a principal or accessory to the same, and such a principal is very near to the same punishist as the principal.

OF RIOTS, ROBOTS, VANDALISM, \\

A Riot, is defined to be "the assembling together

of three or more persons for the purpose of抗拒ing each other, in the carrying into execution an enterprise of a criminal nature, whether it be lawful or unlawful. If the carrying of the enterprise into execution, with force, is to the term of the force."

There must be "three or more persons," therefore, if when an attempt is made, the thing found all not guilty, except two or less, they are innocent of
course, unless the verdict is, that those two with others unknown did the act. "Infants under the age of discretion are laid not to be hazardous for a riot. If two adults with one infant do commit acts amounting to a riot, would they be guilty of a riot?"

They must "assemble together with an intent to commit, and this intention must be executed." If they only assemble together with an intent to do certain acts, but do not hasten towards doing them, it is then an unlawful assemble. If they proceed or move forward to do it, but before the execution, relinquish it, it is then a Riot. If they assemble together under a lawful occasion, or at a fair, or a market, and a tumult occur, and accidentally ensues, it is then an Affray. If after having assembled together, they enter into a conspiracy for the purpose of committing an act of riot, and do commit it, it is a Riot, but they did not literally assemble together with the intent."

The enterprise must be of a private nature. If it is of a public nature, it may amount to treason. As if it be to disturb the peace of the country, to reform religion, etc."

It is essentially necessary to constitute the offence of a riot, that the object of the rioters be effected, "with force to the terror of the people." It is however, however, that positive testimonies of any person being actually frightened, is not necessary. If the acts done are executed in such a tumultuous manner, as would naturally frighten terror, it is sufficient to make it a Riot. So, if the act done is an unlawful one, yet if it be done in a manner not tumultuous or terrorizing, it would not be a riot."

This is the com. law on the subject.
The punishment at common law is fine, confine.

The Act, as it is, has not altered the offence, but it has rendered the punishment different, than the old act is read. Any opposition to the reading of the new act is punished with death, without benefit of clergy.

The Act of C. 301, does not extend to unlawful acts only, so that if this act committed in a riot be lawful, the offence of being a desert is a common law. It is most probable, however, that the Act was intended to comprise all common law riots.

Under this Act, it is not necessary to constitute a riot that the riot act be read. But this is necessary to subject the rioters to the Act's penalties. And by the Act, if it is read, the rioters are subject to the penalties, at all, they have not committed the act or acts. But, if they commit the act, not be an unlawful one, the said penalties are incurred, whether the act was read or not.

The punishment imposed by the Act, as it is, fine, whipping, or death, or all three, at the discretion of the Court.

Over Rest, the Sth & County Ct. have concurrent jurisdiction.

Of Treason.

Counterfeiting the coin, is not treason, but that of the making instruments for committing an armed conspiracy, by confinement in Maryland.
The only offenses that are treason in this case, are the buying one as the government, or adhering to the enemies of the land.

Loying war agt. the govt. may consist not only in an open rebellion, or for the purpose of overturning the govt. but it may be done by taking arms for the purpose of effecting a return of religion, or any other public matter, in an attempt to disturb the regular course of justice, or any attempt at a general destruction of property, or to destroy all evidences of all brotherhood or all brotherhood the high treason.

Adhering to the enemies of the land means,

1. Treachery.

2. Treachery.

3. Treachery.

4. Treachery.

5. Treachery.

6. Treachery.

Barately is the frequently exciting

1. Act 94.

1. Act 94.

6. Co. 35.

Barately is the frequently exciting

1. Act 94.

1. Act 94.

6. Co. 35.

Barately is the frequently exciting

1. Act 94.

1. Act 94.

6. Co. 35.

Barately is the frequently exciting

1. Act 94.

1. Act 94.

6. Co. 35.
Maintenance is the offence of promising 
1. B. Com. 245. to do suits by assisting one party to maintain the 
1. B. Com. 245. suit, by supplying with money &c. This, however, is 
1. B. Com. 245. allowed to no offence, where the person assisting 
1. B. Com. 245. has an interest in the suit, or where the cause from 
1. B. Com. 245. which assists is his landlord, servant, or poor neighbour. 

The setting of pretended title, or a sale of land, 
whereof the seller is not in possession is a species of 
1. 4. C. 200. maintenance. As punished by Act. 2, &c. with rendering 
1. 4. C. 200. the deed void &c. forfeiture of half the value of 
1. 4. C. 200. the suit. In the construction of this 
1. 4. C. 200. Act. it has been held that the person in possession 
1. 4. C. 200. must be in claiming by a title adverse to that 
1. 4. C. 200. of the seller.

Chamfering is an offence near of her to the 
1. 44. C. 200. last it is the agreeing with a party to carry on a suit 
1. 44. C. 200. for him. The chamferer is to share the profits. 
1. 44. C. 200. The buying up of notes of hand is a chamferer, if 
1. 44. C. 200. done for the purposes of gain, for the sake of carrying 
1. 44. C. 200. on a low suit.
Public Wongs. Jurisdiction of Ct. in Cr.

Of the jurisdiction of the Local Ct. in C. in criminal cases.

In C. crimes are triable according to their different degrees of aggravation or leniency, by dept. Cr., viz. by Justices of the Peace, by the County Ct., & by the Superior Ct.

Crimes punished with death, life or both, by imprisonment, and imprisonment in Bridewell, adultery & questions of divorce, under the Stat. are except in two cases triable by the dept. Ct. only. The two cases mentioned are those of riots & horse stealing. In these two the dept. & County Ct. have concurrent jurisdiction. A. B. Riots are not punished in any of the methods mentioned above. (St. C. 262).

Our offences punishable by Stat. Vincent is those above-mentioned but beyond the jurisdiction of a Justice, the Ct. Ct. have exclusive jurisdiction, which are crimes punished with whipping, imprison. or fine above points.

Misdemeanors are offences at. mortality, not punishable by any Stat. Or. if a Stat. is made prohibiting certain acts without offering any penalty to their commission, these are misdemeanors may be punished as such. Over these, the dept. & Ct. Ct. have in all cases concurrent jurisdiction. It is usual, however, for those of a higher nature to be tried by the dept. Ct., those of a lower by the Ct. Ct.

In cases of treason, burglary, & larceny, breaking the juridiction of a Justice of the Peace, St. C. 142, 281. This is final, as it allows in cases of offences agt. the law for vesting religious houses. (St. C. 107.) For selling or letting tickets contrary to the Stat.
Public Wongs. Jurisdiction of Ct. &c.

In other cases the Justice may try an offense for which the penalty does not exceed 7 dollars, but an appeal to the Ct. of Ct. lies in most cases except where it is expressly provided by Stat. that the shall have final jurisdiction.

If the justice thinks the fine ought to be more than 7 dollars, or he thinks it is an offense over which he has not jurisdiction, he may bind over the offender to the next Ct. of Ct. for trial, that is, take bond for his appearance at that Ct. or if he is not able to procure them, commit to Gaol to await his trial.

A. M. Subpoena that a justice of Peace shall not
under our Stat. "concerning delinquents" (par. 3) any power to enquire whether a person has been guilty of forgery, falsifying or any of the higher crimes, to bind over or discharge at his discretion, for this would be to make him a trier of the offense. (Stat. 20, c. 17, 4th) that is that if a person is complainant of by an informing officer for such crime as forgery, &c., the justice has no right to discharge him: but must commit, or if he can bond him, bind him over, the most he can do is to acribe the informing officer to withdraw his inform. (Stat. 20, c. 17, 4th)

But the justices, on C. do exercise the jurisdiction, the discharge by the justice under such circumstances does not operate as an acquittal for the accused: may after such discharge be indicted. This practice of the justices in C. is not authorized by mistake from the Stat. of C. as to breaches of the peace, concerning which the justices in C. have a right to exercise their judg. in binding over or discharging.

Justices have cognizance of breaches of the peace by Stat. unless they are high handed: but the justices are to judge whether they are high handed or not. If riots, it has been determined that they have not cognizance, but they are to bind over the offenders. The Stat. on the Subject seems to contemplate only such breaches of the peace as arise from violence or injury of person to the person of an individual.
Public Moongs Breaches of Peace &c.

In all cases of a trial before a justice for a breach of the peace, the offender may appear. The practice of receiving a complaint from the offender himself, inflicting a fine without inquiry is illegal and improper. For, on such a complaint, the magistrate can never know the degree of aggravation which accompanies the offence.

In cases of Private Assaults, which by law are made breaches of the peace, the party in whose presence the assault is committed is allowed to testify; by the terms of the law, the person so present in whose presence the assault was committed, shall be the person to whom the act of assault is chargeable. If a third person be present, the assault is not proved. Yet, if they did not know of the presence of a third person, he commenced his action in his own name. If in this action, the two persons are present. If in this action, the case is a bad one, no damage can be recovered. If in this action, may have two persons instead of bringing one as a witness.

Of Securities to Keep the Peace.

If any person has committed acts of violence

Breach of the peace, or if there is good reason to apprehend that he will break the peace, he may be arrested to find security that he will keep the peace.

The evidence of a breach of the peace must be sufficient to justify the proceeding, or he may be discharged by the justice of the peace.

Any person who is afraid to secure that another will break his house, restrain his liberty, or do him any corporal injury, may demand securities before a justice of the peace of a person of whom he is thus afraid.
Public Wongs. Securities of Peace.

The person complaining to a justice & must swear to his fears, & must specify the grounds of such fears: And the justice may, on the oath of the party complaining, either with or without further enquiry compel the person ag'zn whom the writ is made, to find securities or be committed. But, before the justice submits his to the requisition of the Stat, he ought to be satisfied that the fears of the complainant are well-grounded. All persons are entitled to the benefit of this Stat under the circumstances described.

4.58. E. 255.

The bond given by the person complained of, under this Stat is perfected by his committing any act of violence, & any person of the bond is a general one. The person bound is, in Ec, to appear before the next quarter sessions, & C before the next B. Of the bond may then be continued or discharged at the discretion of the B.

The officer in the bond is not liable to pay costs except on a petition to have the bond discharged and if he will not make application for this purpose, no costs can be recovered. Bonds have been discharged in such cases.

4.59. E. 256.

The power of binding to good behaviour is incident to the Justices of Westminster Hall, at common law, when the conviction of offenders, who had been guilty of breaches of the peace. The Stat 31. E. 3 & 4 gave this power to Justices, & extended it so that in the construction of this Stat. It has been held, that all persons guilty of any criminal act, punishable as an offence by the laws of society are punishable to find securities for their good behaviour. This is new, the law when this subject, and obtaining in C.

4.59. E. 257.

Securities of good behaviour are taken when an breach of peace has been committed, or in apprehension that securities of good behaviour are taken when the

4.59. E. 257.

are forfeited by any act or misbehaviour which the recognizance was intended to prevent.
Public Writs.

Of Indictments & Informations.

An Indictment is a written accusation of one or more persons of a crime or misdemeanour preferred to, and presented on oath, by a Grand Jury. Twelve grand jurors at first must agree to every indictment.

An Information is a complaint in &t. by the proper officer of some offence. It is concurrent with an indictment in all cases of offences at &. Except those which are capital, &. all capital prosecutions an indictment is the only proper accusation, but it is by Eng. Law.

If a Stat. points out any particular mode of proceeding (e.g., by information) that only can be pursued in a prosecution on the Stat., but of a Stat. prohibits a matter of public grievance. Hence an information is a particular mode of proceeding; an indictment is always proper. In a Stat. not an indictment, also proper, in the case of being a crime, the proceeding of the office is not criminal.

Of a Stat. respects concern of a private man (e.g., the deficiency), an indictment is never the proper mode of complaining under it.

Of a Stat. points a greater punishment than the crime, but to whose suit commenced when the Stat. cannot be supposed, it may still be good at common law.

A Bill or Claim is a kind of prosecution, but in the English by the Act &. for the recovery of a public penalty. This is not known in practice as the it is mentioned in several Acts.

2. Stat. 38. 39. 40. 41. 42. 43. 44.

Indictments are necessary in Eng. only in cases of:

1. Treasons. Felonies. They are good in cases of:

2. Misdemeanours. Battery. Not good where indictments only are impracticable. The crime is not endangered as for a Leak, nor where the offence, the public is punished by penalty.
If part of a penalty is given to the public, it is best to an information, inform. or bill in the proper warrant. In all other criminal cases, as well as in treason, felony, indictments are good. For public offenses under felony, informations are good.

2. 3/4. 6c. Information is good for any offense not capital.

If matters be joined in an indictment?

1. If an offender has been guilty of several offenses of a like nature, as burglary, larceny, they may be joined in an indictment against him. If the offenses are of a different nature, he must be indicted for each offense separately.

2. If several offenders have been guilty of the same offense together, they must be joined in an indictment if the offense can be joined. Otherwise, if the offenses of one cannot be the offense of all, e.g., if several persons join in committing an assault, a

2. 3/4. 6c. If several persons join in committing an assault, burglary, or a forgery, they may be joined in an indictment for the offenses because their offenses which may, in their nature be joint. But if several

2. 3/4. 6c. If several persons join in committing the same time. In the same case, they cannot be joined in one indictment, for the offense cannot be joint. So that the offense of one cannot be the offense of all.
Public Wrongs. Indictments.

General requisites of an Indictment.

As every offence must be tried in the county where it was committed, it is necessary that the county should be tried in the indictment. But where the

2 March 229.
3 Durn. 139.
300 135 77.

Crime is such as may be continued or renewed in contemplation of law, in every stage of the offender’s progress from one place to another, or in carrying the offence is committed in one county, it is continued into another; the indictment may lay it in either.

At common law, if a man was mortally wounded in one county, whilst in another, the offender could not be indicted for murder in either. This rule of common law was altered by a Stat. of 180, 131, 105, 5, 17.

Every indictment must state that it has been found by a grand jury under oath. The day of the commission

2 March 235.

of the crime must also be stated; but proof of the act charged, the committed on another day will maintain the indictment. Where the offence is an omission, the day need not be stated.

Figures violate an indictment, the they do not

4 Durn. 190.

but a declar. in a civil case. A trifling clerical mistake is not fatal to an indictment.

In criminal prosecution, the charges must be

2 March 226.

positive, not descriptive, as “that he did or caused to be done.” They must be particular, not general, except in the case of common bawlers, common

bolts, ragers.

Ces 83, 483, 137.
5 Stad. 22, 129.

As to the use of technical words, which are in many cases indispensable in indictments, &c., see above.

At common law, the words “riot armed” were necessary in all indictments they were explained with by

2 March 247.
Ces Inc. 472.

Stat. of 180, 105, 131, 5, 17. Hanb. a.s. that at common law, these words are not necessary in cases where they would be absurd, but he is not supported by authority.
Of your true prosecutions &c.

When an individual is injured by a public offence he may bring a qui tam action by the Stat. or not, (as).

The Statute here only is where a Stat. is by the Stat. given to the party injured to have the act done by the Stat. or not. (as) or when a penalty is inflicted divided by the Stat, except between the State & the private party. Has it not been decided that an individual can prosecute in the case unless empowered by the Stat.

On an indictment or other process at the suit of the public, the party acquitted is a qui tam. But in this case, the party injured can recover damages on the action of the Stat. but must sue to an action on the Stat. and whenever a Stat. gives damages to a party injured by a public offence, he cannot recover on the indictment but for the public injury unless the Stat. so expressly provides.

An indictment or information is a bar to a qui tam prosecution for the same offence, & vice versa.

When a Stat. gives a penalty to an informer, the public may prosecute under this Stat. But the fine inflicted on this public prosecution cannot exceed the penalty.

If a Stat. contains no words of prohibition, but merely enacts that whoever commits a certain act shall pay a certain sum to an informer, there can be no indictment by the public on the Stat. other wise if there is a prohibitory clause.

Prosecutions qui tam may be brought in the county in which the complainant lives, the offence was committed in another county. (as) or not.

27. 293

2. Stat. 210
Col. 920
Act 351.555
1. Surr. 742

2. Surr. 241

2. Surr. 159

This case is for forgery, burglary, & theft.
It has been decided by the Sle. Ch. in C. that if on a quo war action, not under the Stat. of 2. C. atg. disorders C., in the right injury, the deft appears negates the charge, the C. may refuse to con. law evidence, if the evid. can prove the deft. guilty, he may recover on the same com- plaint as at com. law damages for the injury sustained. The C. considering the complaint under these circumstances as amounting to a declar in their right arms at com. law. But in such a case, the fine is not inflected. Why may not com. law evidence support the complaint as a com- plaint on the stat.?

In Eng. it is not uncommon for private persons in their private capacity to prosecute for public officers what are termed the fine or penalty, even the no part of the penalty belongs to the prosecutor, as it does in ac- tions quo tan. The mode of prosecuting has been rejected by the C. of C. all prosecutions of this kind must be brought forward here by a public officer.

These individuals, in Eng. undertake such prosecu- tions mainly for the sake of the costs, which are generally large enough to afford them a very liberal compensation for their trouble. The right of prosecuting in this man- ner is not confined to such persons as have suffered from the offence, but is open to all persons. Individ- uals become in this way, prosecutors even on indictment. this not in cases of very heinous offences. They prosecute this for offences amounting only to malpris.

It was formerly the practice in C. on quo tan. to pro- cure of the informer a bond to secure the state, part of the granting the crim. It is now customary to decide the penalty by grant two ex. one for the prosecutor, the other for the state. In this practice variable.

The prosecutor on a quo war action must enter into a recognizance to refund damages to the adverse party.
If an offender agt. a criminal Stat. which is afterwards repealed be not prosecuted to judgment before the repeal, he cannot be punished under the Stat. at all. This rule has been acted upon by our Courts in a proceeding for violating the provisions of a repealed Stat. agt. enculturing for the small por. of the 2d. Sec. 1. therefore, a prosecution agt. such an offender is to commence till after the repeal of the Stat. which he has violated or, if having been commenced during the existence of the Stat. it has not been pursued to judgment before the repeal, the offender cannot be punished by virtue of the Stat. But if the offence be a crime at com. law, the offender may still be punished either or a proceeding commenced after the repeal, or on one pending under the Stat. at the time of the repeal. In both of these cases he is convicted and punished at com. law. But if the offence be created by a positive Stat. no prosecution of any kind can be either commenced or continued after the Stat. is repealed, unless the Stat. expressly provides that the repeal shall not affect antecedent offences.

In criminal actions, if the accused consents to the plea of "not guilty," he should plead a demurrer to the indictment or a plea in bar, which should be faced agt. him, the judge is not at law in chief but "responsed master." In case of vexatious for treason or felony, a justice can be held specially, but it must be given in evidence under the general issue.

In Eng. new trials are never granted in criminal cases. As in Sp. they are sometimes obtained on the ground, but never for the public.
No representation made by jurors after verdict will be received to contradict their finding. Nor can a motion in arrest be had after sentence is pronounced.

After verdict, a delinquent for an offence punishable by fine, evidence is hard to mitigate or enhance the fine. But a distinct offence cannot be proved for this purpose.

Of Bail in Criminal cases.

1. 20th Com. 792. §

At common law, even treason, all offences other than homicide were bailable, but the lowest degree of homicide was not so. (q. 207.)

But the Act of Westm. 3 (Dec. 1.) takes away bail from treason, arson, breaking of a public goal, all felonies of which the accused is "naturally guilty." Other felonies, therefore, than those mentioned are bailable, unless the accused is "naturally guilty," i.e. unless he is taken in the act of committing the offence, or with the means, or has confessed. But this rule of law that certain offences are not bailable applies only to sedition.

2. 20th Com. 793. §

Bail may be denied to officers (as sheriffs, justices in Quir. and justices assistants in Q.) except to the O. of B.p. in Eng. nor to the Lieut. O. in C. These O. may grant bail in any case whatever. For manslaughter the charge they always bail. And the the change
be of murder; if on enquiry they think the offence
only manslaughter, they will sometimes bate. In one
instance they have done it. (Who? R. R iv. 1st. 1822)
It has been a prevailing opinion; that one charged
with murder or any capital offence is not liable.
But this may be in such cases.

When a party's evidence becomes a retreat,
ya few of his fellow-offenders, he may be committed to hear
his testimony for the trial. It has also been supposed
that a justice be may not only require evidence of
any other witness, but on failure or inability to
procure justice for his appearance. may commit the
also. Sill. Presume that no magistrate or he has
any such right. They may require that witness to
give surety for his appearance in a criminal case,
but, if he cannot procure it, they have no authority
to commit him. If, indeed, the witness is a man of
property, his own bond is suffic. Was in this case to
can do what is required he may probably be commis-
se if he will not. But, also, the bond of a poor witness
is not suffic. and if he cannot procure other surety
there seems to be great injustice in committing him;
indeed such a thing has never been done. The statute
indeed provides that if a witness refuses to appear and
sworn the justice to. Nothing the trial may pre-
ceed. 4 committ'the

Sec. 192. 

o. Sec. 501. 

A warrant of bail may be altered.
Public Wrecks.

Of Cost in criminal cases.

By the Stat. of C on this subject, a person accused of a crime & acquitted, if not subjected to the cost of prosecution, unless the not guilty of the crime charged, he was the culpable cause of the prosecution.

If he was guilty, either of the crime charged, nor of any unlawful or flameable act, which led to the prosecution, the State or town, as the case may be, must bear the cost.

If the offence is tried by the Just. or County Ct., the State pays the cost, if by a justice the town pays the cost, in those cases being paid out of that fund which would receive the fine had the same been inflicted by the Ct. before whom the trial was had.

If the accused is found guilty in a criminal prosecution, of the offence charged as of any misconduct, as aforesaid, he must pay the cost. And if he has not property sufficient to be seized, but, in the nature of the case, he cannot be bound to serve, either by reason of the heinousness of the offence (as murder or any other capital offence), or by reason of inability to labour, that not properly, the costs must be paid out of the State or town treasuries, as aforesaid.
Bail, when given by the defendant when being arrested, is for the purpose of returning him to his liberty without injuring the party. This is called bail to the officer, or in C. common bail. And, in civil cases, the officer holding a defendant in custody, is always obliged to accept sufficient bail, when offered, & if he refuses is liable to an action.

The terms of the bail bond are that the defendant shall appear at the trial of the suit. But if he does not, the bond is not of course perfected. For, if the defendant is surrendered into custody, any time within the life of the suit which issued upon the suit for which he was arrested, the bond is void. The scrivener, by this act, must in as good a situation as he would have been, if the defendant had been the whole time in custody. But if he is not thus surrendered, the scrivener is liable in deceit, or on a scire fac for debt. In Eng., the scrivener is not liable if the defendant is surrendered at any time previous to judgment or on the receipt. But he is also liable for the cost incurred on the suit.

When aet. has issued aet. the principal (not being surrendered into custody) the officer may return was at any time, on less than 30 days. Then the bail becomes liable; that the return of the officer being conclusive, & the principal without a surrender.

In Eng., a prisoner in custody at the suit of the party cannot be charged with civil process, without leave of the whole term of the judges. & in ??
Bail.

The bail may at any time, on suspicion of the principal intending to escape, take the latter whenever he can find him, and surrender him unto custody of the officer. He is for this purpose, in Eng. furnished with a bail piece, which is a certificate of his being bail, entitling him to take the principal at any time. We have no bail piece in C. but the bail is entitled to a certificate from the Clerk which answers this same purpose.

The bail may take their principal on Sunday, and surrender him before midday.

The bail bond taken by the Sheriff is negotiable, if it is sufficient, i.e., if the bondman is capable of paying it. The J.P. is bound to accept it from the party in cases of necessity. It is commonly used in C., in the officers' name, but being negotiable, it may be issued in the name of the J.P. to whom it is addressed.

If the J.P. refuses to accept the bail bond from the officer, then the Sufficiency of the bond is tried. If it is found insufficient, the J.P. will recover at the officer. The latter is left to his remedy against the bondman.

The bail fails in his action, he must accept the bond, if the bail bond is sufficient.

It has been settled that if at the time of taking the bail bond the bail appeared to be sufficient, the officer shall not be subjected in the event of its insufficiency. For, he is obliged to accept bail bond, and if he fails, his judgment as to their sufficiency he shall not be made liable if he has conducted prudently.

Insanity does not excuse from an assault, but the defendant must presume guilt or it must be proved for him.
When the debt is arrested, brought into Ct. by the officer, or having been liberated when bail for his appearance is tendered by the surety, he must be committed to debt unless he procure special bail, in any called bail above or bail to the action, which is taken in Ct. by consent of the deft. or a decision of the Ct. By this bail the surety is bound for the debt appearance to respond judgment. The rules respecting forfeiture of this bond and the consequences of such forfeiture are the same, as in case of the bail bond before mentioned.

When a debt is brought into Ct. when an arrest, or is tendered by his bail, he must plead with those words, "I, the custody of the Ct." if the deft. accepts a deed of the said bail, not containing those words, the deft. body is discharged. (If the action also discharged)

203. If the bail has not surrendered him to the Ct., but the deft. accepts a plea without the words "in custody of," the bail is discharged.

On the appearance of the deft. to answer to the action, the bail may discharge himself, by surrendering him to the Ct. that is, by moving the Ct. to take him into custody. And if the deft. has not been liberated upon bail, on his appearance to answer to the action, the deft. must move the Ct. that the deft. take him into custody; otherwise he the deft. runs the risk of the deft. escaping. The record of the Ct. is the only evidence of the bail surrendering the deft. into custody of the Ct.

The bail may sue his principal for more liability, without having sustained actual damages at common law. The lien of the deft. of Ct. in case of recovery of judgment against him, the bail by the deft. he may sue his principal, without having satisfied the judge.
Of Bonds given by the Pet.  

By Stat. in C. 24, living in another state, or bringing an action in this state, must always procure bonds for prosecution. So, if he should fail in his suit, he cannot go at him (i.e., out of the state) for the cost. The design of this bond therefore, is merely to secure the payment of the costs, and of judg., in this case, you ag. the Pet. nothing but actual proof of the cost discharges the bondsman. The debt must, however, take out an ag. the principal, I have a man of credit returned before he can proceed ag. this bondsman. But this return need be only as to property, for, if he wants the principal in this state, he is not bound to take his body. Or, if he does take his body, it commits him to the prison. If the debt is so, how about the bondsman is liable—yes, that is the bondsman good?  

If a person unable to pay out, things a suit, he must in motion to the Ct. the adverse party being bonds before he can proceed. This practice is not usual at any. low. low, & bonds in this case are given only in suits before even low, & not in Cts. cases. These bonds are given to the adverse party. In this case, the nothing except actual proof of cost discharges the bondsman.  

Every Cts, in an attachment must give bonds to prosecute. The practice is to take the defendant bond if he is a man of property. The practice seems to be founded on the notion that the bond in this case is a security for the costs. In this view, the practice is absurd. The bond only. But, if the sole object of the bond is as debt, follows a security for the property, attached, the practice of taking the defendant bond, evidently frustrates the idea of the law.
Of Bonds or an Appeal

Whenever a party appeals to a higher Ct he must give a bond with surety, to prosecute his appeal to effect. By this it is not meant that unless the applicant pays his costs the bond is forfeited, but he is merely bound to go forward with his appeal & if he does not the bond is forfeited. — For, if the appeal destroys the judge before, if the applicant does not prosecute his appeal to judgment in the Ct above, the adverse party who recovered below, would be deprived of all the advantages of the judgment. — An appeal may be taken at any time during the year of the Ct. but if the Ct does not move for an appeal immediately after verdict or judgment, as the case may be, it may not be taken before he takes his appeal. The appeal will be as(Vertexes to the Ct. After an appeal is entered or moved for, no further prosecutes his appeal, but the latter is again tendered at him, the bondman is liable for cost only. but he is liable for all the cost, viz. that incurred both before & after the appeal. What if after the appeal the adverse party becomes a bankrupt, he unable to redeem the bondman liable for the debt in that case?

But the bondman is not liable even for cost, if it can be obtained from the applicant. It is, therefore, necessary for the adverse party, to take out an ex. ag. the applicant to have a non est returned, i.e. a non est as to property. A non est as the principal in all these cases, says a foundation for a Seizure against the party.

If there is special bail as well as a bond on the appeal, if non est is returned as to the estate, gen. whether it must not also be of the party to subject the special bail as if the applicant, the special bail is liable for the debt against the party in the appeal are liable for costs.
When special bail has been given for the debt, the judgment in favor of the creditor, or if it is reversed, it is a question upon which the authorities are contradictory, whether the special bail is discharged by the judgment, or whether they are bound to answer final judgment.

If the bail foregoes the debt, the bail obtains no satisfaction. It may still resort to the principal. But if he has since taken the principal bail, the bail is discharged.

Bail is in its nature joint. Several before them, or more than one. There can be more than one in this action at the suit of the plaintiff.