Car of evidence is let in to rebut an estate to
only where there is a rule of law that clear-
very have broke in upon, on such cases, in no
other proof is let in to rebut that equitable con-
truction & restore the old legal rule.

In Eng, the law was formerly that the Exe-
should have the residuum whether he had
a legacy or not, but now if he has a legacy left
he shall not have the residuum. But in this State he cannot receive
the resid- 

\[2Ak.372 239\]

See 1 Will. 305. 3 Ak. 68. 30 Willm 40 2 very 91
Wern. 473. 10 Fre. Can. 2. 328

The question whether an Exe can be excused
from distributing such debt may make a
figure in this State.

\[where a \text{ Exes dies leaving an Exe, the last Exe may}
\text{accept the last Exe's ship without accepting that of}
\text{the former testator, but he cannot accept that of}
\text{the former without adopting the latter.}\]
The page is filled with handwritten text, with lines running in various orientations and without clear structure. The handwriting is difficult to discern, but the text appears to discuss legal and financial matters, possibly related to contracts or legal agreements. The handwriting is cursive and lacks clear margins, making it challenging to extract coherent sentences or paragraphs.
First U. S. Law School Restored
For Washington Bicentennial

Litchfield, Conn., Commemorates President's Visit
in 1780 on August 27 in Building Tapping Reeve ERECTED ON HIS ESTATE FOR THE INSTITUTION

Special to the Herald Tribune

Litchfield, Conn., Aug. 6.—In commemoration of a visit by George Washington to the village in 1780, Litchfield will celebrate the Washington Bicentennial on August 27. While honoring the memory of the first President, Litchfield will also pay homage to its native son who was one of the main contributors to the nation's life during the early part of its existence. Among these men are General Oliver Wolcott, Colonel Benjamin Tallmadge, Judge Tapping Reeve, founder of the first law school in America, and Judge James Gould, Reeve's partner and successor.

Washington, journeying from Hartford to New York, stopped in Litchfield as the guest of Oliver Wolcott, a signer of the Declaration of Independence, member of the Continental Congress, and later a Governor of Connecticut. It was just at the time that Benedict Arnold was fomenting his plot to betray West Point to the British and possibly the American commander in chief would fall into Arnold's trap. Thus, Washington's presence in Litchfield is venerated more, because it was at a time of unforeseen peril.

Made Friends in Litchfield

The Wolcott mansion on North Street had been the scene of a strange incident years before. General Wolcott had stopped in New York while returning from the Continental Congress in 1776, and returning to Litchfield he took with him the headless torso of the leader statue of George III, which had been pulled from its pedestal in the Battery by an excited mob of patriots. In Wolcott's home his daughters and friends melted the bronze to make bullets. 42,000 bullets for the Colonial Army.

While in Litchfield Washington became better acquainted with young Oliver Wolcott, who later served in the Continental Army as the successor of Alexander Hamilton. He also talked with Tapping Reeve, a young lawyer, who had served as a recruiting officer at the opening of the war and had gone to New York with a group of freshly recruited troops in a diversion movement aimed to rescue Washington in his retreat through New Jersey.

Roosevelt lived in a spacious house opposite the home of Oliver Wolcott. In later years, when his law school had become well established, he erected at the back of his home a small building to serve as a law school. It is this Litchfield Law School building and the adjoining mansion, now restored to its original design, with its relics of its master and his pupils, augmented with an exhibition of Washingtoniana, gathered from many sources, that the Washington bicentennial celebration will be centered this month.

After graduation from Princeton in 1783 and serving as a tutor there for a few years, Reeve proceeded to practice law. With him he brought his wife, Sally, sister of Aaron Burr and granddaughter of Jonathan Edwards. This was in 1782. Three years later his brother-in-law came to study law under him. Thus, Aaron Burr was the first of a long list of young men, later to become distinguished in many branches of the nation's life, who gained their legal knowledge from Tapping Reeve and the school which he founded.

They came from all parts of the Union—John C. Calhoun, young Oliver Wolcott, Peter Van Winkle, John M. Clayton, Ephraim Kirby, Ward E. Hunt, Horace Mann, Uriah Tracy, Stephen R. Bradley and many others. Of the students who studied in the Litchfield Law School, two became Vice-Presidents of the United States, six were members of Presidential Cabinets, three became Justices of the United States Supreme Court, eight served as members of the House of Representatives, twenty-five were members of the Senate, fourteen were State Governors and many served in minor executive, judicial and legislative capacities. Reeve's all but forgotten school played a strong part in the early life of Washington's judges.

Appointed Judge in 1788

Reeve erected the little law building at the side of his home in 1784. Herefore it had been the custom for a law student to study in the offices of a practicing lawyer, but Reeve began to lecture to his students, speaking in a shrill whisper, for he had an affection of the throat, with the students scribbling hasty notes on his discourses. The lectures were in the morning and the students passed the afternoon studying and copying their notes into books. In order that they might have something to write from, the students participated in moot courts, where two took a part on each side, with others acting as Judges. Judge Reeve reviewed their decisions, pointing out the discrepancies in argument and legal doctrine.

Having been appointed Judge of the Superior Court in May, 1798, Reeve saw the need of a partner in his school and he chose James Gould, a Yale graduate in the class of 1791, as his assistant.

For twenty-two years Reeve and Gould conducted the law school jointly. For purposes of teaching they divided the law into forty-eight titles. Reeve was particularly interested in the law of domestic relations—Baron and Femme—and he published an authoritative book on it in 1816. Judge Gould specialized in the law of pleading, molding his ideas into a treatise which was a legal guide for many years.

Retired in 1829

Judge Reeve retired in 1829, leaving Gould in charge of the school. Associated with Reeve in the life of Litchfield was Lyman Beecher, "the father of more brains than any other man in America"—Henry Ward Beecher, and Harriet Beecher Stowe, who were both born in the family mansion on North Street. Beecher was pastor of the Litchfield Congregational Church for sixteen years.

Eulogizing Reeve at his funeral in 1823, Dr. Beecher said, "At a moment of greatest dismay, when Washington fled with his handful of troops through the Jerseys, and orders came from New England to turn out en masse and make a diversion to save him, Judge Reeve was among the most ardent to incite the universal movement, and actually went in the capacity as an officer to the vicinity of New York, where the news met them of the victories of Trenton and Princeton, and once more Washington and the country were delivered."

Reeve was gone, but his pioneering work in the instruction of jurisprudence lived long after him through the distinguished services of his students.

Gould continued with the school for ten years. Meanwhile, he had married Sally Tracy, the eldest daughter of one of Reeve's first students, Uriah Tracy, then recently appointed a United States Senator from Connecticut. Portraits of James Gould and Sally Tracy, painted on glass, now hang in the American wing of the Metropolitan Museum.

Coming from Yale, Gould brought with him certain collegiate practices. He was dignified and polished, and his lectures have been described as finished essays on legal practice. He inaugurated a school roster, from which the students later composed the first catalogue of the school. This register now contains 794 names for the period from 1798 to 1833. These, with some 200 before the time of the roster, show more than 1,000 students attended the school in the fifty years of its existence. These students came from as far as Louisiana and Missouri.

Largest Law School for Ten Years

Other law schools were now functioning—Harvard, Yale and William and Mary. Yet the Litchfield school continued as the largest in the country. In the ten-year period from 1820 to 1830 Harvard gave forty-three Bachelor of Law degrees, while 294 were given at Litchfield.

Judge Gould associated with him in his conduct of the school Jabez W. Huntington, later a Senator from Connecticut, and Origen B. Seymour, later Chief Justice of the Supreme Court of Connecticut. But in 1833, when Gould's health had become impaired, the school was closed.

The Reeve property was acquired by Mr. Lewis B. Woodruff, of New York. After the death of Reeve's widow, it was continued in the family, being known as the Woodruff mansion until the death of Lewis B. Woodruff, a grandson, in 1927, when it passed into possession of Yale University. In 1929 it was acquired by the Litchfield Historical Society and restored to its original condition, and now holds memorials of its history in furniture, engravings and books.
Gains Likely in House To Be Elected This Fall

Effective of anti-prohibition gains, despite efforts of the drys to minimize it. The Texas result has put Senator Joseph Sheppard, sponsor for the Eighteenth Amendment in the Senate, in a count of his own. It is the referendum. If victorious, Representative Clay S. Briggs, of Galveston, and Daniel E. Garrett, of Houston, both drys, have announced they would abide by the referendum. Representative Frank Thomas, of El Paso, previously dry, announced before the primaries that he would support resubmission.

In Alabama Senator Hugo L. Black, who is dry, came out for resubmission before he was renominated. Florida has felt the anti-prohibition movement strongly as indicated not only by the defeat of Representative Ruth Bryan Owen by Mark Wilcox, an outright re- 

In West Virginia all the Democratic legislatures are gunning for the Democratic platform. Inasmuch as that state is showing a strong tendency to go Democratic this fall, their stand has a considerable bearing on the outlook for anti-prohibition gains. The defeat of Willis C. Hawley, Republican, of Oregon, former chairman of Ways and Means and a dry, by James W. Mott, a resubmissionist, is accounted a gain by the wet.

The primary developments in Ohio have encouraged the hopes of the wets to control the next House. Wet leaders predict that not more than eight drys will be in the next House from Ohio, long the stronghold of the Anti-Saloon League. While it is generally expected that Senator Robert J. Bukley, Democrat, and wet, will be re-elected, his Republican opponent, Gilbert Bettsam, also is wet, and from the prohibition standpoint it makes little difference who wins.

In some respects recent developments in Indiana are more striking than in any other Northern state. The two major parties in that state are so evenly balanced that the election was declared vigorously for a change in prohibition. The movement for repeal of the Wright state enforcement act also has great strength. The Indiana delegation in the next House will apparently be wet with few exceptions, and Senator Watson, as already indicated, is now for resubmission.

Indiana “Revolution” Surprising
When it is considered that Indiana is the state that is supposed to be the bulwark of the rigid drys, the revolution in sentiment there is astonishing. And, while many political observers insist that a huge dry vote will be rolled up in Indiana, as in some other states, the outcome is in doubt. Willis C. Hawley, Republican, of Oregon, former chairman of Ways and Means and a dry, by James W. Mott, a resubmissionist, is accounted a gain by the wets.

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Minutes of the

Lectures of

Tapping Reeve Esquire

Taken in his Office

By

Rob. Fitchett

Student

O. 1794

Litchfield
Of such defence as at Law may be made against Contracts, whether Parol, reduced at length to writing & sealed, or reduced to writing engaging to pay a sum of money, or perform a duty which on the face of them import a value received—and 1st.

Of Parol Contracts.

1st. Breach may be plead.

2nd. Infancy.

3rd. Lunacy.

4th. Usury.

5th. An illegal consideration stating its illegality.

6th. Payment of performance.

7th. Discharge before breach.

8th. A release since the breach.

9th. Statute of Limitations.
Contracts

10th. That it was impossible stating the impossibility.

11th. That a security of a higher nature was given.

At 15. If those matters appear upon the face of the contract as stated in the declaration it is a go:

general rule that such declaration may be demurred to. To this, the Statute Limitation is an exception it must be plead.

12th. Accord & Satisfaction.

Accord & Satisfaction is not only a de

fence in case of an Assumpsit but in most other

suits in the personality -- in all where nothing but damages are recoverable -- not applicable to

real property (not plaeable to a demand.

due already by bond, bill &c. but if the accord

is executed before payment it is good.

No satisfactory reason can be assigned why

should not be a bar in case of a Bond as well

as in other contracts. The origin of this practice

was this -- Bonds were taken with penalties &

when these were forfeited a man would not

choose to pay them up but only the original
debt, therefore after the penalty was forfeited

Suffera

Pro. Sac. Courts would not accord Satisfaction to be a be

050. to the debt, thus before it was due it would be sufficient
Contracts

Assent & Satisfaction may not be had where there has been no consideration—As if a man should take away cattle & afterwards offer them to the owner & prove that he accepted them, this would not be a sufficient bar as no satisfaction was made for the injury. There must be some consideration & that of value in a pecuniary view—no matter as to the quantum—a peck of corn is sufficient. A less sum of money received for a greater is not a good plea. As if a man should receive 5£ in satisfaction of 10£. This would not do. For the Court knows that 5 is not 10. But if it had been a walnut in satisfaction of the 10£, this would be sufficient for how could a Court possibly tell but what...
Contracts

...not is worth 10L. What presumption would it be in them to decide whether or not a barley-corn is worth a million pounds! Asking pardon is not a sufficient consideration, but why not be more genuine satisfaction to a man who is injured to receive the pardon of the offender than to receive 1/2? As if one man should as well another & afterwards repent & offer pardon in satisfaction of the injury. Would it be the man before & afterwards be the man who had to receive pardon, made a part of the law yet is in the eye of law the former is no consideration, while the latter is alone.

Strange and sufficiently sufficient. It is pretty evident the Elix. 193. original meaning of the law was that the 9 Rep. 74. consideration should be of equal value with the debt & the compensation equal to the injury. It is sure that it would be impossible for the Court always to distinguish with accuracy between the debt & consideration. As if a man sold a horse for 20L should receive 19L for a horse worth 20L. The payent of the
Contracts

Sufficient consideration for the horse—it would be difficult & indeed impossible for the Court to determine that the horse was worth 20l or 10l as the ideas of men are so various respecting the value of a horse. In matters of such trifling difference we should expect them to decide upon the value of articles, but this can be no reason why they should descend into such ridiculous absurdity as to say that a peppercorn is a sufficient satisfaction when 1000l would be altogether insufficient. The consideration must also be of legal value, we in order to be a good plea—an equitable value is insufficient. A release of redemption in equity is considered as no satisfaction, tho' it were really worth a million. The accord must also be certain & executed by the parties. 125. Tender will not do tho' it were more than all sufficient. Cro. Eliz 193. Strange 573. 9 Rep. 80.

There is a decision on in Lord Raymonds 602 that an equity of redemption is a sufficient satisfaction.
Contracts

Lecture 2 - 13th

An award of arbitrators is a defence against contracts.

An award is a judgment rendered by persons chosen by parties, concerning some question in dispute. When an award has been rendered legally, it is a good plea against most all claims as well as those of personal nature, which last we have been particularly contemplating. There are some cases where which cannot be left to arbitration. Award therefore in these instances would be altogether nugatory - criminal & matrimonial affairs & other matters of a public nature are beyond the jurisdiction of arbitrators; but almost all disputes among individuals are subject to arbitration. The titles of lands are arbitrable, but no title can by any means be given by the award; the bonds given to abide by it are forfeited by non-compliance. In England bonds are absolutely necessary in arbitrations concerning real property; for as no title can be conveyed by the award, fresh
Contracts

award would be perfectly negative unless bonds are entered into to abide it, so that rather than forfeit them the party against whom the award was under would peaceably wave his title. The reason why no title can thus be given is because liberty of seisin is necessary & arbitrators cannot be supposed to do this. But might it not as to deliver up the deeds to the arbitrators, as in escrow & suffer them to give the title to whom they please? This would by no means do, for it would be a temporary suspension of all right to the land & break in upon the sacred maxim of the English law that no fee can commence in futuro. In this respect the English Law differs from ours. As we have no just ourgraceful maxim, the deeds may be delivered up to arbitrators, they will convey the land to whoever they think proper.

Debts certain due upon bonds are arbitrable & if the parties choose they may acquiesce in the award, but such award is in reality no defense against an action founded upon them. Yet if
Contracts

Bonds are given & the award not complied with the bonds are forfeited, but if the ground 66.43 of recovery was not the deed only, but by va. Coo.Sac. for of some subsequent wrong an award is a good defence. An award is a good defence against a bond, if the award was before the bond was due. Payment of the condition is always a good defence. But where there is no condition & the debt grows by itself without any subsequent wrong, as in a single Bill, an award is no plea. In Connecticut there is no difference between bond, bills & other writings. All other matters beside the exceptions already made, are arbitrable. All matters of controversy the contracts or suits are not only arbitrable but an award is a defense against any action but, nor is it necessary to its validity that there should be any writing respecting this matter. The powers of arbiters are equitable as well as legal, for the remedy they give may be specific or in damages. It is commonly the case that
Contracts

The award is in writing but whether in writing or not, it is as operative as a judgment of Court. As if there is a dispute concerning a horse and it is settled by arbitrators who owns him, the property of the horse is completely vested in him. Then there is a submission by parcel and a sum awarded, if the deff wishes to make use of it as a defence against an act. Both he must plead the award for performance, for if he has not performed, the award is no bar to the def's recovery on the original cause of action.

If a time is limited for performance, in the interim no action can be sustained upon the original cause of action. After the time limited if it is not performed, the def has his election to bring his action of debt to recover the sum or an action founded upon the submission contained in the submission if it be to do a collateral act as to deliver an horse & his remedy is an action on the case. If the award is specific as that such or horse is the property of A. A may maintain his case.
Contracts

Book II. Shows whether paid or writing are revocable.

If it be by bond if the submission is revocable

And no action lies if by bond the bond is

forfeited. We have a practice of chancery.

They are not men about the legal costs.

down bonds to equitable costs. Where the

submission is by bond, note or covenant

if the Debtor wishes to use the bond by way

of defense, he may whether he has perform-

ed or not; for his bond is forfeited and this

is a security of a higher nature than

the original cause of action. If the Debtor

wants his remedy it is upon the instru-

ment.

If upon a bond the penalty will be chas-

ced down to the sum of the note. If on no

the practice is to endorse down the note.

done by the arbitrators, or if the note is not

endorsed, you may plead that it was an

arbitration note & show the award which

will be the rule of damages on the note.

If on covenant that is to pay the sum

of the award, the Debtor must then set out

the award &c. Submission by rule of Court

is where arbitrators are agreed upon by the

States & appointed by the Court. There are
Contracts

in some respects different from other submissions. The authority of the Arbitrators may be to settle any controversy or all the controversies between the parties. These submissions both in Eng. & America depend wholly upon statutes. The Eng. mode of enforcing judgments is different from ours. If either party will not carry into execution the award his person may be confined as a contempt of the Court & is considered as a contempt of the Court. If they will issue an attachment against him, confine his person till he will comply. The Pf may bring his action upon the award. If, however, the person awarded against dies, the remedy by attachment fails. The remedy under our Stat. is much preferable to the English. An execution is issued for the sum awarded which precludes any necessity for an attachment or any other action. If the submission should be revoked here, it would be a contempt of the Court. We cannot tell however what a Court would do in this case for there never was an instance of such a revocation.
Contracts

Submit to arbitration, that they have their election either to abide by the award or a
word it, this election is not reciprocal be
tween infants of adults, the adult being bound
Ch. 77. at all events. The husband may submit any
matter which he is entitled to in
right of his wife, as bonds, leases &c.; but
if it relates to the inheritance, she must
be made a party. Lunatics &c. cannot
submit to arbitration on the ground that
they are incapable of contracting. Persons
may sometimes submit for strangers, but
provided such strangers do not comply
with the award, the bonds are forfeited
by him who undertakes to represent the
stranger. When a submission is made by
an attorney, the award is as binding as tho'
the employer himself had done it.

It has been a question among Merchants, whe
the one Partner may submit a controv
fy for his co-partner—it is now determined
that he cannot, unless this Power be one of
Contracts

The articles of agreement. But the fact
one who submits, is at any rate bound by
the award, & on refusal to perform it for
feits his bond. Then many are concerned
cases may happen that the act of one is
consider’d the act of all, & where several
have committed some wrong if one of them
submits to arbitration & by the award is
to pay a certain sum the person injured
is here supposed to have obtained a pro-
per compensation for his injury & it would
be unreasonable that he should obtain
separate compensations from every one
that was concerned in a joint act. If
A. bails a house to B. which is taken a
way by C. & the two latter submit the
matter affair A. is bound: by this award
as it respects the trespasser C., but has a
remedy against B. Then a Question aris’d
Can the Bailor bring an action against the
trespasser after the submission, but before the a

Contracts

There seems to be no authority in point, but it is apprehended that the submission is no bar, for although one action by the Bailee, excludes the Bailor from another action against the Treasurer, yet a submission has not that effect, till the award be made.

Who may Arbitrate?

An arbitrator must be a man of common sense — if he is a person destitute of understanding either party may take advantage of this circumstance to nullify the award. An infant, or some court can not be arbitrators. So the diocese of

There is a Question in Books whether a man may arbitrate his own case. As ridiculous as the idea is, this principle is supported by an authority in Tindal's, but contradicted by others.

How may an award be set aside?

If an award be by parol & an action is founded on the agreement contained in the submission, now an action may be Pleaded. & The citizen...
Contracts

of the award be given in evidence. If the action be brought upon the award for a sum certain, the Df must plead no award & give in evidence the correctness of it. If the action be brought on the bond, the def must again plead no award &c. The Df in such cases does not close by saying there was an award but replies over stating the award & proving a breach.

An award may be corrupt three ways, particularly by being founded upon matters not contained in the submission. 1st by failing short of what is contained in the submission. 2d by exceeding it. If corruption in the arbitrators can be proved, the award is destroyed or if it is clear that there was great partiality. An award may also be set aside by a mistake of facts—by Courts seldom meddling with awards of the last kind. The rule of Courts of Law is not to look back into the principles of the arbitration, it being generally presumed that arbitrators have done justice.
Contracts.
If however the mistake is founded upon
the false principles which they lay down
by which they acknowledge they were in
fluenced, a Court of Law or Equity will
interfere. Where there is a mistake in point
of fact Chaney will always interfere
suffer an enquiry into the merits of the case
that the mistake may be pointed out.
But if the mistake is upon a question of
Law neither a Court of Chaney or Law will
interfere. The admission of illegal testimony
may set aside an award formed on this tes-
timony. New discovered testimony is also
another ground for setting aside an award.
This by application to Chaney the Court
will only set aside the award so as to leave
the parties open to a second trial, either to
a submission to arbitrators, or to an action
at Law. If illegal testimony is admitted in
a submission by rule of Court the ground
in Chaney is a ground in Law. If a Court
of Law in such case will always interfere.
If the award be drawn up in the nature of
Contracts

A special verdict stating the whole proceedings & if it appears upon the face of it not to warrant a judgment, the Court will set it aside. This effected by a remonstrance. An award must be certain, else it is void. As if it was awarded that the Defts should give security to pay the Plf an annual sum of £24. from which void because no security was mentioned or specified. If it should be awarded that A should release all that B owed him, such award would be deficient on account of its uncertainty. But when the Court can make it certain they will as when it was awarded that the Defts should pay all the costs without mentioning legal or equitable. This was held to be certain on a blage in Blackstone, which says, when cost is mentioned without a qualification it means legal costs. An award must be final i.e. it must be so that no action can possibly be founded on the original claim. As when it was awarded that all manner of proceedings depending at Law should be no further prosecuted.
Contracts

This was not final, it staying only proceedings then depending, it ought to be all future also. An award must be possible to be performed. The same rule obtains in this case as in contracts. It must be lawful, for no award is permitted to contravene the law. An award must be reasonable if it is that one man shall serve another it is not good if it be that one shall procure a thing out of power, or that he shall cause a stranger to do a certain act. The award will be good in neither case, unless in the latter, he has the means to compel the stranger to do the act. Awards must be mutual in the case before mentioned, where the defendant was to give up all proceedings, this was not mutual, because nothing was awarded to be done on the part of the plaintiff. The controversy must all be settled at one time. It must be clear who made the award, official to the party to whom it was made. If the submission be of all controversies if it is awarded respecting one only. This according to the authorities is a good award for it shall be presumed that they acted according to the submission, unless the contrary can be proved.
Contracts

If the award is to release all demands up to the date of the award, it is within the submission, for no demands shall be incurred between the submission of the award; if indeed any are shown the award may be affected. If it be awarded that A owes 13 20L to instead of paying the cash, he shall deliver B a certain house. Some authorities suppose the arbitrator have gone out of their jurisdiction, but it is now settled that such an award is good, for it is only awarding a collateral thing for a sum of money which they have a right to do.

Some are of opinion that where several controversies are submitted, if the award is void in part, it is wholly void. But it is apprehended this rule is not universal. What no decree thing conclusive can be drawn from what Bacon says on this subject, the true rule as drawn from the authorities may be founded on this universal principle—that arbitrators may determine every controversy submitted to them either generally or in gross. If therefore they are awarded in gross, if one part is void the whole transaction is void but if severally,
Contracts

The conduct of one cannot affect the rest.

If the arbitrators award as to a particular fact out of the submission, which fact is so immaterial as not to make the validity of the award this circumstance cannot set aside the award. As where a controversy respecting land was submitted, and it was awarded that one party should convey & that his son should join in the conveyance, this award was not considered corrupt. But if a fact it is awarded as to a particular matter out of the submission if the award would not be valid without this matter, or even if it affects the validity of the award in the least, such award may be avoided.

13. Defense against contracts. Tender of Tender

A tender is an offer to fulfill an engagement which a person is obliged to perform. It is a defense against all claims where the debt or duty due can be so far ascertained that a person may know how much to tender. It is also a defense against bonds certain due when no such exceptions relative to bonds, bills &c, as there was an agreement for payment, were pay only...
Contracts

There is no such distinction, is that there is no
such thing as making bill the debt or duty
is due—whereas in accord of satisfaction must
be made before the debt is due the see page 2d.

There is a difference between our practice of
the English as it respects a tender than there
does not appear to be any difference in prin-
ciple. Here a tender may be made after a
suit is instituted if it can be ascertained that
the costs are—-in such case all costs must be	
tendered as well as the original debt. In Eng-
land if a suit is instituted the person who means
to tender must bring in this money by rule of
Court—Tender is no plea where the debt

suits only in damages—-for as Persons are
of various opinions respecting such matters
damages cannot be sufficiently ascertained
to know how much to tender. There are
Particular Statutes in Eng. authorizing
Persons in particular cases to tender when
the sum is doubtful if cannot be ascertained
We have no such Statute in Com. respecting
this subject. Our law upon tender depends
altogether upon Com. Law. In case of a tender
Contracts

of money to redeem any pledge, the pledge vests in the tenderor, all right to it having gone from the grantee, on the moment of the tender. The same as to a mortgage, but in both instances the money is vested in the tenderor. A case may happen where the mortgage will vest in the tenderor on his making tender, without ever paying the money to the mortgagee. As if a man should make a voluntary mortgage to be given up upon his paying the mortgagee 100£, if he should tender the 100£ the mortgagee would not accept, the land vests in the mortgagor without ever being liable to pay the 100£—for no debt or duty was due, it having been a gratuitous grant.

In case of a bond with a condition, a tender of the sum contained in the condition is a complete defense against the bond. This depends upon the nature of a bond. A bond must always be void upon the penalty of such penalty cannot be forfeited till the condition is proved to be performed. A bond given by A. to B. with a penalty of 15£ to be incurred on the failure of A.'s paying to B. 5£ at such a day, only signifies that A. owes
Contracts

13. 5£ the sum contained in the condition if therefore this 5£ is tendered the Bond as penalty is evidently discharged as much as if the 5£ had been accepted. As the sum is thus tendered the tenderor becomes bailee to the creditor & no action ought to be sustained upon the Bond. The action should be an action of assumps. This a new doctrine contrary to the generally received opinion, but appears to be founded on reason. The principle may be gathered from the

Effect of tender of money upon ordinary debts.

If the debtor does all his duty, tenders the money fairly, he suffers no more inconvenience it operates for him just as favorably as tho' he had paid the debt. He is only to come into Court & plead "That he has tendered, has ever been ready to pay if is now ready." No interest is to paid after tender, till demanded. The tenderor may the benefit of his tendering if he is not always ready to pay on demand. If the creditor after tender makes a reasonable demand, & the debtor refuses to pay the money, he is left in the same situation as if he had never tendered, only interest would be struck
Contracts

out from the time of the tender to the time of the demand. This demand must always be reasonable; it must generally be made when the debtor, or (as we should call him) the bailee, is at home, & if away from home if it can be proved that he has the money, this would be sufficient.

Operation of Tender upon some collateral matter, not money.

Here the debtor has nothing to do but tender, he is not obliged to keep the things tendered. As cattle & other burdensome articles, which are either expensive or keep inconvenient to keep. The debtor need only come into Court & plead simply that he has tendered. The tenderor has no further claim upon the article tendered, but it immediately vests in the tenderor, & if tenderor takes care of the property & will not deliver it up on demand from the tenderor, he is liable to an action of trover. Also if the article was expensive to keep the tenderor has a lien upon it, until this expense is paid. As if cattle are tendered & afterwards fed by tenderor this must be paid before the tenderor can take them.
Contracts

Where cattle or money are tendered, the true idea is, that they both vest in the tenderee. This is the only principle by which authorities can be reconciled. The only which is reconcilable with reason. As to collateral articles, it is generally & universally allowed, that they vest in the tenderee. But that money, thus vests in the tenderee is far from being generally agreed. The reason why is said not to vest in the tenderee is, that the action is after tender boot upon the note, which could not be the case if the tenderor was only bailee. This objection is easily obviated. The action is boot upon the note, in order that the note may be boot up to view & be lodged in the files of the Court, so that after the debt is paid, it might rise up & be again recovered, for it is easy to see that if the action was boot against the tenderor as bailee, the note might be kept secret and another demand made for the same debt. Suppose a debtor has tendered his debt & afterwards his house is burnt. Who shall be the coffer? on all hands agreed that the coffer, but what can be more nonsensical & absurd than to say the tenderee shall be coffer, if the money
not vest in him. The tenderor in whose house it was burnt does not own it; for if he did, he would be the looser, & if the tenderor does not own it, there is no loss in the case. Upon this principle the money, from the time of the tender to the time of the demand, would undergo a temporary suspension of its existence. If lost within this time, nobody would be the looser; a thief ought not to be apprehended for stealing it. The fact is, that in both instances of money & collateral articles, they when tendered vest in the tenderor. To suppose the contrary in case of money would do great injustice if the money was lost by accident; the tenderor being only Bailee to the tenderor, liable in deed to account for the money in a suit upon the note; but this for the benefit of the tenderor that the note may not rise up thereafter. The law is made in favor of the tenderor & is most the most unfavorable to the tenderor as being most blameable in not receiving the money when tendered. The very fact that the tenderor has a right to demand the money clearly shows that the tenderor is only Bailee. If the note can be proved to be lost, or out
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of the way, in any such case, an action of

of a pump, lies, which clearly proves the prin-

ceptible before laid down, that the tenderor is

merely a bailee to the tenderee.

Where a Creditor is the cause of the tend-

not being made, if there is any loss happens

in consequence of his not being ready to receive

it, then to be the loss, & not the debtor—As

if the creditor is out of the Kingdom, & has no

fixed home & has left no agent with whom the

money might be left, in such case the debtor

stands only to declare before evidence, that he

is ready to pay the debt if wishes to do it. This

is just the same in Law, as tho' he had tender

ed it—If a man cannot tender to take up a mo-

gage because the mortgagee was not to be found

he may re-enter, as if he had made payment;

if there is an agent it is necessary to tender to

him. This principle of the creditors be-

ing inascivable applies to all kinds of debt.

The creditor is to bear any loss of by depre-
ciation &c. Of any other accidental loss in

consequence of his inascivility.

Here naturally arises the subject of de-

falcating the sums due to refugees before the

civil war. In some States, Stahiles wou
Contracts
made to defalcate such debts. It is said by
some that those statutes are in violation of
the Treaty of Peace, if so they were of consequence
repealed, for no Act can be made contrary to
treaties. It is apprehended that these statutes
may be reconciled with & are perfectly confis-
tant with the Treaty, on the principles before laid
down—The Treaty says they the tonis should
be secured the whole of their just debts. They
became inaccessible to their debtors, so that when
the money was good, they were not here to receive
it—Suppose the loss had happened any other
way besides by depreciation, who would have
borne it? The creditor certainly. It would be
just as reasonable for the debtor to bear the
loss in this instance, as it would for the faith-
ful tenderer to bear the loss of that which
he had tendered but which unfortunately was
burnt up with his house. The loss had hap-
pened before the treaty of Peace & was not
to be repaired by the treaty. He may therefore
fairly conclude that just debts might be defal-
cated, if the tonis notwithstanding be secured &
Lecture 5.

The Authorities on first sight would seem to contradict the Principles before mentioned, for they say that in cumbersome articles, tender discharges the duty completely—but that the tender does not discharge all duty. This is very true, if upon examination we be found to agree perfectly with the ideas before suggested. In case of money, the duty that remains after the tender is simply the duty of a bailee of the tenderee of cumbersome articles may also impose upon himself the same duty, if he pleases to take care of them after tender which is frequently the case.

Of Tender in case of Book debt

Some have supposed that a tender of a book debt would not be good on account of its being difficult to ascertain what is due. This however is false for it almost invariably is capable of being reduced to a certainty. The charge justable idea is that a tender of a book debt is good, tho' it is not fully settled—

By whom a Tender may be made—

A tender may be made by any person employed as suret or agent to the Debtor, or his proper re
Contracts.

Representative as executor or administrator, but a tender made by a stranger who has no concern in the matter is good for nothing. Some say the tender must be personal, made by no body but the debtor himself—some however contend that this is the general rule, but they confine it to particular cases, and make this distinction. As if a man engages to pay another a certain sum, it must be done personally. But if at a fixed day it may be done by others. There is no reason in this distinction. If it seems to be allowed to another principle in the English Law, that a person by simply naming himself includes his proper representatives.

Manner of tendering.

It will not do simply to ask a man whether he will accept the debt, or to tell him you are ready to discharge it. But the money must be produced, offered for acceptance & counted for evidence so that it may be known whether there was money sufficient to discharge the debt.

Kind of money that may be tendered.

In England no money is tenderable but English, or that which is made current by proclamation.
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We have no such practice here of proclaiming
what shall be current coin—Any coin that is
common in circulation & will pass among our
Merchants is tenderable. Tender will not do
of coffers for a sum of any considerable val-
ue, no more than a few for the sake of mak-
ing change where it could not be made without
them. It is the common received but erroneous idea
that coffers are tenderable—Bank's notes
are tenderable in such places where they are
in general circulation; but not the notes of
any distant Bank that do not pass current-
ly in the place where tender is made. Counter-
feit money is not a good tender—Our statute
has pointed out a remedy to recover good money
when counterfeit has been received ignorantly.
Formerly Com.Law afforded a remedy to recov-
ere for counterfeit money—but our County
Courts have lately refused to do this where it
could not be discovered who was the rogue; or
the principle "That one innocent person ought
not to be relieved at the expense of another."

With this custom would have a tendency to en-
creas the superfluity of Government by making men
afraid to take money.
Contracts

Where Money may be tendered.

If a place is fixed upon, where the money is to be paid, then it must be tendered. The general rule is that if no place is agreed upon, it must be tendered to the creditor's person, or in his absence to his agent. If neither creditor nor agent can be found, the being ready to pay is as effectual as a tender. In case of a Mortgage a tender at the house of the Mortgagor is sufficient. A tender made where the money is loaned is a good tender sometimes. Payment proposed to be made at a particular place & no object made by the creditor, tender at this place is good. In long a tender by a tenant at the house on the land from whence the real issues is sufficient. Tender of Oubrous Articles in some respects different from the tender of Money.

If a place is fixed upon, no doubt. If no place is agreed upon, the general rule is to tender where the creditor lived when contract was made, or some other place as convenient for the debtor; but if the debtor is requested to make delivery at a certain place imposing no greater duty upon him than the terms of the original contract, he must tender there.
Contracts

There are instances where the place of payment is always fixed without mentioning any particular place or in case of due bills rising from a merchant store.

The time of tendering.

A man promises to pay on or before such a day. Can tender be good before that day? It may, or it may not be good. If the person was at home at any day of this intervening time, a tender would be good. But a tender at his house would not be good, if not personal. When the day of payment arrives, a tender of the debt on that day is good. The tender must be made at the answer most convenient part of the day. This critical part of the day is adjudged to be at such time that the money may be counted by day light. If the creditor was at home, any time in the day would do. If the place is fixed on time, the debtor may give notice at what day he will pay the debt. If a tender on that day is sufficient. In case of negotiable notes when the money to be tendered to? If the debtor knows nothing of the assignment it must be to the original creditor. But the last assignment may appoint any place not more inconvenient for the
Contracts

Promises to answer for another. Or 3d to charge any person upon a contract made in consideration of marriage. Or 4th Upon any promise relating to the sale of lands, tenements, hereditaments, or any interest concerning them. Or 5th Upon any contract that was not to be performed within a year from the time of making it, unless the agreement upon which such action shall be brought or some memorandum or note concerning it shall be made and signed by the party to be charged, or some person authorized by him. Of these in their order 1st Executors & Administrators in their respective capacities are not bound by their verbal promises, where there are not agents sufficient to fulfill those promises. If however the agents of the testator are sufficient to satisfy all the debts their verbal promises are binding. 2nd A person shall be bound by a verbal promise to discharge the debt of another person. This branch has been the occasion of some dispute, which has given rise to a distinction, where a person is when he is not bound by a promise for another. If the promise be original, it is taken out of the statute. If it bind
Contracts

If the promise to Collateral it is within the Stat. consequently void. Original means where the promisor brings the debt completely upon himself & frees the first promisor. As if A has a note against B. C a third person steps in & tells A to lose the note, & he will pay the debt. In this case the 2nd promisor takes the debt completely upon himself. Collateral, means where the promisor of the 2nd person only comes in aid of the first promise. As if C tells B if A won't pay the debt he (B) will.

See Smaller case of Jeffers & Williams. If C should pay to B release the property taken in security to A. and I will pay the debt.” Here C would be bound for he was the occasion of B giving up his lien upon A's property. 1 Millen 385. 3 Burrough 1878. Mr. Leper.

A Promis in consideration of marriage is good for nothing. As if a father should promise a man to give his daughter the sum of 1000£ in consideration of his marrying her. This promise is good for nothing, unless reduced to writing. The any hint of such an intention in writing would make the promise binding.
Contracts

As if a Father should write a letter to his daughter informing her he would give her the 1000£ if she would marry such a person & this person could make it appear that he saw the letter before he married the daughter this would be sufficient to bind the Father

1. Any fraud promise relating to lands to which are within the Stat. void

A man who enters upon land under a lease cannot be dealt with as a trespasser. No while he stays there he is answerable for quantum of rent. Many cases which were formerly within the statute of frauds specinios have been taken out by Courts of Chancery first ventured to strike the blow & Courts of Law have followed their example. As when a contract is executed on one part Chancery will order a specific execution of it. But Law damages may be obtained for non-performance. Here Courts of Law have sustained actions of this kind.
Contracts

5. Oral Contracts not to be performed within a year are void. — Contracts at which from their nature could not be performed within a year, if no time is specified, they are not within the statute. — Lands sold at public auction are not within the statute tho' not reduced to writing. — Memorandum signed by the party charged with it is immaterial whereabout upon the paper the name is written. — But if it appears pretty evidently that the signer had no intention to be held, as a general rule, the signature shall not. — In some cases a man is bound although he does not sign the writing, if signed by the adverse party at the procuration of the other party. — As if a man engages to do a certain act for me & I in return am to do a certain act for him, we reduce the promise to writing & he signs the memorandum & I am to keep it. — The promise on my part is equally binding with his.

Remark that an action on such agreement to be performed within a year, or which might be performed within a year according to the natural course of things, will be sustained three years after such agreement made, but not after this by our statute.
Of the Estate of a deceased person

Chapter 1st

Principles of the English Law on the
Real and personal estates of deceased persons.

The Law of Erie, respecting the management of the Real property of a deceased person is different from the law respecting personal property. The real estate, immediately in the heir, the personal in the Administrator. Real estate in the hands of the heir, is not liable to creditors unless for particular kind of debts when the deceased has bound his heir by a special writing under seal. For any but specially debts the real property is not to be enforced by any remedy either in Law or Chancery. If the heir has once redeemed the land by discharging the specially debts, that land is afterwards liable to no creditor. At common law the heir might sell the land immediately after the death of the intestate and be liable to pay specially debts. In this situation a wide door was open for injustice & imposition, but a Stat intervened in the reign of King & Mary, making the heir liable to the specially creditors in this case his personal estate being enough to pay them.

On the real estate the personal estate is not the only fund for the discharge of specially debts. The personal estate is the hands of the...
Estate of Deed Persons

Administrator may be resorted to by the special

ty creditors if they please. Specially creditors may
take personal property in preference to simple
contract creditors. If he will support a man died
with 1000L 500L real & 500L personal prop-
erty, owing 500L by bond & 250 by simple con-
tract. The specially creditor may resort to the real
or personal funds; if to the personal, he may ex-
haust this fund & thus exclude the simple con-
tract creditor from a recovery. If the creditor by
bond had taken only 250L from the personal estate
& then resorted to the real fund for the residue, the
creditor by simple contract would have recovered
his whole debt. But by taking exhausting the
personal fund, he leaves the simple contract
creditor remediless. Observing the manifest in-
justice of these systems Courts of Chancery
have interfered, & tho' they have not entirely bro-
ken up the system, they have acknowledged its
atrocidity & afforded a partial relief. If speci-
ally creditors have exhausted the personal
property, chancery will let in & have not broad-
ed the real, chancery will let in the simple
contract creditors upon the real property to
paid out of the personal,

the amount of the specially debts but no

further. Thus in the case supposed above if
Estate of Deed Persons

The personal fund was exhausted by specially creditors, the simple contract creditors would by application to chancery stand in the place of creditors by bond & exhaust the whole real fund viz. 500£. If there had been no specially debts, no personal estate. The simple contract creditors could not have taken hold of the realty, but would have been without remedy. When real property is laid open to simple contract creditors there is no priority of rank among them by applying first or otherwise. If specially debts do not amount to enough to satisfy the chancery will average it among them.

Of the Personal estate.

Personal estate of the deed is considered assets in the hands of the administrator, to pay all debts to the extent of those assets. And further debts are to be paid according to a certain rank, the administrator must observe this, or he cannot protect himself against claims of a prior rank. Among creditors of equal rank there is no saucage. The administrator may prefer whom he pleases unless by legal diligence one creditor has gained a priority by instituting his suit & obtaining judgment first. He has no priority who institutes his suit first but he who
obtains judgement first. If the administration becomes bankrupt he squanders away the assets, as he is obliged to give bond, the creditor may resort to the Bondman to the extent of the bond. If an executor becomes bankrupt there is no bond to resort to, unless the executor has been compelled to procure bonds. But if either administrator or executor has proceeded to pay legatees or distribute, the estate among the Representatives, such estate may be in Equity seized by creditors, or they may come upon the Administrator in his turn may compel the legatees to refund to the extent of the debt.

Assets in Law & Assets in Equity.

There are assets in equity, which are not so in Law. Equities of redemption were not the same as assets in Law, tho' they are in Equity. By applying to Chancery, Creditors may obtain a decree for the sale of equitable assets if their devises will be averaged among the Creditors with no regard to priority of rank. There are some cases where there is no other way to get at property, but by application to Chancery, if this property when obtained consists of legal assets Chancery will distribute it according
Estate of Deceased Persons

To priority of rank as a Court of Law would.

Although the real estate is not generally the
fund for the payment of debts, yet the testator
may charge his lands with the payment
of his debts in a variety of ways. He may
empower the executor to sell the lands. This
need is valid if it is reasonable and if he re
fuses to sell the may be compelled by lan
ency. The testator may give the lands to the
executor to sell & pay debts which rests a fee
in the executor & renders him liable to credi
tors to the value of the land unless he sells it.

The testator may also devise to a certain per
son with the incumbrance of paying these debts.

If the devisee accepts of this devise on this
condition he is liable to the extent of the
debts by the declarer to accept the land de
voted to the heir & he is liable to creditors
to the extent of the value of the land.

Lands ordered by testator to be sold for pur
poses are not assets in the hands of the execu
tor in the hands of the devisee they are assets.
The testator cannot release his estate from its a
bility to pay specialty debts. A Reversion
is reckoned among the assets. There is one fre
ce of reversion however not assets as where
an estate tail is given on failure of the grantee to return to the heir. This would not be considered assets on account of its uncertainty, its being liable to be cut off by sale, yet when the time in tail should fail soon the estate should revert to the heir, it would be assets in his hands, choses in action are assets, but the Administrator is not liable to pay till they are recoverable, judgment must be granted accordingly.

All the profits of the personal estate are in the hands of the executor, as assets, as a lease for years all the profits above the rent are assets at the end of one year after the testator's death, after the first year executors must pay interest for unpaid legacies. All the estate of the testator's money is assets. Damages also recovered for an injury in the intestate's life or afterwards. Goods lost by accident without any neglect on the part of the executor are not assets. Goods held by the testator as trustee for another are not assets in the hands of the executor. An estate of a trust estate is not assets in the hands of the executor, but assets. An assigned bond is not assets.

Duty of Administrators & Executors
After lumping the Deeds & moving the will to the must first pay off all the debts with the
If any are left after discharging debts, the administrator must distribute it among the representatives of the deced according to Stat. of Charles 2nd. His estate vests in the representatives immediately on the death of the deced before distribution, so that if a such representative should die before distribution the property would go to his representative. The duty of the executor after discharging debts is to observe if any legacies are due. He must see whether the legacies are specific or pecuniary. Specific is where a particular article is marked out as a horse or an op. Pecuniary is a sum of money. If there still should be a residuum he must observe whether the is a residuary legacy & pay the residuum to him. But in case of no residuary legacy, where shall the estate go? Formerly the executor was accountable to nobody for the residuum, it devolving to him by virtue of his executorship; for the presumption was that the testator had made provision for all he wished to. But now if the executor has a legacy, he has nothing to do with the residuum, he is the trustee of the next of kin for the residuary sum. If now even the legacy does not appear to have been given for his trouble or a way so it will not deprive
If it was never intended that the action was released in the last case, the executor's debt is released to him when there is a residuum as being due to him according to the Old Law. If a legacy be given him of such a residuum, he would be obliged to distribute the value of the debt among the rest of him. An administrator may be a witness in any action concerning the estate of the deceased on the ground that he is trustee to the rest of him. But an executor who acknowledges to be a trustee cannot be a witness, because it is said he is interested. In cor. he is considered as a legally.

Let us consider equitable assets was omitted in the last lecture: if a man devise land to an indifferent person in trust to be sold for the payment of his debts, such land is considered equitable and not legal assets. Had they been thus devised to an executor, they would have been legal assets. In case the devisee will not sell the land, the residuary will come to the executor. There is no priority in rank as to creditors, the assets would be averaged. But if the devisee sells the land voluntarily despite of the payment of debts, there is no law compelling him to observe any priority. The asset may be sold or trust assets as soon as possible.
Duty of an Executor as it respects Legacies.

There are 2 kinds of Legacies; 1st. Specific & General. If there is not personal property sufficient to pay off General Legacies they are abated proportionably. But Specific Legacies are never abated, they being of such a nature that it would be improper to abate them. Sometimes impossible. Legacies are frequently given by implication - the intention of the Testator is to rule when it can be discerned without it is not necessary to assume a rigid set of words - "I desire" or "I request you" are sufficient to establish a legacy; or "I bequeath besides my clock a hat." The clock is a legacy not mentioned anywhere else in the will. When specialty creditors have exhausted the personal estate, Legatees may fall upon the realty as we have seen simple contract creditors might - if lands are devised for the payment of all debts & creditors have exhausted the personal estate, Legatees may stand in the place of creditors, for whose land is devised for the payment of debts, it is presumed the Testator meant the Legacies should be paid out of the personally.
There is a further division of Legacies into Lapsed and Vested. A Legacy is said to be Lapsed when the Legatee dies before the Testator, i.e., the

263. Legacy is not transmissible to the Representative of the Legatee, but reverts back into the personal fund, if there is a residuary legacy; it vests in him otherwise it is undistributed if the Testator dies intestate as to such Legacy. Legacies however are not always lapsed when the Legatee dies before the Testator. A Legacy

264. to one "to be paid when he attains the age of 21 years" is not lapsed if the Legatee dies before that time. An unvested legacy will go to the Representative of the Legatee if he dies. If however the Legacy had been given to one whom he attains, or if he attains 21 (without the words "to be paid") if the Legatee dies before that time it is a lapsed legacy. But if a Legacy is given to one whom he attains 21 is directed to be on interest, it is a vested Legacy. This new distinction was taken from the civil Law, introduced into Eng. by the Ecclesiastical Courts. It is adopted in Chancery only on account of its connection with the Ecclesiastical Court. Many circumstances unite to show that Chancery is not pleased with this distinction.
Estate of Dec'd Persons

If a Legacy is charged upon land, the words are "to be paid at the age of 21" yet if the Legatee dies before that time, it is a lapsed legacy. In other instances they have varied from this distinction. When it can be collected from the words of the will that independent of those terms "to be paid" to that the testator meant the Legacy should go to the Legatee, it is vested, as if the Legacy be given on interest at 21%. Thus where it is given over on the event of the death of the Legatee it is a vested Legacy. It has been a great question whether a repetition of the same Legacy should be construed an accumulation or a mere repetition? The rule now is established that where the Testator devises a Legacy of 100£, in the same will, to the same person & in toto, verbo verbo devises another 100£ it shall be considered a repetition merely if the Legatee shall have only 100£. The presumption being that it was a mistake of the Testator or Seniorem. But if 100£ is given to a man in the will & 100£ to another man in a different instrument as a Co-tenant. If the testator died, it is not considered a mere repetition, but 200£ will pass to the Legatee. If it is evident by the words of the testator that he assigned the Legatee should have both as if after the 1st he should say "for the further provision to both good."
Estate of Dec'd Persons

If different sums are bequeathed at once they are not considered as one legacy but both good. If 1000 L. is given in timber, another in cattle, another in land &c. they are all good.

It was formerly held that when a man gave a legacy to a creditor the legacy should go in satisfaction of the debt. Judges have been refined so far upon this principle that it is at length refined to nothing. One of the best principles is established in its room. We will give a slight sketch of the progress of this reformation. A century ago it was an established maxim in Chancery that if the testator was indebted to a man 100 L. for interest in his will devised him a legacy of 100 L. This was to be in satisfaction of the debt, going up on the presumption that the testator must mean it as a payment of the debt. Many cases were decided under this maxim as it was carried to an unwarrantable length in the case of Chancery where the debt was contracted subsequent to the making of the will. The legacy was held to discharge it. Another circumstance that gave rise to this construction was that when a man covenanted to settle a portion on his intended wife & afterwards devised her a portion to the same amount, both portions could not help it being fairly presumed that the testator had performed his covenant.
The Chancellor not relishing this rule laid hold of every circumstance to evade it. The first case in which they attempted to break it up was when a legacy was given to a creditor of a greater sum than the debt due to be paid in a different species of property from the debt. To evade the rule in this case the Chancellor presumed the legacy could not be intended as a satisfaction of the debt, it being of a higher value & not ejusdem generis. Several cases were determined under this principle—A case soon arose where the legacy was of the same amount with the debt & ejusdem generis, the debt however was payable 6 months before the Legacy. This circumstance was laid hold of & it was presumed by the Chancellor that the Testator designed the debt should be first discharged & the Legacy entitled to the Legacy.

A 3rd Case came up where the Legacy was to the same amount, ejusdem generis, & payable at the same time. It is curious to observe how Chancellors have raised their inventions to evade an absurd maxim which might have been broken up at once without all those after-the-factrible instances. The Chancellor in this case had recourse to the common expressions in the will, “after all my just debts are paid” he concluded.
Estate of dead persons

that this debt should be paid amongst others & after this the legacy ought to be paid.

A case afterwards came up in which the legacy was payable at the same time with the debt & to the same amount, & there was no clause "after all my just debts are paid." But the legacy happened to be given to a bastard & an illegitimate heir! The Chancellor observed that "as there was no precedent relative to bastards," he should be favored. Thus was the rule evaded.

Another case came up stripped of every circumstance that had hitherto been laid hold of. In this instance, the Chancellor broke into the ridiculous restraint which had so long fettered former Chancellors & boldly declared that unless something positive could be found in the intention of the Testator that the legacy should go in satisfaction of the debt, the Legatee should be entitled to both sums. And in order completely to destroy this rule, the Chancellor in another case declared that unless direct expressions were made use of by the Testator, that the legacy should go in satisfaction of the debt, it shall be presumed that no one can ever make further provision for the Legatee. Our Courts have determined in favor of the Legatee. One curious case
Estate of Dec'd Persons

came before our Court and all the
were attended with all the circumstances
which had been laid before by the English
Chancellors. A man gave a legacy to his bas
and daughter & before that he had given he
a deed in the same form to she took both.

Authorities for the above history

1. 10 1/2 (11) 2. 11 1/2 (110)
2. 1 1/2 (100)
2. 1/2 (10)
3. 1/2 (10)
3. 1/2 (10)
3. 1/2 (10)
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3. 1/2 (10)

The following are not to have any effect if a legatee in his
interest, in the terms of the contract or not
A legacy given payable at a future time is not to be consid-
ern interest till it is due & not then unless
A legacy given payable at a future time, it is to carry interest
from the death of the Testator until other provi-
sion is made in the will for the minor's main-
tenance. The interest is to be considered a provision
for the child till he comes of age, unless other pro-
vision in made. This however is not the case
with a legacy from a Grandparent. 2 Vent 1316
2. 41. 324. 3. 41. 101.

Where no time is limited

In case of a legacy & no time specified this dis-
tinction obtains between infants & adults.
Estate of Deceased Persons

VII. A legacy to an infant is carry interest in year after the Testator's death, whether it is then demanded or not; but a legacy to an adult is carry interest after a year provides the demand it at the years end, otherwise not till demanded; as the case may be, not till a bill is filed by him in Chancery.

To these principles there are exceptions. When a legacy is of such a nature as to carry interest of itself, it must carry interest from the death of the Testator, let it be given to whom it may, demanded or not demanded. As bonds, notes, etc. that an upon interest, or a legacy charged upon lands upon which rents and profits are arising in all such cases the legatee is to receive interest. In O'Brien v. 126 is a case where an infant daughter had a legacy given her by her parents, payable on her marriage. No other provision was made for her. She married & her husband being ignorant of the Law took interest only from the time of marriage. Executed a release of all demands for the legacy afterwards filed a bill in Equity & obtained, from the death of the Testator or the principle laid down above. This is a striking instance among many others, where ignorance of the law will suffer may be an excuse in law for avoiding a contract otherwise.
Estate of Decedent Persons

The sacred maxim of the English law, "That ignorance of the laws shall excuse no man." What becomes of the intestate when the legatee is not entitled to by reason of his failure of demanding the legacy? If there is a residuary legatee he takes it. If no residuary the executor will take it as residuary legatee in case no legacy is left him. But if a legacy is left him, it sinks into the fund of undistributed property, as to which the decedent's estate.

Of Specific and Pecuniary legacies.

The first is where a particular article is specified as such a horse, such a bank bill, and may be a quantity of money in such a draft there must always be a particular thing specified, with a particular description. A Pecuniary legacy is where a sum of money is bequeathed to the executor right over the legacy it makes no difference whether the legacy is specific or pecuniary. The Specific legacy does not rest in the legatee unless with the consent of the Executor, but when the Executor is sufficient to pay other debts, the executor is accountable to the specific legatee for the value of the legacy. If the executor is sued for a debt of the testator & a specific legacy is taken & sold for the debt, the executor is accountable to such legatee for the value of the legacy in preference to pecuniary legatees. When all the assets
Estate of Decease Persons

an exhausted for debts & the Executor being
called upon by a Legatee, plaintiff to admit
mismanagement, if the Legatee wishes to prosecute
the Executor for misconduct or wasting the
Estate, he will reply over to the Executor's
plea a nonsuit & must prove this he
may then recover his legacy if the waste
was as much as the legacy; if not, as much as he
to the extent of the waste. Suppose the Exec-
utor has made no waste, but the Specialty creditor
have taken personal to exhaust the person
fund, the Legatee then stand in the place of
creditors & if the heir has lands may come
upon them to the extent of the Specialty debts.

After debts are paid Specific legacy holds
the preference to the pecuniary & are to be
paid at all events after the Specific are
distributed, & there is not sufficient property
left to discharge the pecuniary, what there
is remaining is to be averaged among the
pecuniary Legatees. But among Specifics Lega-
tees there is no abatement. The same authority
may seem to contradict this idea, yet it is a
general principle that is to be collected from
the Books. (P. 82) If a Specific legacy is
lost, it is the loss of the Legatee & has no demand
upon any other property for it. No there should
be more than sufficient to discharge all.
The debts of the Testator. The pecuniary legatee runs no such risk, for if a house is built up & a quantity of money with it, if there is other assets sufficient he meets with no loss. This hazard of the specific legatee is one reason why in other respects he holds preference to the pecuniary. A devise of land is a specific legatee. Similarly, and as the case may be, simple contract creditors may on failure of other property come upon such land legacy. But another legatee cannot. Cases may happen when legates may come upon the heir for their legacies, but they cannot upon a specific legatee of land. If however all the landed property is thus devised, the devisee is liable, as well as the heir in other cases. 549. There is one case the pecuniary circumstances of which suffer the pecuniary legatee to have preference to specific legatee. A man gives all his property in legacies specific & then gives to another person 500£ for inst. A pecuniary legacy of 500£ is charged upon the specific legacies & the specific legatee must bear the burden equally. The principle of giving the preference to specific legates may be great & amount to injustice & defeat the intention of the Testator.
Estate of Decedents

As if a man supposing his estate larger than in fact it was should give his children large legacies and then give specific legacies to other persons. Unpaid debts come in & take away from the executor all the property except the specific legacies. In this case the children of the Testator might be left destitute contrary to the intention the residuum of the estate go to indifferent persons. Whereby the Executors confest a specific legacy is vested in the Legatee & unpaid debts come in & there is no estate left to discharge them. What in such case shall be done? If the executor when he gave up the legacy took a security of the Legatee to refund in case of unknown debts (as he ought) then the legacy is to discharge the debt, otherwise the Executor is to pay it out of his own pocket but if the Executor had in all other respects faithfully executed his trust this would be a hard case, it would seem reasonable that the Legatee should yet refund notwithstanding the executors neglected in not taking a security. If the executor pays in full a promissory legacy thinking there was property sufficient to pay all other debts & legacies & there happens not to be sufficient the Creditor or as the case may be the Legatee must first resort to the ordinary channel the good
Estate of Deceased Persons

If the estate is insolvent, they may pursue the assets wherever they may be. If the estate has been paid, the creditor may compel him to refund actually the whole legacy, if his debt amounts to it, & the other legatee may compel him to average. 2 Vesey 193. If the executor is able (however unjust it may appear) he must in such case bear the loss; but if he is insolvent, the principle is that the creditor may resort to assets wherever he finds them first in the hands of an equal creditor of an equal or prior rank. There is a case in 2 Vesey 203 where Lee & a half executor having taken all possible precaution before he paid the legacy, was not excused from paying a debt which came in afterwards.

It is a principle in English law that when an executor has abused the trust reposed in him by the testator by making unequal or unjust distributions, Chancery will interfere & compel an equal distribution. As where 100l. was bequeathed to 2 persons & as much if the executor thought fit to a 3rd person. The estate held out & the executor thought fit to give this person nothing, but was compelled in Equity to give the 3rd person 100l. as much as both the others had. When a Legacy is given to a man's children there has been great dispute...
Estate of Decedents

whether it means "I shall have" or "all those which he had
man had I shall have," or to those which he had
when the will is made," or "those which shall
be alive at the Testator's death." It is now estab-
lished that such expressions shall mean "to
those children which are born at the in-
stance at the time the will was made, and to
whom the Testator could be supposed to be
acquainted."

If the bequest is to a man's children, it has none at the time the will was
made, it means to all the children he shall
ever have; if to a man's children & one of them
has no children, it means to all the children
of both equally.

A legacy to a child is some-
times construed to mean a child's grandchild. As
if a legacy be given to A's children & A is
a widower having no children, it may go to
his grandchildren. A legacy given to B,
for life with a remainder to the heir of J.S.
who, when the will was made was C. & C. died
before the Testator, then B became heir to J.S. It
has been an important question whether the
representative of C should take the estate.
or B. Whether it may be as to D, it ought
to be considered a lapsed legacy with respect to D.
Where a legacy is given by a Testator to his
relations, that has been some doubt what
relations shall have the benefit of such legacy but it is now determined that those only shall take who are authorized under the Statute of Distributions. 2 Vesey 527.

In a general devise of person's profit that which is acquired after the making of the will may pass to the Testator. This however is not the case with real property. When all the personal property at a particular place is bequeathed under such bequest all the property passes which was at that place at the decease of the Testator unless it can be gathered from some circumstances that the intention of the Testator did not extend to a particular article. As where a man bequeathed "all his goods, chattels, furniture & such things on such a farm." There happened to be a large sum of money in a drawer of a house on the farm & this was said not to be included in the legacy as the Testator went on to specify the article & had not mentioned this most important of all.

What may be considered an ademption of a legacy?

This is a question that chiefly respects legateses specific legacies. In case a bond is
Estate of Deceased Persons

given by a testator & is collected by him before his death, this may or it may not be considered an ademption as the circumstances of the case are, if it appears that the testator at the time he collected the bond was restrained for money, or if the obligor was like to become a bankrupt, or if the bond was discharged voluntarily by the obligor, neither of these cases would be considered an ademption of the legacy. But if it can be collected from the act of the testator that he meant when he took up the bond that the legacy should be destroyed, then it would be an ademption.

There is another set of cases where legacies are said to be adeemed. Where specific legacies are lost they are the loss of the legatees & the legatees have no demand on the estate to make up for this loss. There is a curious instance mentioned in the books where a house was devised by the testator & before testator died it was so repaired that there was no part of that house to be found which was given at the time the will was made. There does not appear to have been any decision in this case. No principle laid down by the judges in a succeeding case it may be discovered
that the house would not have passed to the
Legatee. This was the case of a vessel which
was (after the will was made) repaired so that
nothing but the keel remained. The keel saved
the Legacy. The judges easily identified the vessel
by means of the old keel. tho' had it not been
for this, they said the Legacy would have been
lost. A Legacy of a mill, tho' it had been
all repaired away, would pass for the Court
might easily identify it if there was not an
almon of the old mill left.

Legacies may be deemed where there
is no loss as where a Testator in his will made
provision for persons, & unexpectedly being long
after made the same provision for these persons
as he made in the Will. This however might
not be considered as an abandonment, if the Testator
had increased his property after the will was
made & it appeared that he was fully able
to make this after provision besides the pro-
vision in the will. Adjudications in such
cases are meant to comport as much as possible
with the intentions of the Testator.

Legacies are frequently given with
some condition & this is generally respecting
marriage. As if a person marry with the consent
Estate of Dec'd Persons

of parents" or if a girl does not marry a man of a particular profession as a lawyer, ad

test. It is said that conditions are impracticable and used as being against policy. It is reason-
able. There is only one exception as where a

trust gives his wife a legacy on condition

that she does not marry. The reason why

the law is so indulgent in this case is that the

trust for children may not be so likely to be

taken proper care of in another family. But

however this reason ceases when the trust has

no children. Such legacies would pass to the

trustee and many. The testator's wish is some-
time indulged where it is of trifling impor-
tant, as if he gives a legacy to a girl on con-
dition that she does not marry in York for

it would be easy for her to go out of York and

many; but all restraint where the interest

of Society is in any way concerned are void.

A Legacy to a limited one to B. on A's mar-
riage is perfected by his marriage. I will go to

When an executor has a legacy to his

provisions for a minor, he must not give it up
to parent or Guardian unless by rule of Court.

If he does deliver it up to parent or Guardian,
without leave of Court he is liable to pay it over again in case the parent or should happen to be bankrupts. The executor may be compelled by Charity to deliver up the legacy to the Guardian, but unless by leave of Court he ought to keep it till the minor comes of age 17th. 233. If a vested legacy is given & the legatee dies before 21. Question: Ought the executor to pay the legacy before the legatee would have arrived at 21? He ought not unless the legatee had children whom it was necessary to support; or in some such particular cases. A vested legacy given to A. and on his death to B. If A. arrived at 21 & died after that B. would be excluded, it would go to A.'s representative. But if A. had died before 21, then it would have gone to B.

Formerly legacies were recovered in Ecclesiastical Courts, but now the Court of Chancery has a concurrent jurisdiction with them. & in some respects the
Estate of Dead Persons

Predominance of equity is more extensive than that of the ecclesiastical courts. As where a legacy is given in land the ecclesiastical courts have no cognizance these cases are the province of Chanery.

16. Courts of law have cognizance sometimes over a certain description of legacies. As where lands are devised to A. & a Legacy is charged upon it for B. 2 Salk. 115. 2 Plowm. 947.

Of the Statute of Distribution made in the reign of Charles 2nd.

The principles in this Statute apply to all the United States & if understood, will lay a foundation for a complete knowledge of the distribution of the Estates of testate. Anciety in Eng. the method was to divide the estate into 3 parts a rate of 1/3 falls to the widow & another
Estate of Deed Persons

To the children. The residue was taken by the ordinary (who then administered) for the good of the poor, the Church & the soul of the intestate without liability to account for the management of it. Thus the Abbot & Clergy took a kind of every intestate's estate, without even paying the lawful debts. To check these enormities several statutes were made abridging their powers till finally the administration was taken out of their hands. The Bishops however still appointed Administrators but were obliged to appoint the next of kin. The Administrator frequently abused his power & there was a great part of the estate over which by determination of Courts he had unconstruable power. This gave rise to the Stat. of Car. 2 which is no more than a revival of the old Saxon Law. This Stat. regulates the distribution of the first surplus of intestate estates: 

1/3 must go to the widow if there are children.
2/3 if there are no children, & the other 1/2
to the next of kin or their representatives. If there is no widow, the whole must go to the children or their lineal descendants ad infinitum. If neither children nor widow, the whole must be distributed among the next of kin in equal degree & their representatives none, representatives being admitted among collaterals further than the children of the brothers & sisters of the intestate. In computing the degrees of propinquity, the civil law computation is adopted. Courts have adhered pretty strictly to this, tho' they have departed from it in one or two instances which we shall mention.

Table for computing the deg. of propinquity:

<table>
<thead>
<tr>
<th>Degree</th>
<th>Relation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>Father</td>
</tr>
<tr>
<td>2nd</td>
<td>Grandfather</td>
</tr>
<tr>
<td>3rd</td>
<td>Uncle</td>
</tr>
<tr>
<td>4th</td>
<td>Grandson</td>
</tr>
<tr>
<td>5th</td>
<td>Brother</td>
</tr>
<tr>
<td>6th</td>
<td>Nephew</td>
</tr>
<tr>
<td>7th</td>
<td>Grandnephew</td>
</tr>
</tbody>
</table>

If there were two brothers & one died leaving children, the children stand up with the living brother & take per stripes what their father would have taken. Both brothers dead leaving children, they no longer take by representation, but in their own right & the Uncles in the 3rd deg. will take with them per capita. Grandfather & brothers do not take equally.
Same relatives, only one Brother dead leaving children.

Q. This child take per stripes?
A. All the Brothers are dead leaving children in unequal numbers.

Q. The G. Father takes the whole.
A. The Grandfather is dead & Aunt living.

Q. The Aunt & Nephews take equally.
A. One of the Nephews is dead leaving children.

Q. The Aunt & the surviving nephews take equally, the G. nephews being beyond the 3rd degree taken off.
A. All the Nephews dead leaving children.

Q. The Aunt takes the whole.
A. G. Father again alive.

Q. He takes the whole.
A. G. Father dead & Aunt dead leaving children.

Q. Her children & the Nephews' children take equally per capita.
A. The Mother is living & Nephews.

Q. The Mother is kept down to the 2nd degree consid. as the old stock, that the nephews may take per stripes what their respective parents would have taken.
A. The Aunt is alive.

Q. The distribution as before, she takes nothing.

8. No relations but nephews & some of them of the half blood.
A. All take per capita.
Causes determined by the Law of Distributions Personal Estate

Prob. I. J. S. died intestate leaving child: Son,
Dick Sally

Ans. Dick and Sally take equally

Quest. 2nd. Son is dead leaving Son A, Daughter

Ans. A & B. take per stripes what their Father
would have taken

Quest. 3. Tom Dick & Sally are dead. Tom's child
as before, Dick left C and Sally D & E.

Ans. All the Child take equally per capita

Quest. 4. Not only Tom is dead, but his son A
leaving C & D

Ans. A & C take per stripes what their Father
would have taken.

Quest. 5. There are no children but a father and
their 3 Brothers.

Ans. The Father takes the whole

Quest. 6. The Father is dead.

Ans. The Mother by the Stat. would take
whole, but the Stat. of Iac. has degraded her
from her rank to the 2 degree that the
Sisters may share equally with her.

Quest. 7. J. S.'s Grandfather is living.

Ans. By Stat. he would share with the Bros.
but he is excluded by Counts so that the in
heritance is as before

Quest. 8. Same relatives, but the mother is dead.

Ans. The Brothers take equally.
Estate of Decedents

In this case the grandfather is excluded by courts, tho' contrary to the Stat. of Car. By this Stat. if the father was dead his wife would take to the exclusion of Brothers & sisters. Finding that this would frequently carry the estate of the intestate into other families by her marriage.

The Statute of James 1st 13 & 14, & 57a degenerates her from her rank & suffers the Brothers & sisters to take with her, but as soon as the Brothers & sisters are dead she is said to resume her rank, this however is only to the exclusion of Grandfather, & grandfather for the is by the decisions of Court kept down to the 2nd degree when the brothers are dead & consid as the old stock that the children of the brothers may take by representation what their father would have taken. There is no distinction made by these statutes between the whole blood & the half blood. The enquiry is not which of the relations has the most of the intestates blood in him? but proquinquity is the only thing to be looked for.

The Statute of James 710. Salt 38. & 351.
2 Thess. 213. 1 Thes. 393.
1 Thes. 323 316.
Estate of Dead Persons

Of the Advancement of Children by the Father

It is a rule in law that where a child is advanced by the father, he shall not be entitled to a distributary share under the estate, unless he throws the property advanced him into the pot; that is, unless he puts the property he has received into the common stock. That all may take equally, he has his choice either to bring it into the pot or retain it with the risk of the others having more than himself. As to what may be considered advancement, it has been determined by a set of adjudications. The child must have been actually furnished with property for his future support. Occasional presents to a child are no advancement. When the father has advanced any consid-

erable sum for the education of a child, it was as much as he is able to give his other children; it may be questioned whether the child could come in for his distributary share, the current of authorities are against education being considered an advancement. Money paid out to a Master for teaching a child a trade is considered no advancement for it said to be only keeping the Master to keep
Estate of Deed-Persons

Him instead of the Parent. But when the Father buys an office for his son, who but at will, as a Commission in the army of the like, or where the Father makes a provision for his child by a marriage settlement, there are advancements—Where the child advanced is dead leaving children the same rule obtains. This doctrine is confined entirely to an advancement made by the father for if the child is advanced over so much by any person except the father, by any collateral relations, by a stranger, or even by the mother out of her separate property, he is notwithstanding entitled to his distributary share—so it is said in the 20thmo. 356. That the Statute does not contemplate advancement by a father, it only speaking of those who could have a wife or children & that the mother could not have both was a clear case. There is no case in Eng. or Con where an advancement by a mother has been made during the life of the father has deprive the child of his distributary share & yet it has never been questioned that a mother surviving the father & dying intestate is within the Stat. as well as the father.
State of West Florida

Of a will without an executor & what is the care is where there is no will.

If a will is made without any executor appointed, administration is granted ex
 testamento annexo & the administrator is vested with the power of an Executor. But
where there is no will the Administrator
is appointed by the ordinary & is to distrib-
ute as the law directs. The ordinary may
not appoint whom he pleases. His duty
is pointed out by the Stat. of Est. 37. p. 8.
He may appoint the widow or next of
kin or both if there are 26, who are near-
est, of kin of equal degree he may ap-
point all of them or select any one he pleas-
sor. or he may grant administration to
one or one part of the Estate, & to another
the administration of another part. This
is to be remembered, however, that these are
joint administration of the kind the other
they must sue & be sued together. In case
one bond, or one article there must be only
one administration. If persons in the ascending &
descending line of equal degree claim admis-
the ordinary cannot select whom he pleases,
Estate of deceased persons

But must prefer those in the descending line, black
As if the father & son claim, the son is to be preferred. It has been a question whether the
½ blood could be admitted to the admin. as soon as the whole, but determined they may stand
in equal degree in the table of precedence. When a sister of the half blood & brother of the whole blood claim the ordinary may

elect whom he pleases. (B. 49. 32.) Unless the female be married. For in this situation she is
excluded in all cases. The next of kin in such case
would not be appointed, for the admin. would fall
immediately on marriage into the hands of the
trustee. If an infant is next of kin & no other is
older he must be appointed with another person.

To administer during minority which lasts till
the minor is 21. (B. 257.) An infant may be an executor at 17. — This admits during minority
may be any discreet person. — If the next of kin
all refuse to administer, the ordinary must
appoint a creditor, if there be any one who is
a discreet person, & if creditors refuse he may
appoint any person. — If the admin. die before he
completes his adm. his adm. nor exec. can finish
the adm. but an adm. de bonis non is to be ap-
pointed & proceed to complete what the former
Estate of Deid Persons

admis had begun. The case as different when an
his office thereunto, to his use if the appointed one, Monog
especially dear. When 2 Adms. are appointed of
one dies his adm. furnishes to the living Adm.
The first thing the Adm. is to do is to go before
the ordinary & there give a sufficient bond that
he will administer faithfully. Our Stat. is a
copy of the Eng. by which the Adm. is directed
"To make out an true inventory of all the goods
& chattels of the intestate by such a day to ad-
minister such goods according to Law and to
make a due return of his Adm. at such a day
to pay what of the
and the residue estate as the Court directs.
It is the general received idea upon the construc-
tion of this Stat. that the bondsmen is bound
for the Adm. that he make due adms. of the goods,
that if he will not pay the debts as the Law
directs the bondsmen may be sued. But this is
not the true idea & cannot be supported by an-
thorities; neither was it the intention of the La-
gislature but the only person liable in such case
is the Adm. & for misconduct he is liable to be
displaced by the Court. The nature of an adm.
bond is not that the Adm. pay the debts or to
secure the Bankruptcy of the Adm. But the
words to administer to administer truly ac-
cording to Law mean that the adm. return a true
& proper account of his administration.
Estate of Died Persons

A creditor cannot sue the bond & assign as a
forfeiture that the adm. has never paid him
his debt— or assign and devestavit as a breach
for this might be done in an action against
the adm. But as the inventory exhibited is evi-
dence of what estate he had, it determines the
question on true administration if the inven-
tory prove false the bond is forfeited— As if a
man dies worth 400L the adm. makes an inven-
tory of 300L only & carries it into Court a credi-
tor sues for the bond—he is concluded by the in-
tventory. But if the adm. proceeds to pay out
the 300L & the debts are not satisfied, the remain-
ing creditor may sue the bond & assign as a breach.
That all the estate was not invented— Suppose
again the adm. has made in a true account of
the estate & will not pay the Creditor, the credi-
tor cannot maintain an action upon the bond
but must sue the adm. If the adm. has commi-
da devestavit by acting indirectly the Creditor
sues on the Bond & assigns this breach, he can
not recover because the Adm. is still liable
& cannot protect himself by a plea of false
administration. The creditor is to run the risk
of a devestavit & not the bondsman.

The expression in the condition "That the residue
after debts are paid shall be distributed among
Estate of deceased persons

The next of kin as the Court shall direct means no more than that the Adm'r after a reasonable time shall make a proper distribution. If he does not the bond is liable for the extent only by distribution, but it is otherwise with the creditor to be paid. See the assets wherever he finds them.

The Adm'r is to make out the inventory by a certain time, if he does not the bond is forfeited. It is to be remarked however that the bond is only liable for what it called the smallest sum that is for the satisfaction of the creditors in consequence of the adm'r failing to make the inventory as the Court directed. The bond is only affected as to this transaction as to all others it is good. The bond may be sued by as many as are injured by the breach of it at different times. For it remains in the Office in the hands of the ordinary or Serg. of probate in Com. If the debts are all paid or any property has been left out of the inventory so that the next of kin are injured, the bond is forfeited. So if he has made out the distribution he will not exhibit it to the Court, the bond may be sued. And if the Adm'r the moment he is sued makes a return in the inventory, still the bond is forfeited to this transaction. No small sums may be recovered
Estate of Decedents

In case when there is not property sufficient to pay all the creditors, the object of the Law is to average it equally among them. If the Estate average no more than 10% on the £ by then is estate any of its left out of the inventory, the creditor cannot sue the bond & recover the whole debt as he may in Eq. He may compel the Adm. To exhibit all the Property & this will be averaged again among all creditors.

Revocation of Adm. Power

The authority given by the ordinary may to the Adm. may be revoked. The ordinary is not at liberty to revoke or to set aside for some reasonable cause. As if a will is discovered with an executor, or if the Adm. become incapable of performing his duty by reason of lunacy, or run away—in such cases the ordinary may make a new appointment. But when a new adm. is appointed which shall become of the adm. of the former adm. when the former adm. had become incapable or run away, his acts are binds upon his successor. But when a wrong person has been appointed, his acts are void; or where a will is found, the law is now different. The acts of a wrong adm. are as binding as those of a right lawful one on the ground that he is to render an account of his adm.
Estate of Deed Persons

and if he has money in his hands raised by the sale of lands, the sale is good & he is accountable for the money. Suppose he has cattle &c in his hands; they may be recovered in an action of Sover. If an adm. has been appointed where there is a well & has obtained judgment against some person & the debt not collected, the executor under the will may bring a new suit & enforce that judgment in the same manner as if it had been obtained by himself.

Of the Right of the Adm. over the Property of the Intestate.

General. As soon as the Adm. is appointed he is vested with the property of the intestate he may oppose the same right of ownership once it had the debt could be liable to fulfill the same duties. Yet there are certain actions which he cannot maintain which the intestate might of certain actions to which he is not liable, but to which the intestate would have been liable.

First what actions the Adm. cannot have

Formerly no action of Surspos for injuries to personal property could be maintained by the Adm. for it was said the rights of action died with the intestate. A Nat. of Edw. A ho. ever was made which gave the Adm. a remedy.
Estate of Deed Persons

where the property was taken away & courts
have determined all injuries to personal prop-
erty to be within the county of the statute
Injuries done to the person of the intestate
are left as at Com. Law falling within the max-
im "actio personalis moritur cum persona."

Adm" liability to actions
The is liable on all the A Rule is laid
down in the Books "But the Adm" is liable
is liable on all the contracts of the intestate
but not for his tools." This however is false
for it will be found that he is not always
liable on the intestate contracts & sometimes
for his tools the adm" is liable. If the tort is
of such a nature that the assets have been
benefited by it the adm" is liable, but if the
assets of the intestate were not benefited the
"Adm" is not liable. The adm" is not liable
for any injury done by the intestate to another's
person. The adm" is not liable to an action
of trespass where the intestate would have been
in fault. The action must be brought against the
adm" in an action on the case for the wrong
had & received for intestate is supposed to have
done the property required & received the wrong.
This difference of law the action against
the adm" & that which should have been brought
against the intestate has occasioned much confusion in this subject. Cowper, Hamley & Scot.
To find out where the adm is liable for the contracts of the intestate, where not ob-
served the following rule—'Where the intestate would have been liable for a breach of a
trust which would not have benefited him, had he performed it.' In all such cases the adm is
not liable as where a sheriff suffers an
escape, his adm is not liable Roll 921, 1. and
218. — The Adm must sometimes sue in
his own name as adm, at others he must sue
in the name of the intestate or his own. In all
cases where a list of debts that arose in the
time of the intestate, the adm must sue in
his own name; but such as arose after his
death he may sue either in his own name
or that of the intestates. A creditor who is ap-
pointed adm is in general in no better situation
than other creditors. Creditors of a superior
rank will take before him. He has the pre-
ference among those of equal rank. An ad-
ministrator in Eng. has nothing to do with
lands, nor appendages to the land, nor
Rabbits, in a warden, or deer enclosed in
a park. Leases for years go to him. Then
however land is extended for the payment of debt,
it acts in the Adm.
Estate of deceased Persons.

There might be a curious question: What becomes of an estate per antævitr? It cannot go to the heir for there are no words of intention in the grant: and the devise cannot take it because it is a free-hold. Before the Stat. of Charles (which gives it to the devise) such estate in Eng. went to the first occupant after the death of the intestate. But as that Stat. has no operation in Con. it is doubtful who would take such estate here.

Of emblems: Some go to the heir & some to the devise or executor. Natural grass & fruits go to the heir, but all artificial emblems, such as are raised annually by cultivation go to the executor. Stones, hats, bollars, etc. originally went to the heir as being fixed to the freehold by too large a nail to be removed. Now one thing that does not properly belong to the freehold may be taken off if any injury is done; the freehold the executor ought to pay damages. 3 H. 23.

Heir-looms as monuments of the ages in N. coat of arms—So, a chest where deeds have been kept, goes to the heir. Roll 415.

If the decedent invented and debts, pay as much as their amount. He is not liable. As if he has
Estate of Deod Orson

invented a tripel at Sea & it is lost. He is not liable to the extent of the insurance.

sect. 16. Originally at Com. Law if a man commenced an action & died, his administrator could not pursue the action, but must institute a new suit, the old one dying with the deo? The Stat. of Mr. Dillon has pointed out a method to carry on the former suit by suffering the admr to go before the Court & change "mortues" to the name of the intest. Then the action goes on as tho he had lived. When the deft. dies also the deft. may bring a new jucias against the deft. Admr counting upon the former action & the cost of the old action is attached to the new as is.

She Stat. has made ample provision for the cases where the deo the deft. but seems not to have sufficiently contemplated the case of the deft. for when a deft. has brought an action without a cause & died his Admr may or may not pursue the action as he pleased. If he does the deft. has been put to cost he will loose it. This however would be very unreasonable. The Stat. says the Admr "may enter" without the action now if this could be construed must
Estate of Deed Persons

The donee would be compelled to pursue the action & the def. would obtain his costs, and a construction would not however be fair. But in all cases in which the donee was a donee where he might sue in the name of the intestate, he is liable to costs, if there was no ground for the action. The legal estate of a mortgage descends to the heir but the beneficial interest is ultimately the executors.

After the Law day the heir may take the mortgaged if he will pay the mortgage money. This estate is not to be inventoried, the money to redeem is to be put in the inventory as fast as it comes in.

Executory interest in the Apprentice.

An apprentice is not assignable, he was put out for instruction in his trade & as soon as the Master is prevented by the act of God from affording such instruction it would seem reasonable that the Apprentice should be released.

Where commissioners have rejected the claim of a creditor there lies no appeal—(but) if the commissioner allow a bad debt the executors may always contest it. The executor always if so sent may contest if the fees are
Estate of Deceased Persons

The Adm' in Eng is to pay debts after the following rank:

1. Funeral charges that are not extravagant.
2. King's debts not fines.
3. Debts in last sickness.
4. Debts upon record.
5. Specialty Debts

Where the Adm' has paid where no debt was due, he is accountable for the amount of such debt, unless he has acted a reasonable part. His safest way is to file a bill in Chancery to have all the creditors appear, and for such debts as Chancery allows him to pay he is never again liable, tho' they found more not to have been due. The Adm' is not obliged to take every legal advantage to avoid a contract as the Stat of Limitations. But there is an authority in Bacon to prove that the adm' of it is a defect.

An executor in his own name undertakes to administer the estate of a Deed, without any appointment either by will or by the ordinary. Creditors may sue him & recover to the extent of the property he has in his hands belonging to the debt & must be described in the writ, etc.
Estate of dec'd persons

executor of the last will & testament. If a person who never made any will. He is sometimes however, described as executor in his own wrong. If he was a creditor he cannot retain his own debt & is in no better situation than if he had not assumed the office. There can be no executor in his own wrong where there is a rightful one unless where there has been a fraudulent conveyance, or a donatio causa mortis. In the former instance viz. where a fraudulent conveyance has been made the vendee is executor in his own wrong & is liable to creditors to the extent of such property. In the latter inst where a voluntary conveyance was made of there was not other property sufficient to discharge the debts the donee would be executor in his own wrong. for the debt

Of the power of a testator to limit his personal property.

By the ancient common law no personal property could take place in expectancy. Because such property is of so transitory a nature & so subject to be lost, it would tend to stop that easy circulation of property which is so necessary to commerce & create quandrels
Estate of Decd Persons

if it was suffered to be transmitted over,

that he could not be transmitted over to any

person in esse. A man may also devise
his books to one person for life with a remainder
to another? Blair, Com. 398. But if personal
property is given to a man in tail, it vests
in him absolutely & no remainder shall
be good for the vesting is not allowed to de-
vice an estate so that it should tend to a per-
petuity. A man may give personal property
to another for life & then to his son. An
estate could vest in the son in the vest ab-
solutely without tending to a perpetuity, but
it would not be an estate. To a man of
the heirs of his body would vest an estate
in the grantee in the nature of a fee simple.

Lect. 17.

Feb. 17

This Stat. was made to prevent persons from
making donations to corporations & particu-
larly to prevent the property of the nation
from falling into the hands of the clergy.
After the Reform was established when there
was no danger of this kind, donations to
 corporations for public or charitable uses
were decided to be without the stat. till a
Stat. of George 2nd intervened & declared
Estate of Deed Persons

It may be that Wills of Persons born deaf, dumb or blind are good, but it can be made to appear that they saw or in case of a blind man that the will was read to him & they consented.

Wills made under duress are void.
The rule in law does not ascertain how far threats must go to destroy a will. The case that has come up where there was any kind of duress the will has been avoided.

When fraud has been practised to turn the testator's intent the will has been undenied void in all the cases reported except a single one. Fraud in this case was made use of to influence the testator to destroy a will in which he had conferred his property upon an unworthy object & in the second will had given the property to his wife & child.
Estate of Dec'd Persons

This was looked upon to be such a gross fraud that the will was confirmed.

Persons guilty of treason or any high crime by which their property is infected are incapable of making wills.

It is a maxim in English Law & a very important one. That the intention of the testator is to govern if it can be found & is consistent with the rules of law. If by this is meant that if the will is incoherent with any form of technical words it is void according to the strict rules of law & the technical forms, it is good otherwise not; the equitable intention of the testator is entirely defeated. It cannot however be presumed that this restraint was meant to be put upon the maxim. Buller's explanation of it seems to be the true construction. That if the intention was legal it might be executed even if the technical forms of the Law were not complied with: but if for example, the testator had devised a library of books so that a perpetuity would be created, how his intention might be plain, but proof to

...
Of Estate of Decedents

an unlawful intention it is not binding.

Of the admission of probate testimony
respecting wills.

Formerly greater latitude was allowed in admitting testimony relating to wills than to other instruments. But now there seems to be no distinction. The same rules of admission of probate proof will apply to all cases. 2 ATK. 372. Where the ambiguity arises from any extraneous matter foreign to the will, probate proof is admitted. As where an estate is given to a son John. The man happens to have 2 sons by the name of John. Probate testimony is admitted to prove which John was meant. Or if the testator has misdescribed the legatee by mistaking his christian or surname, it maybe proved by probate testimony that person meant of rebutting an equity. Where legal words convey one idea, probate testimony is sometimes let in to contradict that idea by disclosing the intention of the testator. As when an executor has a legacy, the law is that he shall not take the residue, but probate testimony.
Estate of Deceased

is admitted to show that the Testator intended he should be the residuary legatee. The rule is that where the ambiguity arises from the face of the will parcel proof is not to be admitted. There is however an exception to this rule in a case reported in 1 Brow 8th 172. This has given rise to an equitable rule that parcel proof may be let in to explain facts to give a construction to the ambiguous words in a will.

Requisites for a will of personal

There must be 3 Witnesses to a will of real

property, but as to a will of personal no witness is necessary. If it appears that the will is in the Testator's hand writing & his name any where upon the writing it is a good will sealed or not or even if his name is not in the will yet if it is proved to be his hand writing & that the Testator signed it to be his intention that the will is valid. And even if the will was not written by the Testor but it can be made to appear by parcel evidence that he approved of it it is good. A will of person infant is the poorest of all instruments.
Almost any person may be an executor, but when persons of no discretion are appointed they may be displaced—but ill-usage of manners does not disqualify a person for the office. An infant may be appointed executor of an estate—yet he is not permitted to act till 17 as executor—but previously to that period an executor under minoritate is appointed. The infant may rescind his contracts generally, yet those entered into as executor are binding upon him.

A legacy to a man's wife is said to be the husband's if it is executed to her sole & separate use if it is hers alone. This idea however breaks in upon the old maxim that no mere covert can own free property in possession. This is certainly a rule of law. We have before seen that if the intention of the testator is against a rule of law such intention is void. The courts however have by some method or other evaded the law & the practice of suffering such legacies to be good is a just & wholesome practice. Legacies being out of hands given to girls in tenure on condition that they will not marry a particular man or a man in a particular profession in such case.
Estate of Deed Persons

The intention of the testator shall be complied with. If the legacy is defeated by a breach of the condition. 

A donation causa mortis, conditioned to revert to the donor, with immediate enjoyment on the death of the donee, if the executor has nothing to do with it. 

It is a question whether a bond such donation must be delivered to the donee personally; a donation of cattle or such a farm is not good in law. It is another question whether bonds are subject to such donation; if this is the case the executor cannot take such bonds, for if he could it would be discretionary in him whether to give the bond to the donee or not. Such a donation is substantiated in Phil. 168.

Lecture 18th. Feb. 12, 1793

Of Injunctive Wills

These are wills which depend entirely upon oral evidence. At common law such wills were good. But the Stat. of Charles has laid so many restrictions upon them that they have fallen into disuse. The question may make a figure in common law. Whether any injunctive will would be valid. And if valid how far they might extend. As it has been the universal practice in this country...
Estate of Dec'd Persons

to reduce Wills to writing it is very doubtful whether Courts would admit a verbal will. But if admitted as valid, it is very uncertain how what would be the extent, as the Stat. of 1806 which puts such close restrictions upon them have no operation in this State.

It is an established principle in the Eng. law that a will of real & personal property although it be defective to pass real yet may be good as to personal estate. This however is a very unreasonable principle for the intention of the Testator may be completely defeated by it -- a great injustice done to his family. For instance: A man having 6 sons & 6 daughters devises his real property to his sons & his personal to the daughters. If the will happens to be faulty, signed perhaps by only 2 witnesses -- in this case the will is void as to real but good as to the personal estate. If the daughters will take the whole personally & the eldest son all the real estate, so that the other 5 sons would be completely excluded by the intention of the Testator greatly thwarted.

It is easy to see that cases of this kind may frequently happen. It would appear reasonable...
Estate of Deceased Persons

That this unjust principle, which makes

give way to the positive & unerring
rule that the intention of the testator is al-
ways to govern, unless inconsistent with law.

We have seen that the Adm., before ap-
pointed by the ordinary, has no authority over
the goods of the intestate, but the speculator
before probate of the will, may exercise any
power over the property of the dec'd that he
can after, with a single exception of being
he can bring no action till after probate, for
he may discharge, & collect the debts. Before
he has proceeded to any such, it is at his plea-
sure to refuse or accept of his office, but if he
has done any act in the character of exec-
the must accept. Office of Exec. Tit. 3. 1. Salk. 301.

If the executors neglect to appear, the ordinary
may summon him before his court & there
he may accept or refuse, but when sum-
omed he does not appear, the ordinary
will excommunicate him & administration
will be granted to one, even testamento an-
neck, in such appointment, the ordinary
need pay no regard to the next of kin.

In Con. instead of excommunication, he ex-
Estate of [Redacted]

... is only fined $5 for non-appear-
ance on being cited by the probate court.

Generally 2 executors are appointed & if
one refuses the other may proceed to exercise
his office as tho he was sole executor, but the exec-
utor who refused may come in & act, during
the life of his co-executor & act jointly with
him. If both accept, a bill must bring his
suit against both, if the one who refused is sued
he may plead that he was never execut, but if
he has come in & done any act with his co-
exector they may be sued jointly. (Roll 1918)

If an executor dies his executors may
succeed him in his office & adm. of the proper
of the former testator, he is obliged to accept
of this however. This is not the case with the
adm. of an exec. or the exec. of an adm. They
have nothing to do with the adm. of the for-
mer deceased person's estate.

Where there are 2 executors & one dies, the
his exec. cannot be joint exec. with the original
exec. but the office falls solely into the hands
of the survivor. Suppose again the survivor
dies, the executors will not then go to exec. of the for-
mer deceased exec. but to the survivor's exec. Suppose
the survivor dies intestate, shall the office then
Estate of Dec'd Persons

go to the exec of the original exec? No, for
the right was solely in the Survior. Office of
Exec. 101. Important question. Shall both ex-
ecutors be jointly liable for the devastation
of one of them? Abstractedly consider they
are not. As for instance, if one had rece'd a cer-
tain property to administer & it had not been
in the hands of the other. The one who had it
in his possession would be liable alone for
waste. Consider it in another point of light.
They both rece'd money & gave a joint receipt
for it. One took it all & committed a devas-
tation, both are liable. For the receipt in the
names of both is evidence that it came to
their hands jointly. This rule embraces
all cases of the kind. Talk 378. 203. Ch. 114.
The authority in Salkeld makes a distinction
between Legatee's & Creditors. As in the case
last put the creditor could have his remedy
against both execs, but legatee could not only
against the one who had committed the devas-
tation. But the later authority in Brown a
bolishes this distinction.

An executor is not so liable to be reached
as an Adm't. The ordinary may take away
Estate of Decedents

The administrator, an administrator for almost any
especial conduct, a lawful want of discretion, or for being in failing circumstances.
But an executor cannot be displaced for
such causes; his discretion must be weak
indeed to be grounded for displacing him. If
he cannot be removed on any suspicion of
this becoming a bankrupt, he in such case
obligation may compel him to give bond.
The executor must prove the will before the
ordinary by swearing that it is the true will
of the testator. If a will of person estate
only, it is then good, provided no one appears
to dispute it. If there are witnesses the prac-
tice is to examine them privately & reduce
their testimony to writing to show to the
ordinary. The executor may cite in the widow
or next of kin to certify the validity of the
will, if necessary. If the ordinary refuses
to approve of the will, he may be con-
melled by a writ of mandamus to appear
before the Court of Westminster Hall & then
it is to be tried whether the executor appointed
shall proceed to the execution of his office.
Estate of Decedents

There are several instances in which admin. is to be granted where there is a Will.
1. Where there is no exec. mentioned in the will - in this case an adm. is appointed cum testamento annexo.
2. When the exec. is a minor - an adm. is appointed durante minorate.
3. When the exec. is out of the kingdom, an adm. is chosen durante absentia.
4. When there is a controversy concerning who shall be exec. - an adm. is appointed pendente litio.

Lecture 19th Feb. 20th 94.

When real estate is devised for the payment of debts, before this is touched the personal is to be exhausted, unless the testator has directed otherwise in the will. This however is unreasonable & inconsistent with the principle that the intention of the testator is to govern, as creditors might be injured if the creditors were allowed to take the whole personal fund. If this would be manifestly contrary to the intention, the testator when he had devised real property expressly for the purpose of paying debts, 1 Will. D. A. 18. c. 6. 154. The principle ought
Estate of Deceased Persons

To be that, unless the signified particularly that
the person professed should first be exhausted the prop-
erty real which he desired for the payment of
debts might be should be taken by creditors
before they come upon the person.

If a Testator desires all his debts to be paid
debts upon which the Stat. of limitations has run
are taken out of the Stat. & may be recovered.
The general received opinion that debts revive
when taken out of the Stat. is just the true idea
the founded upon false principles they go upon
The presumption that the debt has been paid
What as soon as this presumption is removed
the debt revives. But if this presumption is
good a devise that all one's debts shall be paid
would extend to all other debts ever contracted
by the Testator paid or not as well as those bond
by the Stat. -- The Courts of Chancery have intro-
duced a presumption contrary to this by which
all the authorities may be reconciled. Chancery,
takes it to be an existing debt that the Stat
was only made to prevent litigation which
would arise from suffering debts to lie a long
time & the difficulty of ascertaining them. That
every man has a right to waive his right to
the Stat. after that he never can resort to it
again. A man may take debts out of the Stat.
Estate of Goods Persons
by publishing that he will pay all his debts. It has been supposed that publishing & declaring as above is a promise to pay the debt & that this is the ground upon which recovery is to be had. This is not the true idea for where there is an express promise, the creditor may recover upon the original debt & bring the promise as evidence of the debt. The idea is false for another reason, where a man owns that he owes the debt, this is no promise to pay it & yet this may furnish a ground for a recovery upon the original debt.

The most striking argument against the presumption that the debt has been paid when barred by Stat. is this. A man acknowledges the debt to be due but says he will not pay it. In this case, most clearly, the presumption is completely taken away for the debtor expressly says the debt has not been paid. When a man acknowledges & refuses in this manner, it is no waiver of the Stat. It shows that he means to take advantage of the Stat. & therefore does not furnish a ground for a recovery. From what has been said it is manifest that the law must presume that the debt was not paid & in this way all the authorities on the subject may be reconciled.
Law of New York respecting the estate of Deed Persons

According to the principles of the Eng. law, the real property descends to the heirs of the personal to the Esp. The real in the hands of the heir is liable both to specially & simple contract creditors. This feature in the law of New York is distinct from the Eng. principle. The first paragraph of their Stat. relative to this subject is to be understood as the principle of the Comp. law taking in the Stat. of James—it subjects the heir to creditors before the land is aliened. It is assets in the heir's hands for the payment of debts & after aliened the creditor may come upon the heir himself. Another difference from the Eng. law—the design of the law is that all debts be paid if there is estate sufficient. Any where in the first place the creditor must come upon the person property & this being insufficient the estate may sell so much of the real as is sufficient to discharge the debt. If the deed is to be given by the Esp. or Adm't & not the heir—It is to be remarked that these principles do not apply where the estate is insolvent.
Estate of Deed Persons

In case of insolvency, the estate is all to be sold by the many Court before the Chancellor & there averaged amongst all creditors without any regard to priority of rank. The inventory inventory is to include all the real & personal property in this respect different from the Eng. Law.

Administration to be granted as in Eng. The Stat. of A.D. is a copy from that of Hen. 8, & the distribution is according to the Stat. of Charles 1. James with a single exception, a child advanced by his father is not to throw his estate in hatcher, but what property has been advanced him is consid as an advancement without throwing it into the common mass. The Administration bond is as in Eng. Respecting Legacies, the decision is not before the Chancellor as in Eng. But the Court of Probate in A.D. is vested with all the authority over legacies which in Eng. is vested in the Court of Chancery & Ecclesiastical Courts. The judge of Probate may enforce his decree by issuing an execution against him who disobedits & confines him till he will comply. By a stroke in their
Estate of Deceased Persons

That they have adopted the English mode of enforcing decrees, excepting the infliction of corporal penalties.

There is another equitable difference from the English laws. They have made a provision for the redress of injuries done by the testator, by the executors, or agents. Suffering the action to be brought against the Adm. or Ex. respecting the liability of the Adm. to costs the law as in Eng.

Law of Connecticut

The real estate is said to go to the heir & the personal to the Ex. There might however be a question whether this is actually the case? For an injury to the realty the practice is for the heir to bring the action & for any injury to the personally the action is brought by the executor. The title of the heir is defeasible in case of insolvency, it is totally defeated & if the personal fund is insufficient for the payment of debts it is partially defeated.

The realty is a subordinate fund the personal must first be exhausted. In Eng. real property is a fund for specially debts only. In Conn. for all debts. & in S. Y. when the action is not against the heir it is a concurrent fund with the
Estate of Dec'd Persons

personal estate. Here as in N.Y. all the property real and personal is to be inventoried & if the personal is not sufficient sufficient to pay debts, the executors may go upon the property in the hands of the heir (with leave of the Court of Probate) & sell that till the debts are discharged - but the executors must not keep the land himself & advance the full value of it. This has been determined by a decision of Court. When the heir has sold lands for money, the money is assets & the heir is trustee to execute. After debts are discharged the heir is entitled to the remainder of the estate. Suppose the estate is too small to be insolvent & any injury is done to the lands in the hands of the heir. Who shall bring the action for this injury? Here the heir may if he chooses but it is not at all probable that he would for the property is all going to be taken from him & he would only subject himself to costs for nothing. This point is as yet unsettled but it may not the cost to take the whole command of the property till the period is elapsed in which he is to administer the estate & then if anything left give it up to
Estate of Deed Persons

The case was it for our law in this respect is a little tainted with the Eng. principle relative to heirs; otherwise the Exor. would be empowered to take the profits as above.

In Connecticut it is apprehended that no action can be brought against the heir as heir, tho' in N.Y. their Stat. has provided they may. If the estate has distributed to the heir & a new debt comes in it may be recovered out of the heir the not as heir. In Eng. it could be recovered only in chancery not at Law. There an estate descended descended to 3 females & they were all sued as heir when a new debt came in. This probably would be the case in N.Y.

There has been some doubt whether a mortgage descends to the heir or ever at common law the heir had the nominal interest. The practice for the heir to bring the suit of ejectment & then he ought to convey it to the Exor.

Lecture 20 Feb 21st 1748.

Continuation of the Law of Com.
The exec. is liable to be sued in Com.
Law Combs w. in Eng.
Estate of Deceased Persons

The personal profit is first to be expended before real is had to the real. When they are both insufficient for the payment of debts, the Ee or Adm must be careful how they pay debts. They must represent to the Court of Probate that the estate is insolvent if the Ee has discharged a debt previous to this, he is accountable for what is beyond the average, but it is apprehended he may compel the creditor to sue for it if there is no other way of paying it. As soon as insolvency is represented, Commissioners are to be appointed, they are vested with the power of a Court. They are to accept or reject all claims after the estate if may accept or reject at their discretion. After the Report of the Commissioners is returned to the Probate, it is final & conclusive as against creditors. If creditors wish to reverse their transactions they must go to the Probate to reverse the acceptance of their report. The judge of the county may thence point other
Commissioners in the same upon & give
them this opinion upon the matter. &c.

The creditor's claim is still rejected as
merely subject to the SuP. Court. Commiss-
ioners are more likely to accept than reject
claims for after they are accepted & return
made to Probate, the executor is not obliged
to pay them, but may litigate with the
creditors without the consent of the executor.

If the Commissioner admits more claims to

have the estate is worth to the amount of more

than the value of the estate it is represented

insolvent. If the estate is solvent, the judge

of Probate has nothing further to do. He

proceeds to administer & distribute
the estate according to the law. But if it is

represented insolvent the judge averages

it among the creditors. Government debts,

debt in last sickness & funeral charges

are to be discharged in the first place. Then

no preference among creditors. There is some doubt

respecting even that the meaning of & extent of the

statute from last sickness. But it is no question that the

meaning of the phrase sickness of the De. Whether it

extends to all sickness of the De? or only to the

last. Either falsehood blank or the principle was
Estate of Deb. Person

taken from the Stat. of Georgia which says
last sickness, our ought to receive the same
construction the contrary idea however seem
the most plausible that as they had the
Stat. of Georgia before them the Legislature
would have copied it verbatim if they meant
to adopt the same principle. The universal
practice at present is conformable to
the Eng. practice of including the debts
for the last sickness only. This is the most
reasonable practice whether agreeable to
Our Stat. or not. There has been no deciding case.
Another difference between our Law
& the English is that the Admr. Ex
cannot plead pleon administration.
For if the estate was insolvent it was
averaged by the judge of Probate yet
between the Admr. Ex must discharge
discharge a fair debt in the former case they must
have that the estate has been averaged.
If there has been just property sufficient
do discharge the debts & Legatees demand
The Admr. may plead pleon administration
all the other Principles respecting Legacies
are the same as those mentioned under the
Estate of Dec'd Persons

English Law on this subject.

In Eng., if an adm'rs' deed were administered, the def. would reply over a devastation. But in Cor. there is no room for such a practice— for if the estate was represented insolvent the adm'r has been compelled by the judge of probate to distribute according to the average made. If the estate was solvent creditors must sue upon the probate bond. The adm'r is answerable to the court of probate for any waste. Then an average is to be struck.

The leading feature in our law upon this subject is that all creditors, their equitable parts of the dec'd persons estate in proportion to the magnitude of their respective debts. It is necessary to mark with accuracy this distinction between our & the English law. For the principle of averaging & a few regulations necessarily arising out of that principle are the only deviations from the law of Eng. After an average has been struck, a legatee cannot reply a devastation for the very cia
Estate of Deceased Persons

circumstances of these having been an average showing that the creditors have not been fully paid & they hold preference to legatees & if there had been properly sufficient to pay both the legatee might sue probate cond.

Another difference from English law—by our Stat. if the creditor does not bring in his claim, to the Commissioners he is when an average has taken place unless a new estate is afterwards discovered. But supposing a creditor in this situation should have a debt of 100L. of the new discovered estate was the same sum of 100L. Could this creditor take the whole? In a second average would take place & this creditor would take only his share. For if he might take the whole, men would be encouraged to keep back their debts from the Commissary if they happened to know of some estate of Testator's that had not been discovered; a great fraud might take place in this way, it would also destroy the principle of equalising
Estate of Decedents

The Statute does not say that those who have carried in their claims shall not take advantage of the newly discovered estate; it only says those who have not carried in may take advantage of it. There is a decision reported in Kirby which was evidently unsoundable in which the creditor, who neglected to carry in was suffered to take the whole amount of his debt & no second average was made. Suppose the new discovered estate was worth 1000£ if this last creditor took his whole debt of 50£ what shall become of the remainder? Shall it go to the next of kin, when perhaps the creditors have received only 21 on the pound?

The Superior Court, however, in the present case of the kind reversed their former decision & ordered an average. To compel an average resort may be had to the probate bond. The best method is to inventories the whole new found estate & if this done there is no necessity for jumping upon the bond but if the executors refuses to inventories then sue the bond. By these principles the average law is kept entire. No Receiver tried one case upon this ground & reported in the Superior Court.
Estate of Deceased Persons

It is apprehended by Mr. Reeve that in this Country there exists no such character as an executor in his own wrong. This is a new doctrine & contrary to the general opinion & that of the Court also. It is apparent that the existence of such an executor would destroy the counteract completely the intention of the average law - for he would be obliged to pay the whole debt to the first creditor who might demand, whether the estate was insolvent or not. Such a character might here be styled as a Trustee. It is true that if an estate was solvent he would do no harm, but if the estate was insolvent the most palpable injustice might be done. As executioners would take advantage of the law while somebody to assume the character of an 

**Exemp de son tort** & come upon him immediately & recover the whole amount of their debts, when an average ought to take place among all creditors. It is hardly to be supposed that such villanously would be countenanced by our Courts. As long as the Admn is answerable to the whole extent of the property of the deceased & there can be no necessity for an exemp de son tort if there is any pre-
Estate of Deed Persons

Safety for future goods it can only lie in the cases of a fraudulent conveyance or a donation caus ing death and even if admitted in such instances our favourite & important principle of averaging would again be dis torted as the creditor who comes first might obtain the whole amount of his debt.

Another difference from Eng Law there has been some confusion concerning the heir's being bound by the covenant of his ancestor. Some have supposed that he is bound as heir. This idea however is erroneous.

For instance a man binds himself, his heirs, assigns to suffer another man his heirs to travel across or keep a ditch and his lot in this case any person who takes the estate under this incumbrance is bound just as the heir is. It is on the same principles so that the heir is.

In this State Chancery & Ecclesiastical Courts have nothing to do with Legacies as they have in Eng nor have Courts of Probate any authority over them. The Stat has made no direct provision but the universal practice is to recover Legacies before the Courts
Estates of Decedents

Counts of Corn. Law. Legates state their claim before the Court & there it is tried.

It is frequently the practice for the judge of Probate to order the legatees to pay over legacies, this if the judge does not please to do this the legal remedy is before the County Court—

Sect. 21st. July 22d. 94

Continuation of Corn. Law

The adovt always pays costs in unfounded actions where he does not recover.

Our distribution of personal property is according to the statute of Charles with one or two exceptions 1st. Brothers & Sisters of the whole blood are preferred to all relations except children—The whole blood are preferred to the 1/2 blood in the same degree. 2nd. The Brothers & Sisters of the whole blood parents, not take any after parents, being dead, the brothers & sisters of the 1/2 blood take in preference to any others in the same degree, as grandfather for instance.

The method of proving the will among us is different from the English methods both solemn & common. Their common form is to prove it by the oath of the executors but this is totally rejected among us.
Estate of Deed Persons

When a will is not made or not recognized, as they sometimes cite in the widow or next of kin which is never done here. Our practice is to swear the witnesses the will is then proved, and if any person wishes to dispute the validity of the will he may enter a caveat & the Court of Probate will not proceed any further in the business till all parties appear. This is a practice adopted without any direction by statute.

There has been no instance here of a Nuncupative will. If any would be admitted it would not according to the English Law, for that allowed them to be of any amount. Neither after their statute regulating nuncupative wills, for this was made in the reign of Edward VI at a time when English Statutes have no operation among us. As the property of a deed is so equally distributed in this State, we have no necessity for a nuncupative will. The statute requires all wills to be in writing. Some peculiar circumstances may require the adoption of a form. No will is good unless in writing.

We have seen under the Law of England that when the Exe. is summoned by the ordinary on his refusal he is excommunicated. Our law is different. He is here fined $2 a month till he appears. It may accept or refuse.
Can a Minor act as Ex" in Connecticut? This is like to be made a question yet it appears plain enough by the Stat. that he may as our Stat recognizes the English principle. This Stat. however is said to be repealed by another which directs an Ex to give bonds and as no infant bond is binding it is said he cannot be an executor but this does not appear to be the fair construction of the Statute. It would seem more reasonable that a co-executrix. But as the Stat. has declared an infant may be an executor then that an Ex shall give bonds the clear inference is that an infant Exor shall be bound by his bond. With us an Ex is never a residuary Legatee unless he is made so expressly by the testator. There is a plain reason for this difference from the English Law. In Eng. an executor nothing allowed him for his trouble of time but here he is paid for his pains & has a beneficial interest in the estate. But is it all intents a Trustee. Where he is a naked trustee there is no difficulty in his being admitted as a witness in an action notwithstanding to be a Pfd. or Pf. But where he is interested as when he has a legacy he may not be admitted. It is said by some that as he has to pay costs if he does not maintain his action, he is interested enough.
Estate of Hud unsettions
ought not to be admitted to testify. This objection, however, is easily removed, when it is considered that the costs are not to come out of the executors' private purse, but are to be paid out of the estate.

If the executors owed the legator money sufficient to extinguish, only a legacy was left him. This is the English law.

We have a practice not directed by statute, neither found in the English law of for the Probate to make an allowance to the widow or all necessary clothing, cow, sheep, & all the property that is not subject to execution. This is never the case only where the estate is insolvent. For if solvent, the law directs that the estate be paid to the widow; any other provision made for her. It has been complained of, that the Court of Probate should use its discretionary power & it is questionable whether the practice is warrantable. In one instance where an indirect allowance was made the Superior Ct. abated it. But as the relations in the case were willing the widow should have a reasonable allowance, the Court remarked that they would not touch the question whether the Probate had a right to exercise this authority.

Our statute respecting judgment debts has.
Estate of Decedents

having no preference among creditors" has caused some doubt as to the extent of it. The prevailing opinion concerning it Mr Reeve conceives to be ill-founded. If A creditor has attached the property of the debtor before he goes insolvent now it is said this creditor has lost his hold & can, by the Statute, have no preference to other creditors. This would be unreasonable indeed if it is a case that the Statute never contemplated in the intended manner, nor can any such idea be gathered from the expression of the Statute. The question is not between a judgment creditor and a debtor, but an attaching creditor & a Debtor. Besides this case may be compared with the situation of an execution as when a man has not only obtained judgment but levied his execution he is not liable to be defeated in his hold by an insolvency. The Statute only means that a Credit merely because he has obtained judgment having as yet no hold of the property of the Debtor, shall have no preference to other creditors. For this would defeat the average law. In Eng. if judgment is obtained the officer may proceed to collect the specie.
for it is the English principle that whoever by legall diligence can obtain judgment first shall have the preference, paying no attention to the principle of allowing every credit an equal chance. Because the form of the execution runs "to take his goods & for want thereof take the body" yet if he be dead & his body not to be found, this can be no reason why his goods should not be taken. And if money was to be paid over to the person dying, his executors & representatives completely may receive it without any difficulty.

In England there is no such thing as distribution of real property, the entry of the heir is all that is necessary. Our law is very materially different. Our Court of Probate is authorized to distribute the property among claimants before distribution takes place. They are tenants in common & after tenants in severalty. But the claimants cannot itself in severalty without the power of Probate & where distribution is made by the judge between all the legal claimants, this distribution is conclusive, but where there are 2 sets of
Estate of Deceased Persons

claimants & the judge prefers one as if a Grandfather & nephew should claim & the judge prefer the nephew, this would not be conclusive being directly against the law of distributions - in this inst. the G. Father might appeal to the Sup Court & obtain re.

dress. This appeal from the decision of Probate to the next Supr Ct must be brought to the County

judge in every case & must be so

The Adm. cannot be arrested in any suit in the course of the proceedings - this if any person could for a scire facias, there is no reason why he should not in such case. The reason why he may not be arrested is that the action is not against him, but the assets in his hands. Our Law & the Law agree in this respect.

Our Law respects Antecedent fame as N.Y.

By our statute if claims are not filed in within a limited time they are lost. In case of insolvency it is evident no recovery can be had - for an average has been

paid & all the proper exhausted - but when the estate is not insolvent there seems to be no substantial reason why a Credit should not recover his debt when there is property sufficient to it.
Estate of Deedors

It is declared that the creditor should be barred only as to a recovery from the executors. It is to be noticed that the Statute is only speaking of executors. There is not the least hint that the creditor shall be completely barred from recovering his debt & costs might determine with the utmost safety & consistency with the Statute that creditors should recover, in case the property of the deed should be sufficient, notwithstanding he can never recover of the executors. A creditor in such situation ought to be allowed to take the property wherever he finds it, otherwise the greatest injustice takes place, for he might very probably be absent at sea, or in some foreign nation during the 6 months in which the deed is to settle the estate & nothing can be more unreasonable as well as unjust that he should lose his debt in such case. The General construction therefore put up on the Statute is unwarrantable & indefensible on every ground.
Title by Occupancy to things

Fera Naturalae.

The property men have in beasts is a qualified property; it is only common in fact with the possession. As soon as the possession is lost, the property in them is lost. The possession continues as long as the animus regendi can be discovered in the animal.

As to many animals, as soon as this desire of returning ceases, the possession is lost & is due to the first occupant. As in case of Doves &c. To kill these animals it is a trespass & to take off those which are useful to eat, Doves &c. is a theft criminal; it is felony as much as to steal any other property. But to take, off a Dog, a Cat &c. do any animal kept for amusement, is only a civil injury.

It is no trespass to fence this property on another man's land. His the owner is liable for damages.

It is the English law that the owner of the soil shall have the honey found in his land, let who will find it. In consequence whoever finds Bee, owns them & may cut down a tree without being a trespasser, is liable to any damage he may do. Such kind of damage however late under the maxim deminuto non curat.
Occumancy of things personal. 124.

Altho' the property in these few nature is generally open to the first occupant as soon as the possession is lost let them be found where they will yet when they are so far confined to a man's possession as not to be able to get out, no one has a right to take them. As your birds before they are able to fly.

2nd A person may have a qualified property in Water, Air & Light. Large Rivers or any streams navigated by canoes or any thing of vessel are considered as the public highway, in such water any person has a right to fish, but the small streams on one's land no body has a right to use without the owner's leave & no one has a right to divert such water from its natural course. The property in this water may be conveyed as other property without conveying the land with it. The whole benefit of the stream may be so conveyed so that no offense of the land can set a mile upon it, notwithstanding he is owner of the banks. This estate is merely ideal & is called an incorporeal reversionment.

A may also convey a right of way over his land & this cannot be obstructed by him. A person may not be deprived of the enjoyment of a free course of air & light which
Things Personal & Occupancy.

he has been accustomed to enjoy about his dwelling house. But an injury is remedied by an action on the case.

There are other instances of acquiring property by occupancy, as where a man has abandoned this property. If it appears evident that he has resigned all his claim to it, then it is open to the first occupant. In Eng. & Con. there are different methods of taking things from the fortunate finder. In Eng. no owner appearing they go to the King. In Con. the finder is to leave the article in the Town Clerk's hands for a certain time & publish it & if no owner appears, the finder is paid for his trouble & the rest goes to the treasurer. There has been an instance of a man's finds money & publish it & because he did not leave it with the Town Clerk & put it in the treasury, he was prosecuted. Mr. Reeve defended him & espied that the article money was not within the Stat. he compared it to the case of a will where all the goods chattels & at a certain farm were devised & money there was not included. The Stat. also ordered these goods to be sold at public vendue & put into the treasury but to sell
many would be a little extraordinary & one reason why it was not within the spirit of the Stat. Emblements are said by some to be acquired by occupancy—where much reason they are referred to this head it must be conjectured. Lawyers have much puzzled their brains to find out what head they ought to be referred to (finding no other place have stuck them under ‘occupancy’). They have been alternately ranked with Real & Personal Property, playing like school boys jack of both sides. When a man has lost personal chattels by forfeiture Emblems are considered real property, that they need not be forfeited. And when they were going to be taken by execution they are by some magic converted in the Peer’s property, that the creditor may have his debt. I don’t know however but this was done by Stat.) They are not desirable, they may be conveyed with the land on which they grow, even opposed to the contrary in the terms of the agreement—sometimes it is prone to steal emblems sometimes itself. When they are joined to the freehold—as apples on a tree they ought to take them when in a head. But if a man strips a cornfield & carries off the corn as fast as he can it is to no good.
title by Occupancy.

But if he stops to pile it up he is a thief at once.

He who takes advantage of a stream on his own land by building mills is not to be injured by a person above him so as to injure his works but if A has accustomed to let out a stream to water his land & a man builds a mill below all the he may be injured by A's letting out the water yet he can obtain no redress for A had the first right.

Section 23. Feb 25th 91.

The Doctrine of Accession has been also referred to the head of occupancy. Where a person improves another's property the law is that the original owner may take it with the improvement without allowing for the improvement. If the article is changed completely as wheat ground into flour or apples made into cider, in such cases the taken is not obliged to restore, but is liable for the injury in damages. Making timber into Sables &c is only improvement. Making Sable must be restored.

When there is a confusion or mixture of property he who mixes wilfully loses what he put in, but if the mixture was
Occurancy continued accidental it is otherwise.

Goods introduced among us by an enemy unless by a passport we may take & the taker becomes proprietor of such goods.

There has been great controversy in England concerning the right of Authors to their publications & as the English law was far from being unanimously settled by the Judges & House of Lords & as there is so great a variety of opinions among the most eminent Lawyers this subject will probably make a figure in Connect the United States. The Question is thoroughly discussed in the 2d vol. of Bunroth the case of Millar.

Respecting title by prerogative forfeiture & succession see the 2nd vol. of Black's.

It may be remarked that there is a very unreasonable distinction in the Eng. Laws as to Sole & Aggregate Corporations the privileges of the former do not vest in the successor but with those of the latter do.

Where a man has entered into a voluntary association he holds his right let him move where he will & may assign it for an injury the action may not be brought by an individual member but must be in the name of all.
There is great difficulty in determining what testimony ought to be admitted or what rejected. The rules laid down in the Books are general and will not apply closely to the circumstances of a particular case.

The rule is that Courts are not to admit any testimony, but the best the nature and circumstances of the case before them will admit of. This rule is far from being understood to mean. "The best evidence that can be in the nature of things" for this would exclude the admission of all parol testimony. And it may be that the party might have adduced better testimony than he did yet that adduced, admitted. As a copy is admitted frequently with a certificate of the proper officer, yet the original would be higher evidence. If, however, the party had in his possession higher evidence than that of said, the inferior testimony will not be admitted till the superior is first adduced. As if a man has written testimony in his pocket and will not be let in till the written is adduced, if the said is admitted in confirmation of the written. If a fact is to be proved as for instance a date when a memorandum was made of the date & the party or witness has this memorandum, parol evidence of it is inadmissible.
Evidence

The first division of Testimony is into *Written & Unwritten*

Of Written Testimony

This consists of the Acts of the Legislature & the Records of Courts. Where the private acts of the parties are required to be recorded, for distinction they are called "things recorded." Copies of acts properly recorded are never admitted unless well authenticated & no other evidence but such copies is admitted to authenticate them. So there seems to be no reason why a deed might not be authenticated by witnesses who were present at its execution. A copy of a record is admissible if authenticated by such evidence of its truth as the Law requires. (Of this evidence in its proper place) Some have contended that the record itself is not to be admitted so soon as a copy. This they have endeavored to make appear from the words of the Stat. The record itself has however been always admitted & it certainly ought for its cannot but be considered as higher evidence than a copy.

As a general rule a copy of a copy is not admissible for it is presumed that there must be better evidence.

Statutes are divided into Public & Private. A Public Stat. is such an one as re-
Evidence

relates to the community at large or a whole class of men in a community. A Stat. respecting slavery, or a Stat. relating to the whole body of manufacturers is a Public Stat. But one that respecting a particular manufacture, as making of Hats, is a Private Stat.

The Printed Statute Book is evidence of public acts. But in general there is no occasion to introduce it, the act being well understood, at least by the judges. The evidence of Private acts is not sufficient till a certificate is produced from the proper officer, or it may be by the oath of an examiner. The Stat. Book of the several States is admitted as evidence of an act.

Rule - Where a Stat. is general, viz. a Public Stat. it may be pleaded under the General issue, unless it is to avoid a security for a contract & then it must be pleads specially & the Stat. produced in evidence as in case of Losing.

After a Public act made in addition to or to repeal another act must be pleads specially. There can be no reason for this as a - provision may be given in evidence under the general issue. A Private act in any must be plead specially. The rule in Cor. is different here a Private Stat. may be given in evidence under the General issue. One distinction
Evidence

That obtaining a wrong is important to be remembered. A public writ need not be produced in evidence, while a private one must.

In Eng. Judgments of Courts must come with this evidence—either a full copy from the Court, or with the oath of an examiner, in the latter case a verdict may be made against it. No not in the former.

Where no seal is used by a Court, a certificate from the Clerk is sufficient, or the oath of an examiner. In Cor. the oath of an examiner will not do, but the copy must be certified by the Clerk of the Court to be true, sealed or not.

A seal has been dispensed with even where the Court is ordered by the Stat. to use a seal. All records in Cor. have seals, except single justices.

In Eng. true copies & Private Statutes are carried out by the jury, but not such papers the authenticity of which depended upon formal testimony. But in Cor. all such papers are permitted to be carried out by the jury. The reason given in Eng. for not taking such papers is that the jury cannot take the oral testimony upon which the writing depended, but this can be no reason for they must carry the oral proof with them, in their memories, otherwise it can do no good. A judgment of Courts in certain instances of no consequence as evidence, where the judgment depended upon
Evidence

A verdict for the Court might have been

aware to the verdict. In such cases the verdict

must be introduced. But this practice ap-

pears to be indefensible upon principle.

There may have been different evidence

before the former jury, besides why ought

the opinion of 12 men who sat in the jury

seat to have more weight than the opinion

of 12 other spectators—yet the opinion of

the former is permitted to govern a suc-

ceeding jury, while the opinion of the latter

12 is suffered to have no influence.

It would seem most rational for the jury

to take the case up independent of any

former verdict. When a former verdict

is to the same point of between the same

parties, it may be given in evidence.

When the question concerns land and

it is not necessary that the former verdict

related to the same land, but if it be to the

same point as that on trial it is admissible.

Lecture 25th. Feb. 27th. 94.

Suppose a man assaulted & the public peace

is broken, the public prosecute the Offender &

by the testimony of the person assaulted a verdict

is obtained against him, it has been questioned

whether this verdict could afterwards be given

in evidence against the Offender in an action
Evidence

65. The injured person for private damages.
It would be very extraordinary if the verdict
should be admitted in such cases & repugnant to
every principle relating to the admission of testi-
money— for the party Plaintiff would be evidently tak-
ing advantage of his own testimony to recover
damages.

An execution is evidence without the
judgement or not according to the person who of-
serves it. If it is the Plaintiff who offers it to defend
himself or establish a title, he must shew his
judgement for if he had none he is a trap-
 hacker or if it was a void judgment he is likewise
a trespasser. But if it is the Officer who defends
when charged as a trespasser, it is sufficient to
shew an execution issuing from a Court of
competent jurisdiction— yet the execution
will not be admitted to defend the Officer
unless it appeared on the face of it to issue
from a Court of competent jurisdiction to
the wants to issue it; or comparing it with
the general laws of the land, which every man
must know at his peril, it appear that there
could be no authority given. By some it is
contended that many authorities support the o-
pinion, that if the subject matter of the suit
was not within the jurisdiction of the Court an-

Evidence

all the proceedings being before a Court not having jurisdiction are coram non judice.

The judgment is void, the execution is void, and every thing done by the officer a trespass whilst others suppose the true rule is where the Court might have granted an Exem for any thing that appears to the Officer as would be a good defense. This latter opinion however is not supportable, for it is the Duty of the Officer to know the extent of the jurisdiction of that Court or the respective Courts under which he serves as soon as he takes on the face of it and the exem observed it be coram non judice he must not proceed to levy if he does not is ignorant respecting the jurisdiction of the Court & proceeds it is at his peril. For a discussion of this subject see 6th 10th the case of Marshallsea & Hard 180 & 2 Willison case of Green & Crocket & Haynes & Prescott & Man. The doctrine held up in the case of Marshallsea has been considered in support of succeeding judges & also by Mr. Ace. See Strange 943. Where this doctrine is established viz. That where innocent persons join in a justification with those who are not innocent they shall all indiscriminately be liable for the innocent should not have been caught in bad company. Strange 50% accepted
Evidence

If any part of the [Groun] is wished to be made use of as that a writ issued if was not returned, testimony is admissible to prove that a writ actually did issue.

A declaration in a former action can not be admitted introduced in a Court of Law as testimony against a second claim, yet in Chancery a Bill filed in a former case is admitted to contradict a second claim. The reason for this difference is that the Bill the Dem. swears to the truth of its contents. For the ground that proof to show what has formerly been sworn to is admissible. An infant's answer in Chancery is however never to be proved against him in evidence. It will not do to introduce the answer separately. The Bill must be always with it. But formerly before Bills were recorded the answer might be introduced alone in case the Bill was lost. This now since Chancery has become a Court of Record the answer is inadmissible without the Bill (Although English lawyers pretend to say that Chancery is not a Court of Record yet it is in fact as much as any other). If the Answer is produced it need not be proved to have been under oath if this is always presumed till the contrary is proved. The Law is different with respect to an affidavit. This being no part of the
Evidence

Records must be proved to have been sworn to and produced itself no copy is admissible.

The mode of Proceeding in Chancery is by Depositions. Sometimes there is occasion to introduce these before Courts of Law. Other wise no Depositions are admitted in a Court of Law. This must be with the consent of the parties. The judge will continue, when of the deposition is of considerable importance. The refusing party will agree to admit the Deposition. This under Guidance of waiting till the witness, who is supposed to be abroad till returns. Sometimes the parties proceed in a Court of Chancery where they should have gone to Law on purpose to have Depositions admitted. Depositions from Chancery are not in any case to be admitted in Law. It is only in such instances where the witness himself is either dead, or a foreign country, or prevented by some inevitable accident, as sickness, or from attending.

Testimony in perpetuum se memoriam is where Application is made in Chancery, to take Depositions of Old people or of persons going into a Foreign Country, when an action
Evidence

is expected to be lost against a man hereafter. In such cases Chancery will suffer the Depositions to be taken. Our Sup. Court are by statute with power to give men (debitus potestatem) authority to take such depositions.

Our Law respecting Depositions is different from the English. Testimony viva voce. Depositions are both admitted in both Courts. Depositions from a Court sitting as a Court of Chancery are not admitted in a Court of Law. Depositions here are not suffered to be taken at a long distance than 20 miles from the Court. Some have supposed this law a privilege to the witness & that he cannot be obliged to come from a greater distance. This however is a mistaken notion. It is a privilege to the Parties only. They may be compelled to come from any distance. In Eng. when a verbal act of a matter of fact is applied for in Chancery, if an answer has been put in & the Chancellor will not try it, he may send it to a Court of Law provided the Respondent will consent to have the answer there read.

Lecture 26th Feb. 28th 1744.

A judgment of a Court of competent jurisdiction is conclusive testimony. No averment can be made against it, only where it was obtained thru' some fraud in one of the parties. It is not in such case considered as being rendered thru' any fault in the judge.
Evidence

Of the effect of a foreign judgment.

By foreign judgment we meant those obtained in different countries subject to the same power. These are admitted as evidence, the subject to review. As a judgment obtained in Jamaica or India would be admitted in Eng. as testimony but liable to be examined, or a judgment rendered in one of the United States is admitted in any other State, yet subject to revision. The 1st case in Douglas Rep. will show the effect of a foreign judgment in Eng. A case may happen in the United States of a judgment being rendered against a man without his knowledge. As if a man in N.York owned property in Massachusetts, let this property be of even so small a value, it may be attacked & judgment rendered against him for any sum without the debtor's knowledge. He is allowed to come within two years & obtain a new hearing, but after this period he is supposed by some to be remediless. If this Law is established the greatest injustice might take place for judgements at this rate might be obtained against a man for thousands & that the debt of he ever appeared in the State where the judgment would be liable, to pay the whole or an action on judgment might be brought in another State, where no debt was due. Our Courts have however adopted a rule which may
Evidence

prevent such fraud. After the time limited the Court will presume that the Dst had no notice & will continue the cause no longer but render judgment. Remove this presumption & make it appear that he had not notice a new hearing may be had. This is a very equitable Rule & will preserve the principles of Law entire. A judgment obtained against a man without giving him actual notice ought to be considered fraudulent & liable to be reversed. And if actual notice is given the Dst whether legal or not, the judgment ought to be held good. The Dst might easily give the Dst notice by writing to him informing him of the true state of the business & this is nothing more than his duty.

This is the nature also of our foreign attachments upon absconding Debtors. A suit B. who resides in A. & leaves a Copy of the writ with C. who is supposed to be B's factor. C. appears in Court & says he is not his agent yet notwithstanding this the Court will render judgment against B. for the whole demand. The way to collect a judgment against an absconding Debtor is to bring a sequestration on the judgment against the factor. A copy to be left with the agent provided he will not expose the goods. But in the case supposed. A is careful not to bring his sequestration for he knows C. has no property of the Debtor.
Evidence

But may perhaps wait for B to come to this State, & then levy his execution & commit him to jail—or he may go to N.Y. & there bring an action of debt on judgment & produce the copy of the judgment as evidence. In this way great inequality might be practised. B ought to be permitted to make account of these facts that justice might be done. Our Courts have invented a method to avoid the flat by saying that a foreign judgment is good for nothing no other purpose than to bring a fine facias upon against the garnishee. By this means they hope to have the property of absent men is prevented from being unjustly taken.

The law respecting records of Marriage, Births etc. is different from other records. The law is extremely loose as to what shall be evidence of these. If there has been a record it can be come at hand. Testimony is not admissible, but if there was no record or the record is burnt or lost, other proof is admissible. Before hand is admitted it must appear that diligence has been used to find the record. A clergyman’s certificate, a record in the family Bible, or memorandum in an old Almanack are admitted to the exclusion of
Evidence

Of Deeds

"Deeds" in Eng. include all conveyances of

contracts under seal. It is a rule of Eng.

Law that he who claims by deed must make

a proof of it in Court for it. Another rule

of their Law that if he does make a proof

is not made the deed need not be produced if

challenged. But in our Law it makes no

add whether proof is made or not for in ei-

ther case it must be produced if challenged.

In Eng. in case of a claim upon a deed the deed

is not required if the party is not entitled to

the custody of it. As in an action to eject a

widow from land in dower, as she is not en-

titled to the custody of deed she is not required

to produce it. Her assignment is a sufficient title

till for her until a better title is produced.

The heir however in such case might be com-

pelled to show the deed. In this country we have

no necessity for such a distinction, our deeds

being all recorded & a Copy might in the instan-

ce of the widow be produced by her.

After the deed is produced it must be pro-

ved to have executed & delivered. This is to be done

by Witnesses if alive & if dead or absent it may

be made to appear from comparing their hand

writings of the grantee with the name on the deed.

When a deed in Eng. is burnt or lost its contents
Evidence may be proved by persons who have read it, or a copy may be admitted with testimony to prove it a true copy. This is the Corn. Law. In Con. by Stat. an acknowledgment before a Justice is required & if the Justice is alive when the validity of the deed is called in question he is admitted to swear that the deed was executed & delivered. So the more general practice here is only to exact an acknowledgment & not to deliver the deed till after acknowledgment. The acknowledgment & operation is considered as sufficient presumption that it was delivered. 2 witnesses are by Stat. required to a deed & if the subscribing witnesses can be had, no hand writing will be admitted.

Of comparing handwriting Gibert in his Law of Evid. makes this distinction. In civil cases the handwriting compared would be sufficient testimony, but in criminal cases inadmissible. Morgan considers it weak evidence in both cases. Bulcer thinks it conclusive in no case. In this country witnesses are not required to attest & it may be made to appear that it was not the hand writing of person whose name is on it, but evidence is not admitted to prove that it was another man's writing. It is the practice
Evidence
of our Courts to consider the evidence of a man's handwriting as conclusive in civil cases, but not in criminal, following the opinion of Gilbert.

Lecture 27th March 1st 1814.

In this State we have embraced a wrong idea respecting the design of recording deeds. It is generally supposed that deeds are recorded that when the deed is lost the copy may be admitted as evidence of the claim; but this was not the design of recording them. The true reason of this practice was, to suffer a man who was about to purchase to examine the record & see whether the vendor had any title to the land offered for sale & thus prevent the vendor from being imposed upon. But our practice gives great room for fraud. A man might forge a deed & get after getting it recorded, burn up the deed & so a deed to establish a fraudulent claim. Our practice was formerly introduced by an authority in Salk's case of Smith v. W. But this authority is a doubtful one in the opinion of Butler & other lawyers. Evidence ought to be required to prove the execution of the deed if the deed itself is lost.

Possession of a deed land, with the deed is sufficient evidence of a man's claim with any testimony to confirm the deed. In such a case
Evidence

case if a jury have brought in a special verdict that if the deed was executed and delivered it was done above 40 years ago and the man claiming under it had been in possession during this period the Court cannot draw the inference that the deed was actually executed and delivered, as they would hear the same evidence upon which the jury would be authorized to draw such an inference. We have just seen that possession in 40 years with the deed is sufficient evidence of execution & delivery, yet the jury must expressly say that the execution & delivery were legal otherwise the Court would be puzzled to draw such an intimate conclusion to a logical inference from such complicated premises and the verdict would avail nothing. Also in case of trover if the jury have found a demand & refusal to deliver up the property trovered, although these words legally imply a conversion, yet the Court are not allowed to conclude that there was a conversion unless the jury have mentioned this in their verdict. This is one among the numerous instances of a childish fear in the judges of trespassing on premises where there is not even a shadow of danger & is inconsistent with that dignity which they pretend, to which they ought to be true.

A deed without any solemnity attending it except a delivery, may be good as a covenant, altho
Evidence

it will convey no title. But if the grantee has gone into possession, the grantor brings an action of ejectment against him, the grantee may file a plea in Chancery & compel the grantor to complete the contract by giving a valid deed. If the grantor has before this given a good title to another, the first grantee that he cannot hold the land, may yet bring his action on the defective deed, as a covenant & recover back his money.

To convey land by will there must be 3 witnesses & if only one of these can be obtained he will be sufficient to establish the will.

Of erasures & interlineations

These made by persons any way interested if ever so immaterial render the deed totally void. But an immaterial alteration made by an indifferent person will not invalidate the deed. Any addition or alteration by the consent of both parties renders the deed void for it is said in such case not to be the same instrument that was before witnessed & sealed. If the property might have been conveyed without a writing the erasure would not destroy the bargain; for it would the writing. As a Bill of sale of a horse, an erasure or other alteration would make void the Bill of sale, yet as the horse might have passed without the writing, the bargain remains firm. If the seal is broken off by the parties
Evidence

unles done in Court, or if it be broken off by any accident, the deed is destroyed. In case of a joint deed given by 2 persons, if one seal is broken off, the deed is void as to both; for it is said that the fact of one seal being off is evidence of a discharge & the discharge of one is the discharge of both. This doctrine however appears to be very unreasonable. Let the seal being broken off be presumptive evidence of a discharge, yet if this presumption can be removed by proof it ought not to be a discharge of both either.

These principles are not fully settled.

As to Unsealed instrument: the action may be brought as on a promise & the writing given in evidence. Wherever the covenant is detailed at length & the consideration appears, the action may be brought on the promise; but where the consideration is removed behind the curtain, the contract is a specialty & the action must be brought on the writing.

2nd Division of Evidence
Of Carol Testimony

Of Persons excluded from being witnesses.

1st Those who want integrity

2nd Those who want discomfirt.

Under the first head are excluded persons who are so interested that they are presumed not to give their testimony with integrity.
Evidence

It being natural for the best men to incline in favor of their own cause. Persons only apparently interested, as a Guardian in an action of an infant, or a Trustee in an action concerning property held in trust, are admitted to testify.

Lawyers make a distinction between interestedness in the event & interestedness in question. Concerning what should be considered interestedness in the event, that it is to be judged from the question, whereas it much

Interestedness in the event is where a man is immediately concerned in the event of the suit in which he is called to be a witness. That is, he is to gain or lose by the cause in question as it goes one way or the other. As if a man covenants with the off that if he gains he shall have a proportion of the profit or with the off, that if he looses, he will bear a proportion of the loss, in either of these cases the man thus covenanted is eventually interested in the suit & is therefore an inadmissible witness.

Where a man is collaterally interested, as if two men were in similar circumstances & one should bring his action first, the other may be said to be interested in the question
Evidence

Such kind of interest andself will in no case exclude a witness according to the English Law as it now stands. See Dunford 2d, volume the Case of Bent & Baker in which this doctrine is fully settled by the 1s. B. R. 2251 in which D. Mansfield gives the true reason in favor of these principles. Before this decision in Dunford the English law on this subject was extremely vague & the adjudications were altogether inconsistent; sometimes witnesses interested in the question were rejected & in some instances admitted; if the same inconsistency at first noticed among our judges is observable in our adjudications — our judges having followed the old English practice — But it is to be hoped that the present English principle will soon be adopted by our Courts.

 Authorities relating to this subject.

Lecture 28th March 3rd 94

If it appears that any one can be afterwards made of judgment by a witness, which judgment depends upon his testimony, he is interested in the event & is untrustworthy. But this is not the case where 2 men are both assaulted —
at the same time one may bring his action & introduce the other as a witness. If no use can afterwards be made of this judgment, but when the other comes to bring his action, he may introduce the man assaulted with him as a witness. In case of a forgery of a note, the original cannot be admitted to prove that the note was actually forged, if it is the practice to vacate the note after forgery is proved, for the witness in such case would be immediately interested in the event.

There is a distinction made in Co. Litt. cited in Hard. 532 in this:

Of the admission of members of corporations to testify.

Where there is a balance of interest, in those cases where it is evident that the member of the corporation would be led by his interest to swear one way as much as the other, or where it would be more or less uncertain on which side his interest leans, in all such cases he is an admissible witness.

In a public prosecution against a county for damages sustained by the Badness of a bridge, the inhabitants of the county are admitted to testify in the case on the ground that they are as much interested to have good bridges, as they are to avoid the small share of the damages which the plaintiff is about to recover by such a bridge action would tend to make them keep the bridge good.
Evidence

In another instance a member of a corporation is admitted. Where proof is required to show a man promised a donation as a Bell for a meeting house, or to establish a school &c. In all cases where the members will be admitted, the donation must be such as they are not obliged to supply of their own. They should not be established for if they were obliged to purchase the Bell, unless they established the Donation, they would be directly interested. Any member of the society is admitted to testify except the agent who cares on the fund &c. There can be no reason why he should not be admitted as he is no more interested than the rest. Testimony to prove a covenant which might have been reduced to writing is not admissible. As if a preacher agreed to take continental money for his salary, when the question came up, the members of the society were not admitted to swear that he made such an agreement for the contract if there was any ought to have been committed to writing.

It is a principle in our Law & the English that where a fact cannot be carried into execution without admitting interested testimony, it shall be admitted. This principle however has been rejected by the Circuit Court. If a man should be robbed he cannot be supposed to carry evidence that about with him to prove
Evidence

That he was robbed, but in order that the
Statute may be carried into execution he is
admitted to testify against the robber. This
is a common rule in the Law of England by
which all the determination of the Circuit
Court. Such witnesses are not suffered to relate any
other circumstances than are necessary to cause
the Statute to be executed. An authority on the 3rd.
Mo. 115 speaks of this principle, as being fully
settled. But it is contradicted in 2 cases in St.
2d 316. & 2d. 1197. These are cases of informa-
ions where the informer is as to have 1/2 the
penalty. In actions of account also the par-
ties are admitted to testify & this is with the set
of cases where witnesses interested are admitted
when the Statute otherwise would fail of execution.
These are the only instances in which interested
persons are admissible before a Court of Law.
A refusal to testify when called upon at Law
is a contempt of Court for which the offender
may be imprisoned.

In Chancery the parties may both
be admitted as witnesses, the Dtest always &
The Dst. if the Dst. pledges to appear to his con-
science for the truth. They are not however
witnesses in the same sense as those at Law.
It is no contempt of Court for the Dst. to refuse
to testify, but in such case the accusation of
The Dst. is taken for granted. A Dst. shall never
be obliged to give evidence if he does not wish.
Evidence.

Subject himself to a penalty. Yet if the penalty is going to the CJ & he waives that it the Defendant must then speak or it is taken for granted what the P[ro] testifies. If a man is called upon to prove the highest degree of belief in himself or by it be is not to be subjected to a penalty, he must testify or it will be taken pro confesso. If the Stat of Limit has run upon a penalty so that the need not be subjected, courts will not oblige him to testify.

By our Stat we have made some encroachments on the Com. Law respecting the admission of witnesses. As in an action of Book debt both parties are admitted. Our Courts seem to have involved them selves in some inconsistency in one respect. When action has been lost on a Note the Pst has receipts but not to be found he is not allowed to swear to them yet he may in his turn bring an action of Book debt & charge what he supposed the book receipts for & this he may swear to.

In an action for a private assault the Def is admitted to testify as to the assault itself & as to the words which brought it on but not as to the degree of injury. This must be proved by those who have examined the wounds.

Another encroachment our Stat has made when the Com. Law. In a case of theft the Pst
Evidence

may testify that he believes the deft cut off wood, for instance. If the deft is obliged to swear whether he did or not, or else it will be presumed he did—but if he says he did not the deft can bring in no testimony to prove that he did, as he could in case of the Night Law.

Exception. Where counterfeit money has been received. The man is allowed to sue for whom he received it & recovers back its value. All these instances are against the maxims of Com. Law.

Where a deft. arbitrarily joins a deft. in a suit in order to exclude him from being a witness, the Court will erase such deft. out of the declaration & admit him to testify. If there is not sufficient evidence to prove him guilty, or if the probability is that he is not guilty & there is no other evidence by which the case may be illustrated he will be admitted.

Lecture 29th March 1794.

Husb. & wife are excluded from being witnesses for or against each other. This is a general rule & certainly does not correspond with the maxims that they are one—for a person is admitted to testify against himself. Even if, they are willing to testify against each other they are not prohibited by principles of policy.

So this rule there are a few exceptions, in the instance of high treason they may be
Evidence

witnesses against each other. This principle is founded upon the idea that they are under a superior obligation of allegiance to their

prince: they are therefore bound to diz.

In complaints for personal abuse, they are witnesses against each other. If they are admitted before any other testimony, other witnesses may be introduced. If the plaintiff produce a man for a private personal abuse to the wife, she is admitted as a witness. The first case of this kind was that notorious one of T. Audley’s. This authority has been questioned by some common place writers & in one case denied by Holt to the same authority. Yet notwithstanding all that has been said to invalidate it, it is established fully at present (see St. 693). It is founded on principle.

By the civil law children were excluded from testifying for their parents, but under the English Law no relations are excluded except husband & Wife.

Attornies, witnesses

Attornies are generally allowed to testify in causes in which their clients are concerned. In attornies may not tell the court any thing the opposite party said when it is in proof. That he know
Evidence

The conversation but any thing that was not voluntarily he may relate.

Attorneys are prohibited by law from testifying against their clients anything communicated after they are employed. If an attorney is asked a question relating to such circumstances, he is not at liberty to answer; nay, indeed no one has a right to ask a question of this kind, but with respect to any matters that happened previous to his being employed by the client, he is an admissible witness.

Parties criminally are frequently allowed to be witnesses. There is sometimes danger in admitting them but the evil attending this practice is more than compensated by the good effect. Many crimes which would not otherwise have been discovered and punished, have been discovered by admitting one of the rogues to testify against the others on condition of pardoning him and confining his testimony by confession is good evidence in both civil and criminal actions. The only exceptions are, voluntarily and acknowledges himself guilty of a crime. Where are no other corroborating circumstances the jury cannot convict him. What a person accused of a crime has said before a court of inquiry, so long it must
Evidence be collected from the minutes of the Court & in Con. it is the practice to obtain it from the mouth of justice, & not from any bystander.

What a dead man formerly said under oath is evidence; yet what has said not under oath, as a general rule, is no testimony. Nor in some instances it is admitted. Yet seems reasonable that it should be admitted when it is the best evidence that can be obtained. What a man said in contemplation of death is admissible for it is probable he is as likely to tell the truth in this as in any situation, but if he did not die in that sickness, what he said cannot be introduced nor what he said when he was like to die unless he contemplated death. What a person has been heard to say concerning the boundaries of his land may be addressed after his death.

When a man's testimony is impeached, evidence may be introduced to show what he said before. If a person has uniformly told one story not under oath when he was distrusted & under oath tells a different story, testimony may be admissible to relate what he said always, & not he was put on oath of what he said first.
Evidence will prevail in preference to his testimony under oath. Evidence however is admitted of
what a man said previous to his being put on oath, as well as to impeach it,
of Persons excluded this want of integrity

Persons rendered infamous by crime are not allowed to be witnesses. Under the
class of infamous characters are reckoned those guilty of felony, perjury, cheating &
In order to exclude them, they must not only
have committed, but have been convicted of
the crime & the record of the Court must be
left in as proof of the conviction. Barren
is one of the crimes fabric will exclude a
witness if convicted.

Our Courts have made many innova-
tions in the Common Law on this subject & not
withstanding a man has been guilty of a crime
yet it can be made to appear that he has sus-
tained a good character a long time since
the conviction he is a good witness. This is not
the law of Eng.

A Pardon operates to qualify a man to
 testify, although it appears on the record that he
has been convicted.

In Eng. formerly no infidels could be
admitted as witnesses except Jews but now all
are allowed to testify & are sworn by Pap
Evidence

religion which they may happen to profess. Quakers in Europe are not witnesses in criminal cases. This extremely unreasonable Deists upon their principles would not be admitted; but as they are bred up in a Christian Country, it is presumed that they can relate the truth. Atheists are excluded.

Under our Law, from the form of our oath, no persons can have any objection to take it swear by it accordingly; by all except Atheists are admitted.

Lecture 30. March 5th 91.

Children are admitted to testify at different ages in different countries & indeed in the same country it depending more upon their discretion than upon their age. Some have fixed the period for admitting them at the age of 10. They are allowed frequently to relate their story without being sworn. They are never put in oath till they appear to understand the nature of an oath. In Connecticut, they are not put in oath till 14.

In Courts following the Civil Law, one credible witness is not sufficient to establish a fact. If the proof is by witnesses, they require 2 & if other testimony is admitted it must be equivalent to the evidence of 2 persons.
Evidence

In England & Conne. the credible witness is sufficient, yet some witnesses with and presumptive evidence would not be rejected if they could be had conveniently. So quantity of evidence is prescribed by Law, & it is left pretty much with the discretion of judges as to what testimony may be sufficient in the particular case before them.

As a General rule, hearsay testimony is inadmissible. Yet in some instances it is admitted. It may be testified what a witness has said before when not under oath. It may also be testified what persons have said concerning matters of tradition as births, boundaries. Testimony of a man's character is impeached, hearsay evidence is admitted to show what the witness is not to say what he thinks of the man, but must inform concerning his general character among his acquaintance. A man's particular vices are not to be brought up to view the Court are only to enquire into his general character. In an action of Bank debt evidence is admissible to show that the Debtor is a dishonest man. Testimony is not let in to show that a man is malicious who is carrying on a malicious prosecution. Such evidence was formerly admitted but is now rejected as tending to try character & not facts. Yet a knowledge of a man's character will have great influence when the time. If it has influence when they know, why ought they not
Evidence

To be informed by witnesses that it may have to judge influence. It is evident to see that there is the same danger in either case of trying
characters and facts.

As a general rule, witnesses are not to relate their opinions but only the facts from those facts the jury or judges are to draw the
inference. It may in numerous cases make an essential difference whether the witness gave his opinion or not, as the case will frequently depend altogether upon the manner in which any thing is said or done. This can only be found out by the opinion of the witnesses.

Cases where 2 witnesses are necessary

Two witnesses are necessary to convict a man of high treason. Yet one overt act by one witness and another overt act proved by another witness is sufficient.

Two witnesses are also necessary to convict a man oftreason on the ground that the testimony of one witness would only set oath against oath & just balance each other. Instances however are improvable in which one witness ought to be held sufficient to convict.

By one that all testimony in both civil & criminal cases is left on the footing as at horn-law except in capital crimes. Then the consequence of
Evidence

a crime is to be death 2 witnesses are required or what is equivalent to these. Some have supposed it necessary that 2 witnesses must have actually looked on or observed the commission of the crime, but this is far from being the Law—for one witness with corroborating circumstances is many times sufficient. Indeed only presumptive evidence will sometimes convict a man. One principle however is fully established that the testimony of one credible witness without corroborating circumstances is insufficient to convict a man of a capital crime.

Interest in the Event is proved by two methods: 1st by the oaths of the person said to be interested. These methods are concurrent but by choosing one the party is obliged to waive the other. In the latter method, by voire dire, if he discloses any fact which shows him to be interested in the event, or if he justifies himself interested by bound in honor not to testify, Courts will exclude him, but if the Court think him interested & he says not, they cannot exclude him.

The method of summoning a witness before a Court is by a writ of subpœna, if the
Evidence

Party requesting his attendance has complied with the requisites of the Law; the witness is obliged to attend the Court. His expenses must be tendered to him & also his travel to & from the Court & pay for one days attendance. This is our Practice. Some English writers lay it down that the party must tender the witness his expenses, travel & whole pay for his attendance; but it is impossible to know how long he may want the witness & it would be difficult to tender just sufficient. It is probable however that the witness need stay at least no longer than he has been payed for. The witness reflects to appear the law is that he is liable for the damage the party sustained in consequence of his failure. It is extremely difficult in such cases to ascertain the rule of damages. For it is altogether uncertain what the witness would have testified. Before a witness is thus liable he must be called by the Clerk 3 times & then his failure & the return of the subpoena are to be recorded.

Of Proof by Presumption

Evidence raised by presumption may be sufficient, but is liable to be removed by contrary positive testimony.

When one fact is fully established
Evidence

Another fact is the necessary consequence of inseparable from it. This leads is said to be a violent presumption. As if it was established that it was clear in the evening of the snow on the ground, but in the morning the ground was covered with snow, this would be a violent presumption that there had been clouds during the night. Which presumption is impossible to be removed. Follow the definition strictly, and it is the highest kind of evidence. The old case of a man being found with a bloody dagger running from a dead man, washing in his blood, is cited by some writers as being a violent presumption; yet it is not according to the above definition for it may be, and indeed in a very striking instance, has been removed. A man had sworn revenge upon his acknowledged enemy, was found drawing a knife and from his breast, he was said to have been dead and covered with blood; he was executed afterward. The true murderer confessed the crime. The fact was that the person executors happened to help by the moon. The man was stabbed, and was drawing out the bleeding dagger when discovered in this act. So that fact presumptive evidence is liable to be removed.
Evidence.

The instance of a Receipt for the last term in case of Leave being evidence that all former rent is paid, is related as violent presumption, but this certainly might be removed no, in Law it is held sufficient.

Interested witnesses are said to be admitted only "from the necessity of thing." This is a vague expression might easily be construed to mean that when no other evidence could be found, this might be let in from the necessity of the thing. But the cases included under this head are settled & are as follows——

1. Where the debt would be defeated if the interested person should not be admitted.
2. In actions of account.
3. In an action against a Sheriff for a void

Now escape the escape is admitted as the directly interested for if the creditor recovers out of the Sheriff, he can have no claim upon the escape. This appears a rather an unreasonable rule.

4. The case of a rescue the person rescued is witness against the rescuer——
5. An agent is always admitted to testify that he transacted the business of his employer. The agent is deeply interested for in itself it means that he discharged his duty properly he himself would be liable. This is a very important branch of the case of interested persons being defendants being in every days practice—.
Evidence

6. Where there are two Trustees or one is called in to testify in an action against the other.
7. In a complaint against the trust, the wife is admitted to testify, that the trust may be compelled by Court to give bonds for his good behavior.
8. The mother of a bastard is a witness to charge the father.

9. Where a fourth fidelity is questioned by the Master, the court may testify in an action against the person who he says committed the fault. As where a debt has been entailed with the master's property, he is a witness to prove that another took away the property, or wasted it.

10. Book debts

11. The case of Ass and Batter.

12. Our Stat. which suffers the Def to put the Def on oath when it is believed that the Def committer'd a trust.

13. Where a man is called he is a witness against the Robber. Thirdly, prints not into fact.

14. The case the man's receiving counterfeit money.

Lecture 31st March 6th 91

An interested person is capable of becoming a proper witness by a release. B Burnford 37.

When a person becomes interested after he is called as a witness, his testimony is not good in that party's cause for whom he is interested but is good for the other party. Sta. 632. 78. Burn 27.
Evidence

Miscellaneous principles in the Law of Evidence with their authorities

A witness may swear to the fact of an entry made by him on paper if he remembers his having made the memorandum; but if he has no recollection of his having made the memorandum itself, must be produced. Evidence may be let in to prove there were other considerations to a writing besides that expressed in the instrument, but this is not to contradict the consideration. 3 Durnf. 475.

When a release of all demands is given, it does not release that consideration out of which the release grew. If part of the consideration is specified, others may be shown by parol testimony as well as the 5 Shillings had been the nominal consideration. This last doctrine I heard recognized by the Sup. Court Litchfield Jan. 7. 94. R.F.

See a Case in 3 Durnf. 370, respecting how evidence in which the Court was divided.

A witness who absents himself wilfully may be attached for contempt of Court Doy. 730. Art. 510.

An Executor when naked Trustee is a witness Doy. 131.

It is a Rule that if a party offers testimony inadmissible because not the best the nature of the Wine admits of the Court may look at it
Evidence
at it, & if it is against the party offering it may be read Doug. 752.

The Declaration of a dying man adm. 3 Doug. 753

Pard evidence is admitted to prove that the parties intention was, that a portion should not adorn a legacy. 2 Brown Chan. 163. & that legacies given by a Codicil were meant to be accumulative. 2 Brown Chan. 179, 721.

Substituting witnesses to a will must be called if they can be procured & if not to be found their hand writing proved. It has been a great question in Eng. whether the testimony is admissible to contradict the evidence of the subscribing witnesses. And is determined in the affirmative. 1 Black Rep. 365. 3 P. C. 396, but the self-written witness testifying is just to be introduced.

Length of time is sometimes presumptive evidence of the discharge of a bond. 1 W. Black Rep. 592. Courts have never gone below the time of 18 years.

When a subscribing witness is dead he is competent to testify. Stra. 406.

A person apprehending himself interested when he is not, is no witness Stra. 129.

Card evidence of the contents of a deed when admissible see 10 Vesey 535.

When an expression of the testator is ambiguous, pard evidence is admissible to show what
The intention was even against the legal construction of the expression 20 years. In this case fraud would be admitted. It would show, what the testator meant by heirs on the mother's side, and the meaning was against the legal construction.

If a deposition of an interested person is taken before trial, he becomes interested. The deposition is inadmissible if in favor of that side on which he is interested. See 2 Raymond 1008. It is curious to remark that a person who is heir to the estate of an old man just ready to die is a good witness. And consider the interest respecting any matter concerning the estate, & yet the who has an estate in a remainder let it be ever so distant in expectation is rejected as an interested witness. & therefore inadmissible. We startle at such an unreasonable precaution. There must be a flaw in the wisdom of those who formed it, under the sanction of the profession of the law.

Endorsements are sometimes admitted to rebut the presumption of a Bond's payer. If 18 years have passed when the legal length of time has run upon it. The Rule is, that when the en-
Evidence

Endorsement was made before the time had run upon the Bond; such endorsement reflects the presumption of the Bonds having been paid, but if made after the 18 years had run it is otherwise. This however is an unreasonable distinction for it is in the power of the obligee who keeps the Bond to make the endorsement when he pleases.

The evidence of a single witness corroborated by circumstances, against the 20ths on foot in Chancery, is sufficient to found a decree upon. 1 Brown Law 51. It is the practice in such cases for Chancery to send the witness of the 20ths answer to a Court of Law and after they are tried they are sent back to Chancery.

The verbal declarations of the vendor at the time of the sale are not admissible to contradict the written Conditions, see Black's Rep. Henry 287. Mr. Reeve once lost a case which probably he would have obtained had he known of this authority. Lane published lands for sale freed from all incumbrances when in fact they were not thus free. The Court suffered him to let in testimony that he had told many of the land incumbrances under which the land large $ obtained his cause
Evidence

A person who has contributed to give currency & credit to a writing shall never be admitted as a witness to impeach it as in case of recentious contracts.

The following authorities respecting the admission of witnesses interested in the question viewed together show that they are inconsistent & inconstant.

Salk 283
Salk 285—Charge 595. Leary of the Note & Lecture 32nd March 1804.

There are instances in which a person's general character may be enquired not only the character of the witnesses & parties, but of other persons. & not only general character but particular facts respecting character may be admitted to be proved. All cases may be included under this General Rule. Where a person's character is put in issue by the pleadings, whether it goes fully to a recovery or define or only in mitigation of damages, particular facts or a general reputation may be enquired into. But you are not to enquire to furnish evidence that it is probable that the thing charged was done. For instance in slander c. sues A. for charging him with being a thief. A wishes to prove that B is a slanderous malicious character. Can he do it? Examine...
Evidence

for what purpose he wishes to make this proof when he has made it, will it entitle him to damages without proving the charge? Certainly not. Will it entitle him to greater damages than being the case, after he has proved the charge? Not greater than he had received if B had been a better character. It is not then to affect the damages but for another purpose, to furnish evidence that he actually slandered the to render it probable. This is to come in aid of the evidence to induce a belief that the Pf's declaration was not ill-founded but for such purpose, it is not within the rule laid down, & is inadmissible, for for another purpose it might be conclusive. On the other hand, B wishes to prove that A did steal as stated in the Declaration. Shall he prove this? Examine again for what purpose the proof is wanted: will the proof of this fact exonerate B from damages? It certainly will; it is a complete defence & the proof is admissible. For further illustration, we will suppose that if B proved he stole it would not be a complete defence yet would it lessen the damages? In such case the proof is relevant & admissible for this it does not fully justify yet it lessens the damages. Again suppose he cannot prove any particular theft yet as general character
Evidence
is that of a thief—shall he prove it? Will
the damage be as great to charge such a man
with being a thief, as a good character? Cer-
tainly not. It is therefore admissible.
The case of a mistress who preferred her
Bill to recover her annuity from the man
who kept her may illustrate this princi-
pie & herein of the distinction made be-
tween modest & immoodel women before
the Debanneness received them. The Case of
a Bill for a divorce will also ex-
plain the rule— and the case of an action
brought by a parent against the man who
abandoned his daughter, the latter may in
such case introduce proof that she was of
doubt a lewd woman before the

Postal Evidence is admitted to
rebut an Equity. Where the legal construc-
tion is one way & the Equitable is another,
in such case proof of testor is introduced to
prove the Testator’s fraudulent intention
That the legal construction shall prevail.
This is a vague maxim that Affirmative
Testimony shall prevail over Negative. This
However is far from being always the case.
It is true so far that if a number were in a
company 2/3 of them or even fewer should
afterwards swear to a fact done in the company
& the other 2/3 or more should swear they did not see


Evidence, see the same fact in such case the Affirmative would clearly prevail. But suppose 20 in the company & one swears to the fact while the others appear & swear they were in the same company & should have observed the fact had but that they could not observe it, if it had been committed. Then the negative would prevail over the Affirmative for it would be presumed that the other witness swore falsely or The Affirmative must al ways be regularly proved. In these cases where the negative must be proved because the law in such case presumes the affirmative. Where a suit is brought against a public officer as for inst. a Clerk of the Court for refusing to give a man a Copy of Record which was his Duty to have done the Plf. is first to prove the officer did refuse & after he has adduced his evidence the Clerk may introduce testimony to prove that he performed his duty & did deliver the copy when demanded. The Law presumes in this case that the Clerk did his duty, until this presumption is removed.

What the parties have agreed to in the pleadings needs no proof. The issue is not required to be proved exactly as it appears on the pleadings. The substance of it is all that is necessary. As if an action is
Evidence

But for cutting a certain number of trees & not guilty it plead - the Plf if he can prove that only 1/4 the number were cut is entitled to a recovery. Or where an action is laid for 20L & the Def pleading that the Plf owed him 40L - if it should turn out on evidence that the Plf owed him only 20L or any sum over that 20L whether it falls short of the sum in the plea or shoots over it is immaterial if it is sufficient to call on. The Def demand the Plf is good & the Def is not entitled to a recovery. Again when laying is plead that the Def received more than 60

Cent viz 10L. The plea is traversed by the jury find that only 9 or 9L was received yet they will in 'Writ' for their verdict. If what appears on the part of the Def is sufficient for a complete defense, altho' not in the same terms as he expressed himself in his plea yet he does not lose the benefit of his plea but it is a good defense.

If evidence is assumed which you suppose falls short of proving the issue on the part of your antagonist, you can as usual leave it to the determination of the jury, or if you choose demurr to such evidence and if it be written evidence there must be a joinder in demurrer. If you judge the evidence as coming from a wrong source as an interested person & or if you judg
Bail

Of Bail

Of Bail as under the Law of Connecticut

The Law of Bail in Connecticut is the best system that is known of if well understood will lead to a thorough knowledge of Bail as it prevails in the other States & in England.

Bail includes all cases where a man is bound for the Plaintiff in a suit to pay costs in case he does not maintain his action, or for the personal appearance of the Plaintiff.

The Plaintiff must procure bonds for protection so that if he should not be able to respond the Plaintiff of costs when the judgment is against him the Plaintiff may come upon the bondman.

This provision of the law is for the prevention of vexatious suits. The Bondman acknowledges himself bound for a sum sufficient to discharge the Plaintiff of costs in case the Plaintiff should fail to pay from his action & his property should be insufficient to pay the costs. The Constable is to look for the Defendant & if he returns a non est & does not choose to take his body, the Defendant may then bring
his action against the Bondsman either a Sire facias or an action of debt or bond at his election. But let the bond be as large as it may the recovery is only commensurate with the costs. In case of a summons of the Offender out of the State the Offender furnishing bonds to secure a bill of costs whether he be poor or not but it is the practice here not to require bonds of a man who lives in this State where it is evident he has sufficient when a summons issues. But in all cases where an attachment issues the Offender must give bond, rich or poor a writ ofAttachment cannot issue without bond, an idle practice has obtained here not by any means warranted by the Statute for the Justice to take the Offender's own bond. This is certainly perfectly futile & unavailing for the operation will answer all the purposes of such a bond & indeed more. The original & true idea was that if the Offender chose the harsh remedy of attachment he should give bond not only to secure the costs alone, but for the damages the Offender might sustain in being abused by a vexatious action. But the practice now is only to take bonds for the costs only.
In every case where a man appeals from a lower to a higher Court he must give bond & procure somebody to join with him. His own bond is never sufficient. The condition of the bond is that he make good all damages of the other party prevails. This bond is sometimes a security for costs & sometimes for the debt also—ordinarily it is only a security for costs. As if an appeal is made where the debt had the judgment below was to have 100 & fo. If it is confirmed in the upper Court it is easy to see that all the damages the Appellee has sustained in the costs & there were all the bondsman bound himself for. There has been a dispute whether from bondsman is bound for former costs as well as those subsequent to the time the appeal was made. If the Court has decided that he should be liable for the costs previous to the appeal’s being made with how much reason is another question.

When the bondsman is liable? Debt as well as cost.

This happens where the appeal is not first secured by the appellant. We have seen that the condition of the bond is that the bondsman make good all damages & if it certainly an important injury to the debtor & appellee to fail of prosecuting the appeal, for by the appeal he has
Bail

lost all benefit of the former judgment; it being the nature of an appeal to extinguish the judgment below so that no execution can issue from it. Where the Appellant carries into the appeal the bondsman can be only liable for costs, but where he fails to prosecute the rent for debt also—it is a doubtful unsettled question whether, if the Appellant should become a Bankrupt after the appeal, the bondsman should be liable for both debt & costs. When we examine the nature of the bond it is most natural & reasonable to suppose that the Bondsman should be liable; for he was to indemnify the Appellee for all damages in consequence of the appeal. It is easy to see that had the appeal not been made the appellee might have obtained his debt; yet the current of opinion seems to be the other way. It being said to be a misfortune happening while the Appellant was pursuing his rights. But the strength of this argument may perhaps be questioned.

Of Bail on Arrests

This is of 2 kinds. 1st. Bail to the Officer for the appearance of the Defendant on the first summons.
2nd. Bail given to the Court after the Defendant has complied with the original summons. The former is called Common Bail & the latter Special.
Of Bail

It is the duty of the officer in such case to take a sufficient bail for the appearance of the defendant at Court & if he does not take sufficient bond he is liable at the suit of the creditor. If the defendant fails to appear the bond is not yet perfected, certainly judgment may go against him & his property attached, or the defendant may deliver himself up during the life of the execution or the bondsmen may be lawfully compel him to appear & in all these cases the bondsmen is clear. The officer may also take the defendant on the execution which is, in effect, the same as tho' he had surrendered himself. But if the defendant neither surrenders himself nor is delivered up by the officer & a non est is returned both as to his body & property when the bond is liable for debt & costs. This is an admirable provision in our law, to suffer the defendant to remain at home, managing his business & providing for his family, instead of being confined in the house of prison & this with no disadvantage to the self in the suit.

Of Special Bail or bail to the Court

If the defendant appears in Court on his summons he is then in the protection of the Court who deliver him to the Sheriff not that he may be still at liberty the Law allows him to sue bonds for his appearance at the rendering of judgment & if he fails
to appear, the bond is not of consequence forfeited, provided he surrender himself during the life of the execution. In the English Law, the privilege of the Dft. is extended still further, for if he does not surrender himself during the life of the execution or a seire facias is issued on the bond & if the Dft. be surrendered up before judgment is rendered on the seire facias, the bond is discharged upon payment of costs.

Whether the Bail is liable or not depends upon the return of non est inventus & whether in this there is frequently much fraud practised. The officer by taking advantage of a time when the Dft. is not at home, may return a non est unfairly & pretend the Dft. was not to be found. In such case if it appears that the Dft. had any hand in obtaining this fraudulent non est, the bond is discharged, but if there appears no fraud on the part of the Dft. the bond being returned unfairly by the officer, it seems to be law that the bond is liable, however unjust it may appear yet the bondsman has his remedy against the officer. If the officer has taken insufficient bail he is liable with a single exception, if the bondsman was apparently in discouraging circumstances when he became bail, the officer is exempt. But after it becomes a bankrupt the officer is
very fully expatiated.

When the officer has taken bail &
the defendant does not appear, the officer must assign over
the bond to the plaintiff that the action may be brought
upon it. It is the practice to bring the suit in the
name of the officer, tho it is apprehended to be
an unnecessary practice the proper method.

The mode of recovering upon a bail bond
is by action of debt on bond, or by a scire facias.

The rule of damages is the debt & costs.

Of other bonds in the nature of bail.

When property is taken by attachment, it may
be released by bond, as well as the body. When
the bond is given in such case, the property attached
is bound to be replaced. The bond is entered on the
suit of reprieve to which is to respond all dam-
ages. This again is an excellent provision that
the tenant may keep his oxen & & farming im-
plements & the husbandman his tools till execution
is issued against him. Then if money is returned
the bond is liable.

If an attachment issue for 100l & an
house or
valued at 20l is attached & reprieved & the bond
becomes a bankrupt, there has been a
question whether the bondman is liable for the
100l or for the value of house only. Nothing can
be more simple & easily solved than such a question.

Look at the nature of bond—it is to answer all damage.
The Pr has sustained a consequence of his having delivered up his live upon the house which the bondman be held as a pledge by to interfering & giving bond

Engage what those damages are - 20L clearly for that was the value of the house that was attached if this was the only damage why make the bondsman liable for more - The question however is as yet unsettled of the dispute arises from the opinion in statute the the spirit of it is supposed by Mr. Reeve to be clearly in the bondsman's favor.

Of a Bond upon a Writ of Error.

This also is in the nature of Bail - on statute formerly required no bail upon a Writ of Error a bail however is lately made which regulates the proceedings upon a writ, if a bond is entered upon a Writ of Error the execution obtained in the lower court is superseded & extinguished but if there is no bond the execution remains in force & if the Pr or Error absconds the bond is liable to respond damages.

Bond upon Audita querela.

This Bond is of the nature of a Bond upon a Writ of Error but different in its operation. As where a judgment is rendered against a man for a debt & the officer leaves the execution upon the Def. & commits him to jail the Def. says he has discharged the debt & may have an action for a querela. This discharges the Def. from jail.
Bail

till the sitting of the Court where the question is tried & if the accusata querela is well founded he may recover damages. But he must have obtained a Bondsmen so that if the querela is ill-founded & he is unable to pay the Costs his bondsman may be liable.

Lecture 3rd March 10th G. 1795.

Then may be instances in Connecticut where one party will have 2 Securities for his costs. This must be where an Appeal is made. The Bail on appeal we have seen is liable for debt & costs in case the appeal is not prosecuted & for former costs previous to the appeal. The Special Bail is also liable for the costs previous to the appeal so that the Appellee has a concurrent remedy he may obtain his costs at the lower Court out of the Special Bail or he may recover the whole out of the Bail on Appeal or if the Appeal is prosecuted the will be the same only the Bondsmen on appeal will be liable for costs only & not for the debt.

English Bail

Of the Power of the Bail over the Prisoner.

In England when a mans body is arrested & a bond is given, the Bondsmen takes a piece of paper upon which the Bail is mentioned called the Bail piece. The use of this is that when...
Bail

The man for whom he is bound is about to escape or has actually escaped, he may retake him & commit him to prison by showing his Bail piece & no one has a right to rescue the prisoner any more than if he were taken by the Sheriff. But if he has no Bail piece he has no authority to take the prisoner & any person may rescue him. In Cor. we have a Certificate from the Clerk of the Court of the same nature of the English Bail piece, but it is unnecessary. The prisoner may be taken without it. The Superior Court have decided that the certificate was not necessary & yet that those who refused to rescued the prisoner were justifiable, whereas there was no certificate. For as the bondsman appeared to have no authority the rescuers had reason to suppose their neighbour was taken by illegal violence.

Bail is almost universally taken on Wren's proofs only, & not on Execution, tho' in certain cases where a Writ of Error is pending, the Court of Kings' Bench will take bail.

Bail is taken by a Judge or by an Officer. When the Off is about to bring a suit the Off may go with him to see a Judge & he will take bail for the Off's appearance. This must be by the consent of both Parties.
Bail

As in Cor. The Office is obliged to accept of bail if sufficient & if he refuses he is liable to an action & it has been a question whether it should be an action of trespass vi et armis or an action on the Case but now settled to be the latter & this is Law of Cor. 6th Car. 146 2nd Sarum. 59. Ten. 55. 35. Salt. 99. 2d Ray. 425.

This bond is assignable to Pff & the Pff may sue in his own name tho the Cor we have seen the practice is to sue in the name of the Officer. If the Pff dislike the security he moves the Court that the Officer bring in the body of the Pff & the Sheriff is arrested & proceedings stayed against him till he purifies his remedy against the Bail. 1st Ten. 85. 2d Ray. 399. Sta. 425.

The principles of our Stat is the same in substance the different in the mode of proceeding the Sheriff is not arrested but if the bond is insufficient he is liable to an action of Common Bail & Special.

The Eng. Cor. Bail is different entirely from what we denominate Cor. Bail. There's is merely Nominal blank Doe & John Doe & the same is the Cor. Bail of New York. This is taken where the debt is under 10£. In Covenants & all debts certain above 10£. Special bail.
Bail

is taken but not commonly in actions of
Slander, trespass, Assault & Battery &c. in
all which cases the damages are uncertain.
Yet frequently when Bail is given to Court
the action founds only on damages yet it
is impossible that the damages of any
thing will amount to more than 10. of the
claim Bail will be taken. This in an action
of Slander no instance is known of spe-
cial Bail being taken. 13. B. 6. 30. 98.
Roll. 993, Lev. 39. 14. Special Bail is taken
in an action on a Penal Statute.
An execution is not holden to Bail & his bodily
may not be arrested.
In an action against husband & wife they
may both be arrested & if the husband breaks out
of jail any way the wife must also be let
out. Of the proceedings on Bail

When a non est is returned a scire facias
issues against the Bondsman Upon the
Officer's return of scire facias if the Bail is
lost in the bail is discharged or if one
scire facias goes out & a return of a non est
is made of a 2nd issues with a like return
yet if during the life of the execution 60 days
on the last scire facias the principal appears
Bail

The bail is excused
The death of the principal before the
return of the execution against him is a dis
charge of the bail.

There is an authority in Barnes's Notes
page 80 to prove that the officer, if the bail
was sufficient when he accepted of him but after
wards became a bankrupt, is not liable.

If the officer neglects during two terms to file
his declarative the bail is discharged.

Where bail is taken in B. R. it is for what
shall be recovered but bail in Com. Plead
for a certain sum.

When judgment has been rendered in
favor of the defendant afterwards that judgment
reversed it has been a question whether the
bail was discharged. The reasoning in favor
of the discharge is that by the judgment the bail
was discharged therefore the liability of the
bondsman never can revive, by the old maxim
that when a right is once suspended it is extinct.
On the other hand it is said that the reversal
completely wipes the judgment out of existence. In
One Inc. 63. More 356.

Defence of the Bondsman

1st. That the principal surrendered him.

2nd. That he was taken in execution.

3rd. That no execution ever issued against the principal.
Bail

Law March 1

4. Satisfaction of the judgment, or if reversed

That there was no judgment and the court

When judgment is obtained against both

Principal & Bondmen the Off may sue

and which he Pleading to. R. 320.

Where there are several Bondmen, all

or either may be sued. 1 Lev. 226.

If the Off Sues out Ex m against the Bail

& gets an satisfaction, he may then Sues out Ex m

against the Principal. R. 549. 11 Ed. 107

... Sect 315.

Of the Law Mercatoria, or

Lecture 35th.

March 11th 94.

Law Merchant

The Law Mercatoria is a rule observed

among Merchants respecting Mercantile mat-

ters. It is not confined to any particular nation,

but consists of the Rules of trade observed by the

Merchants of all nations. It is not properly called

custom of Merchants, for this would bring it

a local usage

made the Law Merchant merely an ex-

ception to the principles of Common Law, as the

custom of Englishmen and used by the parti-

cular favor of a Legislature to a particular pro-

vince. But it is a Law governing a whole class

of men, Merchants - concerning particular

transactions. Mercantile Law is independent of the

principles of Common Law. It is true, there are
are certain contracts not made by merchants nor upon commercial matters which are governed by
the Law Merchant, as Bills of Exchange & Policies
of Insurance. The Law Merchant is a General Law
of the land & not to be proved as Customs are
in different places. If there is any variation
from this general law such variation is a cus-
tom & proveable like other customs and are to
the Law Merchant what Customs are to the gen-
eral Com. Law. The Law Merchant is a much more
than grown up much later. It is a much more
national system than the Com. Law. The prin-
ciples of it are collected by judges from the u-
pages of Merchants by Courts & their adjudica-
tions are the Law Merchant when relating to com-
mmercial transactions. And sometimes that have
interfered but statutes are not the foundation.
Courts when judging according to the Law
Merchant are never fettered in the least by the
Com. Law.
The Law Merchant differs from the
Com. Law in these several respects 1st. No consider-
ation is necessary to the validity of a con-
tact. 2nd. Any fraud in the consideration wholly
abolishes the contract. 3rd. A release of any kind
unattended with satisfaction given to one part-
ner is no release to the other. No oral evidence
is admissible to vary the operation of a writing.
Law Merchant

If in a commercial transaction vitiated by fraud, a contract does not make it void, but the party is driven to Chancery to obtain relief. A mercantile transaction must be free of unadulterated and suppressio veri vitiate it as much as suggestio falsi. It may be remarked however that the concealment of a man's speculations in his own brain, tho' by this means he may happen to obtain an advantage in a bargain with another, yet there have no influence in vitiating a contract for ins. A man has a Ship in Europe & from the accounts in the public papers he has determined in his own mind that was in inevitable between a European power & this country. He immediately has his vessel insured without communicating his sentiments.
to the Insuring Master. This would not vitiate the insurance, its being a matter of hazard for the Insurer had the same facts before him & probably might have been determined in his mind that no war would take place. But if the owner of the ship had received private intelligence of a declaration of war & concealed this from the Insurer it would completely vitiate the policy of Insurance.

Of the 3rd Difference. It is a principle of Common Law that where there are two joint Debtors & one obtains a release no matter how with or without any satisfaction, the Release is good as to both. But this is totally different from the principle of the Law Merchant. For by this system if one joint Debtor obtains a release unattended with satisfaction, it is no release to the other, but the Creditor may at any time release the one & hold the other.

Of the 4th Difference. It is a maxim in Common Law that no verbal proof is admissible to vary the operation of a writing. But in the Law Merchant this is done whenever it appears that justice requires it. So this is a very vague principle & there is great difficulty to draw the line where to admit & where to shut out. So that this alteration from
Law Merchant.

The Corn Law is apprehended to be no improvement. Of the 5th Difference. - The jus accrescendi in right of survivorship, which prevails in the English Corn Law, is unknown to the Law Merchant. But if one partner dies his estate descends to his executor & this is the Corn Law principle of Connecticut. The executor of the deceased partner bow.is in all respects tenant in common. with the survivor with the exception that the survivor has the sole right of suing & he alone is liable to be sued. The old authorities maintain that the executor might join in suits, but as the Law now stands he cannot & this is owing to the form of the action. The executor may release & receive debts & take property as a tenant in common.

When the survivor has sued for a debt $1000 & lost, the executor is liable to the defendant in an action of account for one half of the money & when the executor of the deceased partner has papers which the survivor has a right to & will not deliver them up he may be compelled in Chancery to deliver them to the survivor, that he may have the means of settling his accounts properly. If both partners are dead leaving executor the executor of the last deceased partner is alone entitled to sue & alone is to be sued just as we have already seen.
Law Merchant

If however both partners die at the same moment actions may be lost by both executors. If the surviving partner becomes a bankrupt the executor of the dead partner is liable to a suit in Chancery, tho' no reason can be given why not at law. A judgment debt against the survivor is a partnership debt 265. Salk. 414.

Formerly if there was an execution against a merchant in partnership, as a private man & not as partner, the officer was first bound to search for private property before he could assent upon the joint estate. But the practice is at present to levy on either the private or partnership property at the officer's election. The judge when taken is sold at vendue & the tenderer bids off the goods at half price & becomes a tenant in common with the other partner as to the goods purchased by him & the property is by this means kept together undamaged & there is no disadvantage to the other partner arising from the judge being sold under value. Formerly it was the practice for the officer to sell the estate to the amount of double the sum fixed for & deliver over the one half to the other partner & the other half to the creditor.
Law of Merchants

Where two Merchants are in Partnership they possess 3 different estates - each one's private property & the company property. When the property is sufficient in each several sort to discharge the private debts out of the private property & the company debts out of the company property, this must be done.

If B is in Partnership A is worth no private property & the company property is insufficient to discharge the company debts. A has private property more than sufficient to discharge his private debts. These must first be paid & the surplus of his property is a fund for the company creditors. But if the company property is insufficient A's private property will not discharge his private debts the private creditors may come upon the company estate.

These rules are applicable to our average law.

Lecture 36th March 13th A.D. 1744

Of Bills of Exchange &

Promissory Notes

A Bill of Exchange is a letter to a man requesting him to pay over money to a 3rd person or his order - i.e. to this 3rd person or such person as he shall appoint, by endorsing the Bill.
that it by writing his (the third person's) name on the back of the Bill. The writer of the letter is called the Drawer. The person to whom it is written is the Drawer. The person to whom the money is payable is the Payee. If the Letter is accepted, the Drawer is called the Acceptee. If the Payee endorses it to any person such person is the Endorsee. Whosoever has the Bill is the Holder.

Such Bills are either payable at sight that is as soon as delivered to the drawer, or after a certain number of days, or months, or more frequently as may be or double usance. Payable at usance means at a certain length of time, according to the usage at different places. In England the usage or Usance is at 30 days from the Date of the Letter. When payable so many months hence Calendar months are meant always. After the Bill becomes due 3 days of grace are allowed if the last day of grace happens on Sunday it must be paid on the Saturday before the Monday after will not do. The Law Principle is different from the Law Methods in this respect. When a Bill payable on sight then an 30 days of grace
Lee

Formely there was much dispute about the words "date" & "day of the date." The idea that anciently prevailed was that the expression "so long from the date" the day in which the Bill was written was included & that "so long from the day of the date" excluded the day in which it was written. In a case in Cowper 714 this doctrine is discussed & settled. Lord Mansfield gave it as his opinion that as authorities on the subject were contradictory the Court had a right to settle the doctrine as they thought reasonable & said they should consider it inclusive or exclusive as they pleased, & as justice required, or as the intention of the parties appeared to have been. If it could be considered exclusive it might work some mischief in England in a contract of leasehold estate. For the estate in such case would be commencing in future years & would this old maxim would be over as at once. This however is the Corn Law. See the Law Merchant. The expressions "on the date" or "the day of the date" was both mean inclusive. 2 Raymond 221. Str. 829.
Law Merit.

Promisory Notes are a direct engagement in writing to pay a certain sum at a certain time limited to a person mentioned in the Note or his order, frequently "to the bearer" generally. In Eng. these are made assignable by the Stat of Ann. Before this Stat. They were considered only as evidence of a simple contract & were not negotiable. Talk 1742-2-1854 757.

In Can. the Stat of Ann has no operation. Notes of hand are not negotiable.

The County Court in Vermont have decided in several instances that Promisory notes are negotiable, & Judge Chapman of the State has written a treatise in support of this idea that they were negotiable—somewhat at base. Law, before the Stat. of Ann if enforced by many secret & convincing words would be irresistible in favor of his opinion.

In Can. Several attempts have been made in the Gen. Assembly to make them negotiable but unsuccessfully.

Any person besides a Merit may bind himself by a Bill of exchange. It has been
been a question whether an infant could bind himself by a Bill of exchange? He might by a Promissory note before negotiated. But to suffer an infant to be bound by Bill of exchange or a Promissory note after negotiated would completely defeat the Law in favor of infants. For all enquiring into the consideration of Bills of exchange is precluded if to suffer an enquiring into them in any instance would make men suspicious of taking them & from their free circulation. Casewell 82, 160. 2 Vent. 292. It has been a question also whether if the Bill was expressly for necessaries, the infant might bind himself? It is extremely evident that he ought not for were this the case all infants who wished to contract would express in the Bill that the consideration was for necessaries. As no enquiring would be allowed into the true value of the necessaries the infant would not be protected, but the Law in their favor totally counteracted infants would be just as liable to be imposed whether the Bill was expressly to be for necessaries or not.
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When there are joint traders a contract made by one is binding upon all. 1 Falk 126.

There is one difference to be remarked between Bills of Exchange & promissory notes in the former the drawer & drawee are two different persons whereas in a promissory note the writer is both drawer & drawee. The note being considered in the light of a bill drawn by a man upon himself, accepted by him when drawn. 2 Bl. 470.

A note to "one or order" has been decided to mean the same as "to one's order".

A promissory note "to one or bearer" renders it negotiable of course. The bearer, whoever he may be, being entitled to the money, on the face of the note by delivery. In the drawer's hands on document is necessary. Otherwise they are like Bills of Exchange. 1 Bl. Rep. 431. 1 Blomow 1516. 1 Blin. 452.

Of Bank Notes & Draughts when Bankers

Bank notes are considered as money itself, in the hands of a bona fide possessor, although taken from a mala fide possessor. A Bank note is good. A tender of a Bank note is good. 3 Blin. 551.

Draughts upon Bankers are not so valuable as Bank notes. If the Banker becomes a bankrupt the payee of the payee has called upon him within a reasonable time, the judge is not
the payee's but the person's of whom be received it. What this reasonable time is there is much dispute, but it is generally fixed in the place where the note is given. What is a reasonable time is a question of law. The jury should find a special verdict of facts. The facts of those facts the judge is to decide the question.

All the cases in the Books are of transactions in cities, between parties belonging in the same city. 1st. 1274, 550, 2nd. 910, 1248, 1175. Low, Merri, by Beauc, 482.

There has been a question whether in an action on a bill of exchange or promissory note a consideration need be alleged by the former authorities it ought but it is now settled that none is required to be alleged or proved. 2 Black, 145.

Qualities necessary to a bill of exchange.

1. It must be for the payment of money.

2. It must depend upon the personal credit of the drawer and not upon any particular fund.

3. It cannot be negotiated. There are instances where it has been drawn upon the profits of a fund in the hand of the drawer & consid negotiable. 1st. 1211, 572. Doug, 571. 2. Bay. 4817, 575. If the fund is in the hands of the drawer of a note the note is good.
Laws Merchant

Lecture 27th March 14th 44.

1. Bill of Exchange must not depend upon a contingency.

It is not only necessary that a Bill of Exchange should be for the payment of money, & depend upon the personal credit of the drawer and not upon any particular fund. But it must not depend upon an uncertain contingency. 3 Rolls 213. L Haynd 1362. St. 1151. The contingency of time is not meant, for Bills frequently depend upon this & besides, a time hence is a certain contingency that will happen. So a Bill may depend on a contingency that is certain to happen. If this certainty need not be physical but if it is morally certain to happen the Bill may be good. 1 Rolls 163.

If a man should draw a Bill to be paid on the return of a vessel it would not be negotiable, owing to the uncertain contingency of the vessel's returning. So if such contingency should happen the Bill would be a good contract & binding between the parties. 1 Black Rep 1072.

But if the Bill was payable on the payment of a debt due from government, no there is not a physical certainty. Physical certainty that you
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Government will pay the debt, yet as it is
nearly certain, the Bill is a good one

& negotiable

Of the Form of a Bill of Exchange.

The validity of a Bill does not
depend upon any fixed set of words. The
Forms are very various. The requisites that
have been mentioned are absolutely neces-
sary—"For value received" is totally unnec-
sary—for this Styx is only evidence of
a consideration. If we have before seen that
a consideration is not necessary to a Bill
of Exchange. 1 Mod. 267. F. Mayn. 1556.

There has been a question whether the inser-
tion of "order" or "bearer" was necessary to
a Bill of Exchange. In those cases where
this question would otherwise have been deter-
mined have happened to turn upon the
points 2° Willson 253. It is apprehended
that Bills are not negotiable, with those exp-
ingenions. The drawer was formerly subject
to be a debtor to the drawer's order & the
drawer to the drawer's order. But after the
necessary period of time, in which to consid-
er it, for after the Bill is drawn the drawer is
considered as indebted to the drawer. The form
of the Bill. There is an instance of the drawer's knowing of the drawee for not paying after accepting it.

Let us for a moment view the Bill as accepted. As soon as it is accepted the acceptor becomes liable for the sum on the face of the Bill, to the payee, the indorsee, or the holder, as the case may be. The payee may bring his action against the drawer on the drawer's refusal to accept. The holder or the drawer may sue the drawer, in his own name, if the Bill has been indorsed thro a number of hands, the last indorsee being one whom he pleads. The any preceding indorsor of the drawer or the drawee.

The Manner of Acceptance

It was formerly a question whether the Acceptance should be written or not, but it is now settled that a verbal acceptance is a good one. If the drawee when he accepts can be considered as promising to pay the debt of another person, it would seem as if it would come within the Statute of Frauds. If so, it would be consequently void, but it should be remembered that this Statute does not govern
Mercantile transactions &c. Although it should seem that such promise could not be considered as a promise to pay the debt of another person, if it can be presumed that the drawer was indebted to the drawer as is frequently the case. 3

Bar. 1674.

If the time limited for the payment of the bill has elapsed before the payee offered it & yet the drawer accepts it, it then becomes as a bill on sight. See 3 Bar. 1662. 1580. 1611.

Salk. 107.

Of Acceptance for the honor of the drawer.

If the drawer refuses to accept the bill any indifferent person may accept for the honor of the drawer. This acceptor is bound to pay the indorsee or holder, by putting his name upon the back of it, as much as the drawer would have been bound to accept it. There is no instance at law. Law of one man's undertaking for another in this manner.

Not only an actual acceptance, but any agreement to accept is considered an acceptance where a credit has been given. 3 Bar. 1662.
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When an agreement has been made to accept Bills, although the drawer should after such agreement refuse to accept, yet Bills drawn after the refusal would be good against him.

An acceptance may be binding tho' not according to the terms of the Bill as for a less sum than the Bill or for a longer time (D Winton & S. 618.) as if drawn for 4000L.

If it is accepted as to 1000L.

Almost any intimation is considered an acceptance. If the person upon whom the Bill is drawn will undertake to write upon it, no matter what the writing is, unless an absolute refusal it is consid. as accepted by him. "Presented" & "seen" Writen on the back of the Bill have been decided as a suffic. acceptance.

The Manner of Negotiating a Bill

When to the drawee, the Bill is made negotiable by delivery. If to "one or order" it must be indorsed either at length or leaving blank. If it is left blank it then becomes negotiable by delivery & may be filled up by any subsequent holder. If the indorsment was at length the first indorsee must make another indorsment either at length or by blank. D. Reg. 611 633. Such indorsments may be made at any time before or after the time of payment of the Bill D. Pa 375 1516.
Support the endorsement made upon a Blank note before the sums are filled up, the endorser is liable for such sum as he inserted.

Dong. 496. If the acceptor of a Bill should fail & the endorsement was left blank the last holder could not sue any intermediate holder, but he might bring his action at

Com. Law against the person of whom he received the Bill. The face may be trod without filling up the Blank it may be filled at the Bar. If a Bill had been endorsed regularly by every holder the last holder might recover from any intermediate holder. Talk 128.

The holder of the Bill may fill the Blank with an order to pay him or with a Power of attorney to collect it or if paid with a receipt In the first case the action should be trod in the name of the holder, in the second by in the name of the endorser. Talk 123. 1 Decayed 871.

If the acceptor, which demanded by the holder, turns up the Bill & refuses to pay its contents in such case the action may be trod by the payee & the holder is considered as his attorney & admitted to testify to the fact of its having been turned.
Lecture 38th March 13th 94

It has formerly been a question whether the omission of "or order" in an endorsement destroys the negotiability of a Bill of exchange. But it is now settled that no single omission restrains the negotiability. Nothing will do this but «appeals terms restrictive of its negotiability.»

See Bur. 1216. 1222. 10 Black 273. To show that Bills may be restricted see Bur. 1227 in which case the expression "to such a one for my use" was considered a sufficient restriction. Doug. 616. 17. 845. An infant's endorsement is not binding upon him as a contract yet it serves as a link in the chain of endorsements to carry them on. To make them all good as to the others who endorsed before or after him.

Drafts are.

The have seen that Bank notes coming into the hands of a "corporate" possessor although taken from a mala fide possessor are good as to the bona fide possessor. Bur. 452. 10 Black 585. The same rule applies to a Bill with a blank endorsement Doug. 611.

Where 2 Merchants are in partnership an endorsement by one is binding upon both—but where a Bill is drawn upon 2 persons not in
Partnership. A bill endorsed by one person is not binding upon both. In the Court of
Kings Bench, an endorsement by one partner was determined to be insufficient but the
judgment was reversed in the Exchequer Chamber.

A Bill to a single woman, after she marries, the endorsement may be made
by her husband. Lib. 516.
A Bill endorsed by an Endorsee is binding upon them personally. Lib. 1260
Court 487. & if a payee becomes a Bankrupt his assignees may indorse & bind them
in the same manner.

When a Bill is payable to one or order for the use of another, the payee
is alone known in the negotiation of it.

A Bill for an amount may be indorsed of a
part of a Bill. For were this the case the
accepter & drawer might be liable to several items for the same Bill. See Barth. 466.

Engagements of the Parties

When a drawer draws a Bill he implies a contract with the payee that the
drawer is a person capable of binding himself by acceptance. 2nd. That he is to
Law Merchant.

be found as described. That he will accept. That he will pay it on the failure of thedrawer in any of these particulars the drawer is liable to the payee or indorsee for the contents of the Bill & as it may be, for damages & costs.

A Bill may be good where a man only writes his name blank, if it can be proved that he gave authority to have it filled as a Bill Hen. Bl. 372.

A Bill is drawn payable at a future time, the payee presents it for acceptance before the time limited & the drawer refuses the moment of the refusal, the drawer becomes liable Doug. 55, for it was a debt as soon as the Bill was drawn with the condition of his calling upon the drawer. This evidenced by the case of Bankruptcy, 444.

Engagement of the Drawer.

Every indorser is in the nature of a new Bill & nothing but a payment of the money can discharge the indorser. The indorser enters into the same implied contract with the indorsee, as we have seen the drawer does with the payee. The holder by giving the
Law Merchant

The drawer & recoverer judgment is not prevented from bringing his action against any indorser till he is able to recover his money. The principal is his remedies against all the indorsers & the drawer at the same time. It is a principle of Comm. Law that where a man has 2 distinct remedies, both shall not be taken but by pursuing one he distinguishes the other—this principle has been urged against suffering the holder of a Bill to take so many remedies. This objection however is easily obviated by remarking that the holder has his remedies upon several distinct contracts & not upon the same contract. But at Comm. Law there are exceptions to the above maxim as in case of Mortgages.

If the Holder sues one indorser in prison & sets him at liberty if he escapes, the Holder has his remedy against any other indorser 2031. 1235

The Holder's Duty

The Holder in order to be entitled to a recovery must, 1st present the Bill for acceptance at or before the time limited
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If any time was fixed by if "on sight" within a reasonable time. And if the presents of payment is refused he must give notice to all persons concerned if he would lay a foundation for a recovery against them. If he does not & any loss is sustained by the failure of any person concerned, the loss falls upon the Holder.

If after acceptance the drawer refuses to pay, notice must be given to the drawer if not any loss that may happen by Bankruptcy of the drawer, will fall upon the Holder. The indorsors also must all have notice so that if the drawer fails the Holder may come upon them. Proct 2670. 3 Dunlap 74. Suppose the acceptance is variant from the tenor of the draft, notice must also be given of this.

These cases go upon the drawer's being indebted to the drawer & the latter ought to have notice that he may recover out of the drawer. But there may be cases where notice is not necessary to the drawer as where the drawer has not effects of the drawer in his hands & is not indebted to him. Dunlap 410. The presumption is that he has effects of the drawer in his hand & if it is in proof to the contrary then notice was not necessary to have been given.
3rd. Whether accepted or not yet at the time limited for payment it must be again presented. If the Bill is not paid notice must be given as before. If the drawer has become insolvent or has absconded notice must be given of these facts. It is not sufficient that the drawer knows of the insolvency or the notice must come from the holder so that the drawer may know if the holder depends upon him for the payment. [170. This notice must be given in a reasonable time. As to Foreign Bills it is settled that notice must be sent by the first post. With respect to Inland Bills it is impossible to lay down any rule. [171. [171. 167.

There has been a case where a Bill was not presented till after the reasonable time had run out. The indorser promised to pay the Bill, but as he was ignorant of the law, the promise was not binding.


The indorser must have notice that the drawer had no effects of the drawer. [171. A statute on this has fixed Inland Bills nearly upon the same footing with Foreign. In consequence there is no such Statute, and are governed by the same Law of Merchants at the flood in 1711 before the statute.
There is no particular form of notice for Inland Bills & the effect of notice for Inland is different from the effect of notice for Foreign Bills. If the Holder does not pursue the Stat. method of giving notice he cannot recover damages, costs &c. but may still have the same remedy he had before the Stat. was enacted. An Inland Bill is similar to an Order & differs only in one respect as to an order the remedy must first be pursued against the drawer before the drawee be held.

Of Foreign Bills as to the notice given to

By the old authorities other notice than by

Protest would entitle to a recovery but the

Law is now established that the notice must
be by Protest.

Of Notice by Protest

The Holder of the Bill presents it to drawer & if he refuses to accept, the Holder gives notice to the Notary Public & the Nota. Bill, presents it again to the drawer for acceptance & on refusal draws up a Protest which is a declaration of the facts & minutes down the time & all the circumstances, that the Holder intends to recover of the drawer or the endorser damages &c. This protest must be sent by the next post. The Holder yet holds the Bill, that he may present it again at the
time of payment & if the drawee then pays all is well but if he refuse another protest is sent by the next post by the holder & the bill is sent with it. Law Merc. 160. And if the drawee accepts the bill varies from the tenor of it the same ceremonies of protest must made. If the drawee accepts & is like to be a Bankrupt a protest may be made to the drawer for better security. Law Merc. 163. Or if the drawee cannot be found a protest is necessary. This protest is to subject the drawer or indorser as the case may be to the payment of the sum damages interest & costs. As to the damages the payee has sustained no general rule can be laid down. No proof is admissible to show that the holder if he had received the money at the day of payment might have made great profits by it. In different places different rules obtain. In Eng. they have some rule respecting E. India & American Bills.

By costs is not meant costs of suit but the expenses the holder has been at in paying the Notary Public & Law Merc. 161.

As to Interest the gen. comm. law rule obtains that interest is to be recovered up to the day on which judgment is rendered. This principle of
Law of Merch.

plies to Notes & other contracts upon interest
2 Biv. 1086. If however there was any other ins-
tument given in security of the interest, then
interest on the Bill is only recoverable to the
Time of signing the Writ, but the instrun-
tion may be resorted to for the other part
of interest.

Of Supra Protest

There are several modes of accepting by
Supra Protest 1st. Where the drawer desires
the Bill to be accepted on the account of a
Third Person, he may accept for the honor
of the drawer. Lap. 456. 2nd. Or if a Bill
comes endorsed, the Drawee may accept for
the honor of the endorser in those it must be
protested & notice sent to drawer or indorser
as the case may be. 3rd. A third person may
accept in like manner for the honor of the
drawer or indorser.

Of the effect of such acceptance as to the liability
of the acceptor for the honor of the drawer.
He is bound to all the endorsers & of for
the honor of a particular endorser to all the
Subsequent endorsers. If for the honor of the
acceptor the has his remedy only against the
drawer. If for the honor of a particular endorser
he has his remedy against all prior
When a Bill is accepted it is prima facie evidence that the acceptor has effects of the drawer in his hands; if after acceptance he does not pay the drawer may maintain his action on the Bill against the drawer. Acceptor, Phil. 185. If the acceptor have no effects of the drawer no action lies by the drawer but the drawer may sue the drawer. Doug. 249.

The acceptor may be discharged by the express declaration of the holder, or there may be transactions that prove an implied discharge, but no indulgence or attempt to recover out of the drawer amounts to a discharge. Doug. 23678. A letter from the holder to the acceptor "that he need give himself no further trouble for he (the holder) should look to the drawer" was been consid a release

A recovery of part of the money of the drawer or Indorser, or taking a new engagement from them, is no discharge of the acceptor (Doug. 233, in the notes). If the holder receive part of the money from the acceptor without giving notice to the drawer or Indorser, it is a discharge of them. For this is giving full credit to the acceptor. But if notice is given, it will not operate as a discharge. A Receipt
however, if a part from the Indorser is no discharge of a prior Indorser or drawer.

Rayn. 744. 4th 745. 1 Wills. 262.

It has been a question whether the Holder is obliged first to resort to the Drawer. The former authorities are in the Affirmative but the later show that it is necessary to pursue the remedy first against the Drawer but against any Indorser Talk. 1st 441.

Rayn. 443. 2 Burr. 664.

The acceptor, for the honor of the drawer, must give notice to the drawer that he has accepted. If the drawer approves of his acceptance, he need not present the Bill to the drawer. If, however, the acceptor hears nothing from the drawer he must present the Bill to the drawer at the day of Rayn. the

Lecture 10th March 18th 19.

Of the Remedies of the parties & what Evidence is admissible.

It has been a great Question whether an action of indeb. Assump. will lie against the drawer, drawer & indorser? It is now settled that where there is a privy of contract (as there is between the drawer of payer & the Holder & indorser) an indeb. suit will lie.

Formerly in the Declaration it was necessary
to particularize the customs, but since it has become the general law of the land, it is only necessary to state that the contract was made according to the customs of merchants generally. It must be alleged in the declaration that such an one drew the bill, directed it to the drawee requesting payment and delivered it to the payee, and that the acceptor accepted the bill. The indorsee in his action against the acceptor must state such indorsement as will give him a title. That the bill was payable "to such an one or order" and that he comes within this description given. If the indorsement was only blank, the last indorsee might strike out all the intermediate indorsements and declare himself indorsee of the payee, but if the payee indorsed in full and all the intervening indorsements are on the bill, he must state them all in his declaration. It has always been considered necessary to state that the drawer delivered the bill to the payee and it has not been considered necessary to state a delivery from payee to indorsee in an action by the latter, which might be necessary as in an action by the payee. This ap
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Remedy against the Drawer

The payee must state that the drawer drew the bill, delivered it to him, that he presented it to the drawee, that it was accepted & the manner of the notice it is necessary to state as by protest. After verdict it has formerly been considered without mentioning the only notice but in Doug. 654 this doctrine is settled that a verdict does not cure a declaration in which notice was omitted.

There may be cases in which the drawee may bring his action against the drawer. This happens where a Bill was accepted upon the personal credit of the drawer & the drawee must prove that he had no property of the drawer in his hands. Exception has been made to a declaration by the drawee without stating a promise. But the Engl. Auth. all show that no promise need be stated. 12 Raym. 538. 123 Goths. 509. When a Bill passes by delivery as payable to bearer or by blank indorsement & is by such indorsee transferred without any indorsement, no action on the bill is maintainable against the indorsee by the Holder, yet if the Bill is not paid an action to recover back the consideration given may be brought & such action may be met by
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Proving that due diligence to obtain payment was not used, or that notice was not given. This action must be brought against the man the indorsee received the Bill of, but not against the intermediate Holders. An action in other nations besides England are not brought on the Bill after protest, but the protest is evidence of the debt. The following authorities show that all the remedies may be pursued by the Holder at the same time & point out the method of proceeding. 2 Black 74, 9 2 Vesey 115. 16 Hil. 513. Courts will stay the proceedings & prevent further if any person concerned as the drawee, drawee or any indorser will come into Court & tender the money to the amount of the Bill, & the costs on the-first day of the time of the tender as far as they have advanced. Of Proving Handwritings.

In an action by the payee against the acceptor, the drawer's handwriting must be proved, but if the action was brought by an indorsee, it would not be necessary. 2 Mayd 441. 45 6. But if the action is by the indorsee against the indorser, the indorser's hand is to be proved. If all the Holders indorsed their hand are to be proved.
Law Merchant

In an action by the indorsee against the drawer the hands of both drawer & in
acceptor must be proved. He must show that he has used diligence to obtain payment of
the drawer or other acceptor.

In the action by the drawer against
the acceptor, he must prove the acceptor's hand
writing, his acceptance, demand again & refusal
of his own payment of the same. But he need not
state that the drawer had his effects for the
law prefers this & that belongs to the drawer
to show to the contrary.

If the suit is brought by the drawer vs.
the drawer, he must state the hands of the
drawer & payment by himself & prove that
he had not effects of the drawer in his hands
3 Mils. 18. A Bill is accepted for the honor
of the drawer. Then there is no presumption
that such acceptor has the effects of drawer.
If there is no occasion to state this or the action
by the drawer against acceptor. If however the
action is brought by the acceptor the drawer may
prove the acceptor had effects & thus defeat
a recovery.

The protest is sufficient proof of the
Bill's not being paid, yet it is said that the
Bill must be shown by the custom of Eng.
but it is not the general law. Neither is it apprehended that it cannot be done.

The evidence of the handwriting may be by witnesses who saw him draw the bill, by his confession or by any circumstantial evidence of behavior which cannot be accounted for without supposing he drew the bill.

The defense may be set up as a defense, but this may not be proved by a companion of hands for rogues must draw a bill in a new, different hand from what they commonly wrote. But where the proof comes from confession it must then be by the party to be charged - as if an indorsee, for the acceptor he must prove the indorment of the payee.

The payee's confession is not admissible.

If a defense is made that the consideration was illegal, it is good between the original parties but by negotiation the multitude of the original consideration is purged except in 2 instances. A negotiated bill in the hands of an innocent indorsee when the consideration was usurious or for money won at play in either case is void. In 3d of Durnf 418 there is an important distinction made between a contract malum in se & malum prohibita.
A Policy of Insurance is a contract between two men that upon one's paying the certain premium equivalent to the hazard the other will indemnify him against a certain event. The most usual policies are upon vessels engaged in Commerce. There are commonly Offices set up on Jumiege to insure. But insurances are frequently made by a number of Merchants connected with each other & there are called underwriters & each underwriter insures for what sum he pleases—These contracts are never renewing on the ground of the hazard. Insurances are sometimes made for other things than vessels as Lives &c. But this practice is forbidden by the Stat. of George 3rd in all cases only where the insured has some interest in the life upon which the insurance is made. In less such interest exists the insurance is considered under the Stat. of George as a mere wager.
Law. Wertscht.

At Som. Law Wagers also such insurances were lawful & in this country the legality of such insurance depends almost
this upon the Com. Law of Eng. But
notwithstanding this practice was allowed in Eng. for a long time & is now consid.

the Com. Law of the land, yet it militates against the first principles of Com. Law
of which all adjudications ought to be

subordinate. If therefore such a case

should come up before our Courts, it is apprehended that they might with

safety declare the insurance void by

reverting back to the original principle

of Com. Law That all practices which

are against sound policy & dangerous
to the interests of community ought,

by all means to be discouraged.

Insurances are also made against

fire. This is not strictly a mercantile
transaction, nor is it governed altogether
by the principles of the Law. Wertscht. The En-

glish Law is that the party insured must

have some interest in the insured

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Name & also at the time of the accident &
any alienation of this interest previous to
the accident is a complete discharge of the
insurance P. Arg. 551. The policy therefore is
not assignable. In all these Policies the in
sure is to be liable if burnt by the inva-
sion of enemies, or any unsewed power, or
by any accident. A mob has been determin
not to be that unsewed power P. Mills. 363.

Forts, Magazines &c. & other Public
Property cannot be insured for the reasons
why see P. Bur. 1905. A Policy of insurance
it is said may be explained by a Ward
agreement Talk 1143.

Where a Ship is insured "At &
From" a place a question has arisen whether
the insurer is liable if the is lost in the har-
bour before setting sail? It is decided that
he is liable unless that voyage has been
laid aside P. Arg. 350. The liability begins
at the time of insurance & lasts as long as the
voyage is contemplated. If an Insurance is
for "Ship & Cargo" & the Ship is lost in port be-
fore the Cargo is on board, the Insurer is not liable
for the Freight which would have been acquired
Vtr. 1251.
Insurance Policies by persons uninsured, and void by Stat. If however a man has lent money on Estate and bond, he may sell it insured, but it must be so specified in the Policy. 3 Barr. 1394.

When a vessel is lost or damaged the person insured may bring his action on the Policy for the whole loss or for a partial loss. If anything is rescued by his salvage, that part of the freight it is a Total loss 1665. The insurer by making satisfaction to the Insurer puts himself in the insurer’s place as to the salvage, & is entitled to the prize taken 17es. 98. If a ship is captured & retaken & condemned to be sold & a moiety paid to the receptor the insurer may recover as for a total loss, upon distinguishing the Salvage 80th. 1795. There are no instances where the insured are obliged to abandon an entire loss. They have their election to take the Salvage or to abandon & resort to the policy. A vessel is taken & retaken before she is carried into port & intended to be restored to the owners. It is a total loss 1 Hile. 191. A merchant ship is
taken & retaken the insured may abandon & recover for a total loss before she arrives into port at the port of delivery, but after the insured can recover only for a partial loss. 2 Burr 1198.

The least fraud vacates a policy, not only suggestions false, false affirmations, but suppression of any concealment of fact. 1 Burr 1183. As where the owner heard that the vessel was leaky & concealed this from the insurer or an agreement with the first underwriter that he shall not be bound if the vessel is lost & he is persuaded to insure by the owner to join in the insurance in order to make others willing, 3 Burr 1361. But a concealment of a man's own speculation is not considered fraud. 3 Burr 1905. Where the policy is fraudulent the premium must be given back to the owner & the policy to the insurer. If the ship is lost thru the fault of the owner, master, pilot or sailors, the policy is discharged. If she is lost before the insurance was made, to render the insurer liable the policy must be expressed 'lost or not lost' & any deviation from the course unless compelled by law discharges a policy, but a clear intention
to deviate, if the vessel is lost before she arrives at the deviating point, will not discharge the insurer. 12th of August.

The insurer is not liable for things stolen. If thieves are insured against, they must be insured against where the cargo & ship are insured generally without any certain value. The underwriters are all liable if more is subscribed than value proportioned. But if the policy ascertains the value, the underwriters who subscribed after enough had been subscribed are not liable & must return the premium.

Lecture 42. March 20th, 1794

A double insurance is unlawful unless where the insurers become bankrupts & are incapable of paying or it may be or two insurances may be made without intention as where the owner's factor in another country has the vessel insured not knowing that the owner had done it himself. In this case both are liable 4th Bn. 489.

If in the Policy it is provided that the vessel depart with a convoy & this is not done, the insurer is discharged 1st Nov. 60. The convoy in this case must attend the whole voyage talk 483. All the Departure is
Law Merchant
without a convoy, yet if it is taken at the usual place it is sufficient St. 1265.

If the convoy separate unnecessarily as to take prizes to the Policy is discharged but if the separation is from necessity as by reason of a tempest etc it is no discharge.

In the terms of the Policy it is generally expressed "the ship is discharged from the voyage. When the ship arrives if the goods are taken out by the owner in a boat not belonging to the ship the insurer is not liable for the loss, but if they are carried in the ship's boat the insurer is liable. Adam. 1236.

The gen. rule that a capture enables the insurer to abandon but not if the capture was only a small hindrance. 2 B. & C. 383. as when they escaped suddenly or gave but a small ransom.

The an insurance against the perils of the sea, thieves etc does not subject the insurer where the vessel is lost or injuring is done this the mismanagement of the master yet when the insurance is against the barter of the master as when he runs away with the ship, squanders the property, embezzles it, or deceives from the voyage without order of
The owner—butter and negligence is not bar-
entry. A compulsory deviation from the
course of the voyage is not barentry No. 1264.
If the insurance be against embargoes
or restraint of owners—be it does not extend
to seizure for disobedience of the Law as
for running goods.
Where the risk is not run the premium
must be returned; but if the risk has once
begun to run the premium is not to be
returned. Sometimes however a part of
the premium must be returned where 2
premiums are given upon the same con-
tract and the risk is run upon one part
and not upon the other. If an underwriter
insures a vessel which he knows has re-
tained the premium must be delivered up.
A year in the case is sufficient evidence,
that the vessel is lost & then the insured is
entitled to recover. But if afterwards the
Ship arrives the Insurer may recover back
the money paid.

Of Contract by Charter Party

Where a vessel is hired to carry goods
articles of merchandise, the contract is called
Charter Party & the reward for the carriage
is called the freight. A vessel is hired for

Law Merch.

So much a month, for a whole voyage,

for so much for the outward, or for the inward voyage. If the ship is lost, the freight is lost. The owner losses his deck & freight, & the freighter his goods. But where the contract is a certain sum for

the outward & a certain sum for the inward voyage & the ship performs the outward & is lost in the inward, the freight on

the outward must be paid for. If no contract is made respecting the freight it becomes due at the port of delivery—but if

by the terms of the contract no freight is to be paid until the return of the ship & she is lost on her return, the entire outward & inward freight are lost. Cost.

If the master return without landing, yet he shall be paid where it was owing to the merchant or his factor, that she returned empty.

The master has a lien on the goods for the freight—If the ship is not lost but the goods are damaged & the owner chooses to take them, he must pay the freight. He is however at liberty to abandon or goods & recover their value. If he takes any part of the goods, he must take all. He cannot separate the

damage.
Law Merchant
undamaged from the damaged if he a
bandons the goods become the Master's
If the ship is disabled when part of the
voyage is performed the Master shall have
freight pro rata. The Master has power
to borrow money & hypothecate the ship
& the lender has the ship for security
& the owner & master are personally liable
for the money. The master takes up money
for the re-fitting or victualling a ship. The ow-
er is liable as the the ship was leased
to the Master. The owners are liable for loss
occasioned by the Master's misconduct &
the Master is again liable to the owners
& it is said in the Books that the Master
loses his wages, but it is apprehended
this is not the case any further than
as answered damages Car. 58, Talk 140
3 Mod. 322, Dec. 592.

Of Merchant & Factor

A Factor is a man employed to trans-
by a Merchant to transact his business
for which he is paid according to the nature
of the contract. He takes a Commission if
the Commission empower him to
deal with the goods as his own he may sell them on credit. And if the goods cannot be recovered for the goods when sold the loss is the merchant. If the commission be to sell and dispose generally, the factor has no authority to sell on credit even if they are bona fides. The factor must account for the goods he receives according to the nature of the commission & for this purpose an action of account is the only legal remedy, but this action is now dispensed with and an application in chancery substituted as being more convenient. If the goods were lost or stolen it is a complete defense to the factor. He has a lien on the goods. He also has his remedy against the merchant. The lien upon the factor in his hand is good against creditors. In this respect the factor is not considered as a bailee at all events.

In this state we have not ordinarily applied to chancery to call the factor to account but have avoided most other actions which are concurrent with account as indefatigably after. If a factor undertake to own goods if they are seized he must account for them.
& the seizure is no defense. If a foreign factor run goods not seized, he is allowed the duties in accounting in a suit in Equity, but if done by a home factor he is not allowed the duties for this would be containing their own revenue.

It is a question whether the principal shall be liable for the fraud of his factor civilly. By the current of authorities, he shall be liable for all the damage done by the factor & there appears but one authority to oppose the idea. Cro. Jac. 469. If a factor sells the goods of his merchant & purchases other goods with the money & dies, the goods purchased are the merchant's & not subject to the creditors of the factor; but if the goods had not been purchased the debt money would have been liable to the factor's debts. &c. 160.

If a factor sells goods on credit without any authority, yet the sale binds the merchant for the transaction as to the vendee was bona fide & the master in such case must look to the factor & not if there goods were pledged by the factor to secure his own debt. He cannot retain the goods in defense of the master.
Law Merch.

When the factor undertakes to sell goods on credit, the vendee becomes debtor to the merchant & not the factor, but a payment to the factor is good, unless by the express prohibition of the master to the vendee to pay the factor. In some places there is a custom that a factor when he sells goods shall run all the risk of loss & in such case he may sell on credit.

There has been a question whether the vendee is debtor to the merchant or factor & whether the vendee is liable to the merchant for being forbidden to pay the factor. At 1182, this is unsettled. The case in Strange is a determination of the jury contrary to the opinion of the Court. This was a jury of merchants.

Of Mariners

If the mariners do any damage by common law, the injured freighted the master & owners are liable for the loss sustained. There is a rule that if the ship is lost by storm or taken by pirates the mariners shall have no wages, & also if they run away Drake 398 650–206.

The law has made particular provision for mariners to obtain their wages. They may all sue in a Court of Admiralty.
Law Merchant

When I join in one action with another, they bind themselves by a written contract on land. They have a remedy against both master and owner. The master, however, cannot sue for his wages in a Court of Admiralty where the contract was made on shore nor if he dies on the voyage can his representatives.

Bacon. Abs. 1. If part of the property is thrown overboard to save the rest, the master, owners, freights, & passengers must all contribute according the property they respectively have on board. If the goods are injured in lighten ing the vessel an average is made. If any property is given to pirates by composition to save the rest an average is also to be made. But if the pirates took the goods by force there is no average every one runs his risk.

When a vessel is taken the master may ransom her at the expense of the owner or if unable to pay the ransom he may pledge himself or any of the seamen if the owners must redeem them.
Law Merchant

Right of Merchant to stop goods sold in transit.

The Consignor may stop goods sold in transit before they arrive at the hands of the consignee if the Consignee be insolvent. But if the Consignee assign the Bills of Lading to a third person for a valuable consideration, the consignor has no right against the such assignee. This principle of the Law Merchant is various from the Common Law, for by the latter if the goods are once sold they cannot be taken but by attachment 22 Durn 69.

Of Owners

Where there are a number of owners, the majority in property are to regulate. If therefore the major part agree to send her to sea & the minority are against sending her, upon the majority giving security in Admiralty to secure the shares of the minority, the ship may sail if the minority have no share in the profits, but if she is sent without giving this security the minority shall share in the profits too, but if the lien lifts they would have come their share. The minority cannot forbear, send the vessel with consent of majority but may
Law Merchant
compel a sale of the vessel. This can also be
done when part of the owners are unable
to fill her out.

If the Master take good care
for hire & he is robbed in port under the
dominion of the Lorn Law he is consid-
as a Common Carrier & liable at all events
but if on the sea, the Mercantile Law re-
vails & he is not liable. 190. 2. 38

D. Haym. 918.
Miscellaneous Principles

Lecture 44th March 23rd 1794

1. Cohabitation in perpetuation of marriage is good proof in all cases except in an action of criminal conversation Doug. 166.

2. For money misspent to an agent an action of money had and received is but but evidence that the agent paid it over or suffered to shelter the Dft from the Plf's claim Comp. 566.

3. An agent who paid money is a good witness that he paid it Comp. 805. This a notorious exception from to the general rules for admission of testimony.

4. Husband and wife are not witnesses for or against each other upon a ground distinct from interest. 2 Dunp. 208.

5. There is an authority in the 2 Dunp. 758 which serves to elucidate the Question whether an unfair return of non est inventus by the officer is conclusive against the Bail.

6. When money has been paid upon an illegal consideration an action brought to recover it back, the illegality of the consideration is not always sufficient evidence to prevent a recovery by the Plf. Doug. 459.

7. The declarations of a dying person good evid. Lea. 308.

8. 399. 40.
Miscellaneous Principles

8. A person who has no notion of eternity is no witness. Lord B. 96.

9. Whoever purchases of a person who pays a full price against which person there is a judgment, of which fact the purchaser is sensible, the contract purchase is fraudulent. Lord Doug. 88.

10. There is a case in Comp. 76. where a misrepresentation to the underwriter who there was none to the rest vacated the policy as to all.

11. That foreign laws must be proved as facts, see Comp. 171.

12. Where one of two innocent persons must suffer, it is a rule that the person who enabled the 3rd person to do the wrong must suffer. The case of How v. Hartop & other similar cases are manifestly an exception to this rule.

13. In an action of trespass vi et armis against the sheriff, evidence that his bailiff committed the wrong in the execution of his office is sufficient to maintain the action. Doug. 42.

It is an established principle that no acts of the parties shall destroy a contract originally good. A distinction is made in the case of Robinson v. Bland 2 Bunn, 1077, between the security of the contract. If part of a contract were upon a good consideration, part upon a bad one, it is divisible, but otherwise as to the security for that being entire is bad as to the whole.

A party may justify under erroneous proceeding of the court, but not under irregular proceedings so they are null and void.

In Eng. where an action is commenced against a person to recover the property of that person, to a demand of the debt is raised. As directed from the debt to the P I the lessor in executors must deliver over the goods to the rightful adm'x before action brought against him, or he is chargeable. And otherwise in this country for the finger it is not considered to be...
Of Real Property

Began May 26th, 1794

Lecture 1st.

At first view it appears extremely difficult to define Real Property, yet it is impossible, in any one proposition, to give the student an adequate idea of it. It may be told that Real Property is "Corporeal or Incorporeal Tenements." But this gives as imperfect an idea of the subject as Aristotle's definition of a man—that he was a featherless, toothless animal.

The subjects of Real Property are of two kinds—Lands or Corporeal Tenements and Incorporeal Tenements. These two general divisions include all Real Property. Land is included in this general concept and means all the property which adheres to the ground, as well above as below the surface, or such as can be read from within the earth as House, Water, Trees, Mines, Artificial Emblements, &c. &c. are Real Property.

It will not, with a conveyance of the land,
Real Property

Incarnate Tenements are intangible ideal creatures. As a right of way, a right to a stream or in Eng. Offices—Land may be conveyed. Houses be may be excepted. In such case it is still Reaves opinion the house becomes personal property. This is unsettled by any determination of Courts. The ultimate fee of the land which the house covers is in the owner of the surrounding land, but as long as the ground under it the house stands the top of it belongs to the owner of the house.

When Trees are excepted they are always considered personal property and are governed by all the rules of personal property.

Authorities differ concerning what would be the operation of a grant of timber trees. The general & better opinion is that they are personal property, being contemplated as severed from the freehold.

Emblements (pals) in a conveyance of land they are considered real property for the sake of being conveyed with the land in every other point of view they are severed property & also to favor criminals that it need not be felony to steal them in every other view they are personal property.
Real Property

The only Estates which a man has in Real Property are: 1. An Estate in Fee Simple. 2. An Estate in fee tail & 3. An Estate for life. In both kinds of real property a man may have a personal property. As an Estate for years in Land, or an Estate for years in an incorporeal tenement.

A man cannot so conduct with personal as to cause it to be governed by the rules of real property—neither with the latter so that it be governed by the rules of the former. Real Property, one finds out what it is, invariably descends to the heir opere to the Executor so that it is a matter of no inconsiderable importance to know what is Real & what Personal?

 Whoever has an Estate in Fee Simple or Fee tail always has an Estate in Real property, not so with an Estate for life. This Estate may be created in person present or in the case of a Library of Books etc.—

It was long unsettled in Eng. what per ante ete became of an estate for life when the donee died first. Sometimes it was considered as open to the first occupant. But on what did it pass? It was determined
Real Property

to belong to the Executor. It is a matter of uncertainty what would become of a
part of an estate in Con. the Stat. of Con. Having no operation in this State.

Lecture IX May 27th 1797.

Of an Estate in Fee Simple.

A fee simple is such an estate that when given, it is wholly at the disposal
of the person named as grantee. He may dispose of it at his pleasure either by deed
to operate in his life time or by devise to operate after his death. It is not dispo
sed of descends to his heirs general. It is created by these terms "his heirs forever."  

Grist. These words are by the English Law indis-

1. Pensible for a estate to pass by deed

In a wise a variety of other expressions will pass a fee simple. (But the word technical expressions in both words above

which are absolutely requisite)

Formerly an estate in fee simple was held under a Superior at will. Then the

Feudal System had begun to shake a little the tenant acquired his Estate for a term of years. After the rigor of this disgraceful

system had in some measure abated tenants acquired their estates for life. This estate passed
Real property

by the terms "to him forever." But in the
progress of refinement, the feudal tyranny
vanished. If holders of fiefs were allowed
to alienate their estates—so did this they
had no terms. An estate to a man forever
was only an estate for life. Some other terms
were therefore necessary to transfer that
absolute property, which the Romans called
alodial & which we call a fee simple.

For this purpose the terms "to him & heirs
forever" were invented. These terms give
nothing to the heirs of the grantee.

An estate "to A & B forever" would convey
a joint estate—but an estate "to A & his heirs
forever" conveys nothing to A's heirs it being
only a technical phrase to vest an absolute
estate in the grantee—designate the quantity
of the estate granted viz. a fee simple. See
Plowd. Anet. Digby. It would be difficult
to support the reason why this phrase should
be absolutely necessary when the idea if ex-
pressed even so clearly in any other words
would not pass the test. It is probable that
this absurd notion may yet be rejected by
courts when they have shaken off their degra
ding servility to precedents.

Wherever such an estate is conveyed
by the terms "to him & his heirs forever" any
attempts by which the grantor may endeavor
to clear the estate in derogation of the quality of fee-simp-
would be vain. As that the grantee should not alien or desire such estate for a fee simple was created. It is an inherent quality of such estate that it may be alienated by the grantee. So a deed "to A & his heirs forever" remainder "to B & his heirs." The remainder in this case is wholly void for by the legal phrase the whole estate was conveyed to A liable to descend to his heirs. Vaughan 269. Gros. Inc. 591. The passing of a fee simple in fee may depend upon a contingency to a person in remainder & might in a deed (in Eng.) were it not for the maxim that an estate cannot commence in future. A fee simple must descend to the heir general & cannot be otherwise given. An estate "to A & his heirs forever on the part of his mother." This clear intention of the grantor could not be carried into effect, it being against the rules of Law Co. Lit. 190.

A fee simple may be created in a will by other words than "to him & his heirs forever." The rules respecting wills were more liberal established at a much later period than those respecting deeds, which accounts for their difference. Mr. Reeve supposes any words will do which prove that it was the inten—
tion of the Testator to pass a fee simple.

The rule is that the intention of the testator is always to be complied with provided such intention is consistent with the rules of Law. It is important to understand this maxim perfectly. Is it not a rule of law that the words "heirs forever" are necessary to create a fee simple? And that long before real property could be devised? And the intention is clear yet is it not in opposition to a known rule of law? The answer is. This rule is not applicable to the construction of words whatever, but only to the nature of the estate conveyed. For in the Law says that a fee simple must be wholly in the power of the owner to dispose of it. The intention of the Testator be as it may. He cannot alter this quality by any restriction. So personal estate goes to the Testa& cannot be made descendent to heirs. So also personal property cannot be entailed. No intention can alter the Law. All such cases in which one of the & whatever is out of the power of the testator to do, let him use what expressions he will, no intention shall make effective. But where the thing intended to be done is in his power to do, in such case the intention
Real property: owns all the proper technical expressions are not used. See case of Ambrose vs Hodgson. Dus.
Lecture 3rd. May 28th. 34.

The instances which have been determined to carry with them sufficient evidence of intention to pass a fee are:
A devise in fee simple: A devise to a person to pay the devisees debts or the debts of any person for it implies a power to sell to effectuate the devisees intention.
A devise to B in these words, "I give my farm at C to B upon his paying 100£ to D. Had the devise been payable out of the annual profits, this would not furnish such evidence of intention. All my estate" passes a fee simple. But if words of locality are inconsistent with the terms, "all my estate" as all my estate at such a place, there is a difference of opinion in the books. The current of authorities are however in favor of passing a fee simple. My estate forever held as

3. Will. 41. 3. Will. 41. 3. Will. 41. 3. Will. 41.
The terms “all my effects, real and personal,” have been decided to pass a fee also “all I am worth.” “All my estate in the occupation of such a person” held not to pass a fee in Doug. 730.

Of the maxim Nemo est Hector viventi.

An estate given to the heirs of B conveys no estate to the heirs, if B is living, for according to the maxim no one can be heir to a living person. The estate therefore is given to nobody, as B has no heir. But if it is apparent that the testator meant to point out any particular person by the term “heir” then he may take as to the heir of B. If B had an only son, it is presumed the testator meant the heir apparent. Som. Ray. 338. — In every case that person of a devise to the heirs of a person, being alive is not the presumption natural that the testator meant the heirs apparent?

The propriety of the word therefore may be questioned —

Of Estates in Tail.

The technical terms to convey an estate in tail are “to one of the heirs of his body.” These are indispensible in a deed. In a Will
Real Property

Any expressions indicative of the testator's intention to pass a fee-tail, will answer the purpose. To a man this issue "en sufficent or "to one this sans" he then having none.

Origin of Estates Tail

When estates began to be alienated, the pride of the nobility was wounded, & they trembled this fear that their estates would be soon broken up by this practice. They longed for some regulation by which to prevent the alienation of estates & keep them red in their blood while their estates might descend forever. For this purpose they contrived the conveyance in fee tail, thinking this would effectually answer the end for which it was invented. But the intention of the grantor was defeated by the construction of courts. This gave rise to the famous stat de donis the object of which was to lock up estates in the blood of the nobility. This statute was the 13th of Edw. 1. This statute was completely evaded by the conveyance by fine.

Common Recovery—A bong Reovery was in short this. A wishing to put his estate in a situation to alienate it, agrees with B to buy him for the land & not to ap
Real Property

Dear to answer to the suit B then has the estate. He is coming to A a free simple. In this way the entailment is dodged.

Nature of an Estate Tail

An estate tail is divided into tail general and tail special. The former is given to a man and the heirs of his body generally, without any restriction either in favor of the male or female line. The latter is restricted to the heirs of his body by such a wife or to his heirs female, or heirs male.

If it be to the heirs male, the one who takes must be not only male but must have derived his descent from males—otherwise the estate will revert back to the grantor or his heirs—for instance an estate is given to a man and the heirs male of his body, he has a daughter, who dies leaving a son. This son cannot take his parent otherwise he must derive his descent from the donee in tail, not being a male.

If it be to the heirs female, the person who takes must not only be heir & female but must derive her descent this a line of females. See Cott. 2:125.
Of the Qualities of an estate tail

It is liable to revert back to the grantor, on the death of the donee, in tail & failure of issue.

A tenant in tail is not answerable for waste, the Reversioner's interest being on so doubtful a contingency that it is considered no thing in the eye of the Law.

His wife shall be endowed as in all estates of inheritance.

The husband is entitled to his curtesy in estate tail of his wife.

An estate tail may be conveyed in fee simple & the conveyance is good as long as the tenant in tail lives.

Connecticut Entailment

It was long uncertain what would be the Law of Entailment in Conn. Learned Lawyers understood it undertook to tell what it ought to be, long before any decision of Court. Some supposed that the old fee simple conditional, that prevailed previous to the Stat. "De donis" would be here revived. Others contended that the Stat. de donis was our Law it being an ancient Stat. de. At length however their mistakes were relieved by a decision of the Supr.
Real Property

cour Court. By this determination the first
Donee in tail could not alienate so as to de
stroy the right of his heir, and the estate de
scended to the heir, vesting in him a fee sim
ple. The Power of the Court to make this
alteration from the English law was questi
oned, & to remove all Doubts a Stat. was
made in 1784 which adopted the idea of the
Sup.C6. Our Entailment differs from the
English only in the duration of the Estate.

Some have supposed it to be no more than
a life estate. But this is not the case for
the Legislature have made use of the term
"entailment" & this sufficiently shows that
they meant to adopt the English Law with
the single exception of duration, which they
determined should be no longer than the life
of the first donee. All the incidents therefore
of an estate-tail in Eng. belong to ours with
the exception mentioned.

Of a Tenant in tail after Possibility of
issue extinct.

This happens where one is tenant in
Special tail, & a person from whose body
the issue was to spring, dies without issue,
& where an estate is given A. & the heirs of
Real property to be bequeathed on the body of his present wife. If the wife dies without issue.

The duration of this estate is for life only. Yet the tenant is not liable for waste as other tenants for life are. If he alienates in fee it is a forfeiture of the estate Tit. 28, Sect. 80.

Of an Estate for life

If estates for life some are created by operation of law & some by the act of the parties. Of the former kind are estates in Power & Curtesy. Estates during widowhood, or while the donee remains clerk of a Court & depend upon the act of the parties liable to be determined at their pleasure.

If a lease is made without any time limited, it is a lease for the life of the lessee. But such a lease by a tenant in tail is for his own life for obvious reasons.

A Tenant for life is punishable for waste liable to forfeit his estate. He cannot alienate in fee as a tenant in tail may. So such alienation is a forfeiture to him in Reversion & the deed is void.
Real Property

It might be a question in Cor., whether this would be a perpetuity, as our circumstances are totally different from those which produced this practice in Eng. Lords lease their estates to persons in whom they put confidence to adjust them so well, it would not suffer stranger tenants to be Palmered upon them. Such tenents may take necessary fire tools.

House 24, 25

Of a Tenant by Custody

To entitle a man to this estate his wife must have had issue born alive who would have inherited. In England there must have been an actual service on the part of the wife. But here entry is not necessary. A man may as completely possess without entry as with.

There was formerly a decision in our Courts. That tenancy by custody lasts no longer than till the heir comes of age. Some say there have been contrary decisions, but Mr. R. cannot satisfy himself as to this.

A question might arise whether a custody estate is not governed by the law of Gavelkind, which was the tenure of Kent & the tenure
Real property
of our lands under the charter? as no
Hat. has made a different provision.
The curtesy in Chancery differs from the
Comitee Curtesy: that it is only of the moi-
cety of the wife's lands marriage alone with-
out issue entitles to it. It determines on
a second marriage.

Lecture 5 4th May 30th 1794

Of Estates in Bower under the English
Law. This happens where a husband dies seized of
lands. The wife may take the third part of
all the lands, tenements, of which the husb.
was seized during coverture to hold for her
life. The estate must be such as would be
inherited by her issue. It must therefore be fee
simple or fee tail. The wife is dowerable as a
Feme in Law as well as actual fee simple for it is
not in the wife's power to bring the husband to
the to actual possession & the husband can the wife's
life. The wife's life to dower is indefeasible as
to its liability to creditors. If the husband may
devise away from her all his personal prop-
erty yet he cannot, by devise, deprive her
of her dower. She must not commit waste
but what would be considered waste in other
tenants would not be in a widow—an alima
non is a forfeiture. The heir must

Real property

Set off her dower in 40 days after her hus-
don death If he refuses she has her remedy at law
8, pending the action, she may occupy the hus-
don's mansion house. This estate is paramount
to all claims during her life

How Dower may be Carried

1. By a divorce a vinculo matrimonio
2. By her election with an Adulterer
3. By jointure settled upon her before marri-
age. This was effected by a Stat.. Hen. 8. The join-
ture must be competent it must last during her
life, or vest in her immediately on her hus-
don's decease.

If the jointure is determined by dower
she is incompetent, she may resort to dower.

When a jointure is made subsequent to mar-
riage, she has her election to take up with that
a resort to dower—This on the ground of her
being under her hus'
don's restraint after marriage

Difference between Eng. & Con. Law

In Con. the wife is to have only "one third
of the estate of which she hus'
don dies possessed"

Some lawyers make a distinction between
"Feudal Proprietors." others say they are synonymous

terms—no case has yet come before a Court.

Several are about to—In England if the hus-
don refuses to set off the dower, the widow treat

To
Real property is driven to a lawsuit for redress. When this is the case, it is generally 2 to 3 years before the parties recover their rights. In Can., a great improvement is made in the law of dower. Here the Ct. of Probate appoint 3 judicious free holders to set off the widow's estate immediately into 3 parts. The transactions of these men have been almost universally satisfactory, but the heir if he thinks he is injured may appeal to the Sup. Ct.

A divorce a vinc. mat. is not a bar except where the wife is the guilty party. A divorce a mens. et there are no bar.

Dower may be barred by jointure. By a fair construction of the Stat. jointure may be made in real property. But this would be attended with many difficulties.

For in this way a cruel husb. might deprive his wife by claim upon his property. On the other hand, it could not be ascertained that the separate property as all her personal estate is vested in her trust on marriage.

If a husb. in sound health is disposed to deprive his wife of dower he may, by alienating his lands, etc. This is a misfortune to the woman for which she has no remedy. But if the alienation is in contemplation.
Real property

of death, to deprive the wife of dower, it is considered a testamentary disposition. Let the nature or terms of the contract be what they may. When property is given to children to defraud the wife, she shall stand in the place of creditors & take her dower.

If in any instrument an estate is conveyed to a man for life, & in the same instrument, a fee simple to his heirs, the fee simple vests in the first donee as "heirs" is the technical term for conveying a fee simple. The English principle is. That, in a will, if any other expressions can be found plainly indicative of the testator's intention to pass only a life estate to the estate first donee, & a fee simple to his heirs, yet it appears from the authorities that it is extremely difficult for judges to discover the intention when to a man of common sense it is clear as day light. When an estate is given to one for life & not otherwise, & the fee to his heirs, the Court made out to discover the intention of the estate passed accordingly. For life. Also, if in an instrument an estate tail is given, & in the same instrument an estate tail to the
Real property

Heirs of his body an estate tail is vested in the first donee to be.

See the last case in the 8th of Burrow

Lecture 6th May 31st 1811

Authorities for the above subject:
1. 22 R. 93 66
2. 22 R. 93 66
3. 22 R. 93 66
4. 22 R. 93 66
5. 22 R. 93 66
6. 22 R. 93 66
7. 22 R. 93 66
8. 22 R. 93 66
9. 22 R. 93 66
10. 22 R. 93 66

The English Law can commence in future. A fee simple may be limited in remainder after a life estate & in this way commence in future. But this intervening estate must be a freehold & not an estate for years, unless every of feisin is made of the whole estate. Then the estate in remainder is said to commence in presenti, solvendum in futuro.

So that the maxim is not disturbed.

By devise estates may commence in future without any intervening estate such a devise is called coterelar. At how great a distance the devisee may lie is taken by such devise is not settled in the Eng Law. In Rom. it is established by Stat. What no estate either by deed or title can commence at a greater distance than to a per
Real property

for in esse, or to the immediate descendant of such person.

Of an Estate for Years

This is personal property. It is to commence at a certain period, & end at a certain period. This estate may commence in futuro.

No liberty of seisin necessary to pass it.

Parol leases for 3 years are good but not for a longer period. In Common a parol lease is good only for the year. Suppose a parol lease is made for a longer period than 3 years.

If the lessor gives the lessee at the end of the term on the former contract he cannot recover on that ground. Altho' the lessor cannot recover by force of the contract, yet he may on the ground of a promise, raised by the justice of the law, that the lessee pay what is reasonable for the use of the land. The action is an action of debt. It may have the operation of a written lease, where the lessee has paid rent. The lessor shall not eject him on the principle that no man shall drive another out of possession where is compellable in Chancery to make good the title which is the case in this instance. The tenant by parol lease forfeits by committing waste.
Real Property

Month, Estates are considered in Law as
years, estates. Lunar months are meant.
In Cowper 745: "From the date" & "From the
day of the date" are the same, & shall be
considered exclusive or inclusive as shall
best answer the purposes of justice.

Estate at Will

This amounts to nothing more than a
licence for the tenant to go on the land &
improve. It is liable to be determined at
the will of either party. But the lessee shall
suffer no inconvenience by a sudden or
order of the lessor to go off. The lessee do
renounce his estate, by committing waste. He
this act of ownership to the lessor impos-
unfitable, with the lessee's tenancy is an end

of the estate

Of an Estate at Sufferance

This is where a lessee continues his possession
after the lease. He becomes a trespasser as a
tenant at will.

Emblements

There are the annual, artificial produce
of land. They go to the lessor. If the tenant
has joined the land before harvest, the estate
should take the
emblaments, unless the term was certain &amp; the tenb knew it would end, in this case it was his own folly to lose & must loose them. A woman has an estate during widowhood if she has sons & before harvest marries she loses the crops but if she has leased her lessee shall not be injured by her death. If tenants at will or sufferance forfeit their estates by their own act, they lose their emblaments.

July 7th June 2d 98
New York

The laws of England & New Y. are the same. What the terms which create a fee simple only by a late statutes, any words which in Eng. will create an estate tail will in N.Y. create a fee simple. So that entailments are by one general stroke, completely cut up by the roots. Estates per anter vie are in N.Y. personal property & go to the Eva if not devised.

They have made excellent provision to prevent widows from being defrauded of their power. The widow is not deprived of her power by the trust's entail. Their laws ofesty is the same as the English.
Real Property

Of Incorpoal Tenements

The greater part of these do not always exist in this country, but it may be entertaining to read them in Blackstone &c. as a part of our

Those which do exist here ought to be under

Of an Annuity

This may be granted to a man his heirs

forever. The Grantor does not bind his heirs

by such a grant unless particular mention is

made of this intention. But he binds himself

to the grantee. His heirs, if they should hap

then to outlive the grantor. It is personal prop-

erty as to the grantor as it dies with him. If descen-

dee nobody. Thus to the grantee it is real \\

and will not descend to the \\

But the grantor may bind his heirs, but by

this is not meant his heirs generally. The grant

bonds none unless they have received gifts from

the ancestor. It may be an estate tail for life

or for years. Lit. Cok. 14.

Of Rents

We have property no rents here. The purpose

of them is answered by giving notes payable

every year. — The growing rent goes to the

heir. He when collected is easily seen it must

be personal property. The heir owns the Reversion &

the incident is rent is so incident to it that
a reservation of rent to the Est was considered nugatory in Brooke, Est. 238. Where a lease is made by a Lessor, the rent reserved is personal profit.

There is a practice in Eng of selling a fee simple absolute & reserving rent. This rent follows the Reversion wherever it goes. This may take place here. 5 Rep. 111. Est. 238. Lat. 259. Lit. 457.

Acre of Rent have nothing to do with the Reversion being personal profit. They go to the Est. Est. 578. Lat. 578.

Of a Right of Way

These may be in fee simple, tail &c.

In Eng. they are by Prescription. There is no such thing here. Only a man may have his heirs & assigns to grant in a grant of a Right of way.

This gives a privilege which will descend forever to the assigns &c. A right of way to one for life is not assignable.

A man may grant away the use of a stream passing thru his land—common sense is the law to teach what is right in such cases &c.

Lecture 3. June 9 94
Of Mortgages

1. Mortgage is a pledge of land in security for a debt. The Mortgage is not for the payment of the debt but merely a security liable to be redeemed on payment of the debt; the personal security of the Mortgor being deemed insufficient. The Mortgage is no objection to pursuing his remedy upon the debt for the security of which it is given, even at the same time that he is ejecting the Mortgor.

In whom is the legal title? After the pay day there has been no doubt where it is. Before this time some have doubted but it is now settled that the legal title is in the Mortgagee, Mortgor from the date of the Mortgage. This will appear reasonable by considering the nature of the deed. It is, in the M-9-00, an estate in fee simple conditional to be defeated on a contingency. This was considering it before the pay day. After that failure of the Mortgor, the estate in law, is a fee simple absolute. But in Equity there is a right of redemption. The real, beneficial interest is in the Mortgor. The land is still considered a pledge redeemable at his pleasure.

The decree of Chancery does not operate in rem so as to give a title to the Mortgor, for title in law is completely in the M-9-00. Chancery has not found to say that the title shall be held by the M-9-00's
But the same thing is effected by fixing so large a penalty upon the M-gee, if he will not recant to the M-gee as will compel him to.

The History of this affair is this. When these cases first came up there was no Court of Chancery, & Courts of Law supposed they had nothing to do with contracts so clearly settled by the parties. They therefore suffered the M-gee to hold an absolute fee simple after the Gray Day. Failure of Payment. Such great injustice was done in this way by avaricious men imposing upon their negligent debtors, that when Court of Chancery was established, they wished to invent some method to prevent fraud of this kind. They thought it would be too presumptuous in them to alter an established title in direct terms. Therefore took the round about method of decreeing that unless the M-gee would convey he should forfeit a penalty which they would fix high enough to compel a conveyance. This decree was paramount to all other titles.

Payment, or tender of payment revests the title in the M-gee, but his intention is critical for he is to make the tender of payment while the M-gee has a deed of the land. The title therefore frequently is not in the deed, but depends upon a matter of fact to appear in evidence.
Of Mortgages

If the M-gee was in possession at the day for
redeeming, the Mayor might bring his writ of
ejectment in this way. The title would be tried
if he proved the grantee the 6th would go in him
the title. But if the M-gee had remained
in possession there was no way for him to try
the title before a Court of Law. Chanery must
then be applied to. They would order the M-gee
to recover on penalty of if he was unable
to pay the penalty the Court would give the
M-gee in possession by decreeing that he had
the land absolutely. A declaring that no man
would disturb him. This decree operates in
rem & is paramount to all other titles—
If the M-gee should bring a writ of ejectment
against the M-gee, this would answer every fur
judge for the trial of the title could come up
the reason why Chanery took up these matters
was on the ground of their power to compel
the execution of trusts. They considered the M-gee
as trustee to the M-gee—

Chanery gives a day on which the M-gee
shall recover, on failure the penalty is for
feited. This is never recovered.

The M-gee is not liable for rents, although the
title of the land is the M-gee. So the land is
only a pawn for a debt or interest, & no
injustice is done to the M-gee.
Mortgages

The M. go's remaining in possession depends entirely upon the will of the M. see. In this light the M. go is a mere tenant at will, but is different from in respect to the Extent.

These the M. see takes when he enters. He is going into possession however has no effect upon the debt, for he is liable to account for the rents paid to the M. go and if these exceed the debt he must pay the balance to the M. go.

The M. see shall be allowed for such improvements as are useful to the M. go but if he has built an elegant house which the circumstances of the M. go did not require, or otherwise laid out unnecessary expense he shall not be allowed any more than what have made the necessary improvements. It is difficult to determine at how much the profits shall be computed as some would raise more than others. The M. see however must have acted a reasonable part or the profits will be computed higher than he has received. All the circumstances are taken into consideration as the M. see's negligence what the land could have been let for to be.

The Equity of Redemption is it incident to a mortgage that it has given rise to the Maxim "Once a Mortgage always a Mortgage" All agreements to have it inalienable on condition of the M. see's paying a greater sum than the are idle.

Sometimes the condition to a mortgage is attached to the deed itself. Sometimes a separate defeasance is given by the mortgagee. These are equally good between the parties but different as they respect the purchaser. For as the mortgagee keeps the defeasance of the mortgagee the deed the latter might be recorded first & thus deceive purchaser as to the title. When the condition is attached to the deed whoever buys of the mortgagee takes it with the incumbrance of the mortgagee right of redemption, but when a separate defeasance was taken of the land aliened by the mortgagee the mortgagee must file his Bill of Chancery to decree that the mortgagee shall either recover to the mortgagee or forfeit a reasonable penalty about the worth of the land. The mortgagee has his election which to do if he pays the penalty the land is redeemable. This is an exception to the maxim "Once &c."

The mortgagee may sell his Equity of Redemption if the mortgagee purchases it, the mortgage is defeased & the old maxim again broken in Alford 15 Tine 168. 1 P. c. 170. 3. 1. When a man wishes to advance his relation finds having the money at command conveys him a piece of land to be defeased on behalf of the son he wishes to advance & the
Mortgages

If for dues without redeeming the land is then irredeemable or suppose there had been a precedent debt & the mortgagee made this condition that if he had no issue male then the land to be irredeemable In both these instances the right of redemption is defeated on the ground of its being a family provision 2 Vent 361 Har. 574.

It has been a question "Whether a parol agreement could be annexed to a deed to make the conveyance a mere but it is determined that it cannot for this would be varying the estate from a fee simple absolute to a fee simple conditional.

The salutary maxim violated "That no parol agreement shall be let in to vary the operation of a writing." The mortgagee however may appeal to the mortgagee's conscience & if he acknowledges the parol agreement the Court will decree it a mere. This being considered as good as written evidence as no man could be supposed to take a fee simple against his own interest. And if the mortgagee had promised to execute a defeasance there is evidence of this Chancery will compel him to execute it. 3 Alt. 585. 3 Woodier 430 P. Sarn. 526

If the parties have so treated the conveyance that it is manifest they considered it a mere Equity will consider it so likewise.

Where a conveyance has been made to
Mortgages

A mortgagee may eject the lease of the major if the lease was granted after the mortgage.

Every person who has any interest in the estate may redeem as heir, devisee, creditor, except as we shall hereafter see the wife.

A Lessor of Major may redeem.

The mortgagee may treat the tenants of the major as his own by taking the profits from them.

The major must not commit waste if the court Chanery will grant an injunction against him.

Lecture 16th June 1764

There is a practice in the United States of selling real property at Public Vendue to pay taxes. This may be redeemed within a year. Then the generally received opinion is that it is irredeemable. This is a Statutory.

Here we have a statute explanatory of the former Stat. by which creditors are authorized to redeem after the year has elapsed. Some doubt has been raised from the words of the statute which says that unless the debtor redeems within the year limited, an absolute fee simple is vested in the Trustees. Mr. Reece says...
proposes that this term expresses the same as the same technical term does in other mortgages. As
the Legislature must be supposed to be acquainted with the technical terms when they make use
of them they must be taken in the same sense as they are in courts. It is his opinion therefore
that these conveyances were always mortgages.

The last mentioned Stat. plainly shows that
the Legislature had also considered the debtor as
having an Equity of redemption. The substance
of this Stat. is: "That if the debtor does not re-
demn within the year after that his creditors
may redeem & shall hold the same as a
mortgage liable to be redeemed by the debtor.
It is easy to see, therefore, that this is a Mort-
gage, if not in the strictest sense yet in effect
for the debtor if he had no creditor might
make one & suffer him to redeem. Then
redeem out of the Creditor's hand.

From this it appears that the Statute meant
not to deprive the debtor of his Equity of Red-
emption but only to limit a time after
which it should be consid a neglected in the him
not to redeem. That a petition in Chancery
by a Creditor might be preferred to one by
the in for (No decision yet on this subject)
Mortgage

Another exception to the Maxim, "Once a mortgage, always a mortgage." If the mortgagee brings an action on the land he abandons it as a security, it ceases to be a mortgage.

The money laid out by the mortgagee for improvements is to be allowed him with interest.

3 Atk. 513

The mortgagee must not commit waste. If he does, there is no restraint to his committing waste, but the grantor will grant an injunction. The grantor will value the waste & consider it as rents & profits to sink the debt. 3 Atk. 775.

If the heir will not redeem, creditors may.

In case of a gratuitous conveyance if the grantor owes, there has been a question who had the best right, the creditor or the donee. There is no doubt as to the between the grantor and donee. But creditors have a higher right than donee. On the legal principle that a man ought to be just before he is generous.

The wife has no power to redeem her husband's land. But she may be entitled if she will pay 1/3 of the interest of the debt. 1 Atk. 603. 2 Lee 303.

If she may devise an equity of redemption, it will rise under the name of "lands." See page 277.

If the estate mortgaged is sufficient to pay off all the debts, a 2nd mortgage has every benefit.
Mortgages

of the mortgage that the 1st has except the legal title. The moment the 1st mortgage's title is defeated it vests in the 2nd & the same benefit extends to all the succeeding mortgages—7 Vine 52.

If an equity of redemption is devised to one for life & another in remainder. The devisee for life may redeem this heirs may hold the estate till the remainder man will pay two thirds of the mortgage money if the remainder man redeems. The devisee for life must pay one third or he cannot take possession—a life estate being considered one third as good as one third of an estate in fee one third as good as an estate in fee simple. As the a Court of Law considers the equity of redemption as nothing yet Chancery will order it to be sold to pay debt if the heir will not redeem. 3 Mar. 3411 2 PM. 442 25th 52.

A Court of Chancery takes away no rights of persons having a lease upon land by making it equitable assets—Here the Equity of Redemption is inventoried & treated as other Interest little.

Lecture 11 June 12 92

An officer may attach an Equity of Redemption as real property altho' in the hands of the mortgagee this won't affect the rights the mortgagee but takes away more of the interest.
Mortgages

The mortgage is attached if the land is attached if
is appraised. The creditor puts himself in the
place of the mortgagee. The mortgagee cannot redeem
unless he pays all debts due from time to time to the mortgagee,
whether contracted prior or subsequent to the date
of the mortgage. This is to be understood as between the
mortgagee's representative and the mortgagee's representative.
It was formerly the law that the mortgagee
need only pay the money stipulated, but it is now
settled to the contrary. When a mortgagee claims, the
first can redeem by paying the sum stipulated
in the first mortgage that he paid in money.

1. Tyl. 87, Atk. 356

Before a court of equity will aid a mortgagee
they will allow him to do complete justice in
its action with penalty. The mortgagee shall pay interest
and costs. It is a principle established in
the books that if the mortgagee conceals any debt,
contracted by the mortgagee antecedent or subsequent
to the mortgage, a creditor may redeem by paying
only the sum stipulated. From this it is natural
to conclude that he could not, if there had
been no concealment, without paying the other
debts. But this is not the case. In the famous 165
Courts have made an exception that the creditor
may redeem by paying debts contracted an-
tecedent without paying those subsequent
to the mortgage.
Mortgages

If the mortgagee sell his mortgage under value, if the mortgagee wishes to redeem by paying this smaller sum, Court will not suffer him to do so if the purchaser has made a bargain it is his
And the mortgagee's fault. 105 Ch. 2. 511 Yet if
the near purchaser for less, the creditor may redeem by paying that sum only—Dec. 8th.

2 Atk. 1107—To St. of Limitations runs on an
equity of redemption, nor does length of time of
itself bar the Equity—but length of time con
nected with other circumstances will destroy it

Wherever the mortgagee continues in possession,
no length of time operates to destroy the Equity
for if the mortgagee has received interest within
20 years—To make length of time equal to a
St. of Limitations, the mortgagee, after the Loss of
or forfeiture, must have remained in possession
20 years. Nothing must have been done by the
mortgagee alone, or by him & the mortgagee together

to show that they consider it a mortgage. 105 M. 288
3 Atk. 313—When this limiting time has begun
its run and afterwards some disability intervenes
the time runs on notwithstanding 2 Atk. 333

There are a kind of Mortgage called Welch Mortgages
which are liable to be redeemed at any time
to end of the world—There are conditioned to be
Mortgages

That if the money be paid on the 1st of January,
or on the 1st of any preceding Janes, to the end
of the world, then the mortgage to be defeated.

The Majesty may bring a bill in Equity
to foreclose the Equity of redemption.

If the assignee applies to redeem, he must
pay all the debts due from him to the Majesty,
but if the Majesty bring his Bill for the mortgage
to redeem or be foreclosed, the assignee need only pay
the sum stipulated in the mortgage.

If the Majesty sells a mortgage foreclosed & it
fails short of the debt, he will indorse it on
the bond & if it overgoes, he must account for
it in Equity.

When a foreclosure is once effects, it
operates to pay the debt. That is, so that the mortgage
cannot bring any after suit for the debt.

Lecture 12th June 13 34

Originally Courts of Equity entertained the
same ideas as Courts of Law respecting land descen-
ding to the heir. They supposed the beneficial
interest as well as the legal descended to
him. But now upon the death of the mortgagee,
the nominal estate in the vested in him & the
beneficial interest in the mortgage. In case of
a Vice upon the land the heir must bring the
action of trespass, damages are recovered there.
Mortgages

If the mortgagor does not convey the land to the mortgagee, or pay the mortgage money, the mortgagee may recover the land in Chancery to give a title. A mortgage in a mortgage is personal property. See Term 621

"Lands, tenements & hereditaments" as a general rule will not pass m-gees. The term "first profit" will.

If, however, it is plain that the testator's intention was to pass m-gees under the term "lands &c." Courts will suffer that to rule. Any expression clearly indicative of his intent to pass a m-g will answer the purpose. 2 Ber. 978. Of the m-g in his will orders the m-gee money to be delivered to the heir or executor; it may be paid to either of them to the heir he is trustee for the Gr. 2 Vent. 4, Ford. 167.

The m-gee takes the land & the money goes to the m-gee. The being homogeneous

As the m-gee takes the land and security for a debt as to him & his heir, it is homogeneous. But when assigned by him, the assignee takes it not in security for a debt but as real property. Therefore it goes to his heir & not to his estate in case of a devise the m-gee may consist of personal or real property; Courts will consider personal or real according to his intention to pass it to the heir or executors. If a m-g is created by words of joint tenancy 8e will not grate the party by suffering a right of survivorship. But it is a tenancy in common

Query 258
Mortgages

It may be an important question in this
country whether the Cts. might not bring
the action to foreclose instead of the heir.
Why should the heir be obliged to bring an ac-
tion Subject Himself to a Hite of Court where
he can derive no possible benefit? It is cer-
tainly an idle business — After the heir has
foreclosed if he will pay the mort. geo. money
to the Cts. he may hold the land in spite of
every body.

Foreclosure

It frequently happens that the mortgagees
wants to make a family provision or want money
to set out in trade. Be they wish therefore
to have either the Mortgage money or the
land given in security. By petitioning to Chan-
cery they may have the mortgage right foreclosed.
The Cts. will fix a certain time for the mort. to
redeem. If he fails, know that his right shall
be forever barred. — 2 Term. 93.

There have been attempts to foreclose before
the forfeiture. Cts. however will not suffer this
in any case.

The mort. geo. shall not impeach the
title he has given to the mort. geo. on the ground.
That no man shall impeach an instrument to
which he has given money which is an estab-
lishment of our law.
Mortgages

Other persons interested may impeach the mortgage title. 2 Am. 344.

A mortgagee may pursue all his remedies at one time — foreclose attack 2 Am. 344. If the mortgagor is dead the Bill must be brought against his heirs, or if it is requested the devisees must be joined with him. 3 Am. 343. When Chancery fines a set time for redemption or foreclosure the mean Calendar months. The mortgage may prefer a foreclosure against not only the mortgagor, but all the encumbrances at the same time, if he brings it against the mortgagor only, he alone is foreclosed.

Infants may be foreclosed. But they are entitled to sue after the allowed 6 months after after they come of age to enquire into the affair before a Ct. of Chancery, & if there has been any unfairness or any fault in the Guardian, the Court will then the foreclosure 141. 304. 332.

Notwithstanding what may be said about a foreclosure, it has rarely the effect to make the most go redeemable. There are numerous circumstances, with one of which if the care is attended, the Ct. will open the foreclosure & make it redeemable. The foreclosure will be opened if there was any fraud made use of to attain it.

Our Bonds have established an equitable prin...
Mortgages

They will not foreclose if there appears to be any great disparity between mortgage money & the estate mortgaged—English Courts will foreclose when there is a disparity & altho' they are sensible they shall open it again—Our Courts consider this an unnecessary & idle force.

Lecture 13th June 14 1794.

A decree of foreclosure may pass against them Courts, no time is fixed when they may enquire into the cause of the foreclosure before Chang. They shall not suffer from the negligence or coercion of their husbands.

No length of time shall operate to prevent her from calling in question the title.

Where there are other Creditors besides the mse, the foreclosure will be opened or any unfair conduct of the mse to deprive the Creditors of mse's will furnish a ground for opening.

There is a case in Barnardiston 291 where the foreclosure was opened on account of dispropertie between the debt & the worth of the land.

There is no opening for a volunteer as a donee & devisee—That a Welsh mse cannot be foreclosed see

Very 406.
Mortgages

In Salk. 276 see the principle of a mortgage waiving his foreclosure. -

The Rule of the debt being satisfied when there is a foreclosure, would give but an inadequate idea of the subject for the mortgagee may bring his action at any time on the bond but by this he waives the foreclosure. If the mortgagee had sufficient for the debt, the mortgagee may bar a recovery in a suit on the bond for the mortgagee has received enough to satisfy him. It is unreasonable in him to demand more. But if the security was insufficient the mortgagee cannot take this advantage.

The mortgagee may have his choice either to take the slow method of recovering his debt out of the rents profits, or file a Bill to have the security sold, & in this case the mortgagee takes the surplus or he may obtain a foreclosure & sell the land himself. But if there are other creditors of mortgagee, a sale will prejudice them. Chancery will not decree a sale & when they decree a sale no more is sold than is sufficient to pay the mortgagee.

Ch. 1 B. Part 6. 414 There is a case where there was great disproportion & a bond agreed that the mortgagee might redeem, but 20 years the mortgagee had been undisturbed. But I would not suffer redemption.
Mortgages

In 2 B. Par. 3, a case where the court would not open as the mortgagee had entered and remained in the while undisturbed & had laid great expense on the farm.

If the mortgagee has unfairly concealed his inconsiderable in consequence another has taken a mortgage, the 1st mortgagee's claim will be postponed to the 2nd. See 2 Atk. 49, 10 Mo. 39, p. 139.

There is a case contradictory to these in Vey 6.

A more negligence in the mortgagee will furnish a ground for postponement. In p. 351.

If the mortgagee does not obtain the title deeds, he must suffer the consequence. As if the mortgagee shoold show his title deeds for the strength of this borrower men, the 2nd mortgagee shall stand in the place of the first.

In 3 P. 280, 1799, 300 these are instances where the mortgagee denied that he had a mortgage & yet was not postponed. The mortgagee supposed it an inquisitive question which the inquirer had no business to ask. But if he had told the mortgagee that he was about to take a mortgage, provided he had not one, the mortgagee would have been postponed. In this state we have no such regulation of postponing as we have Records. Those who take preceding mortgages will not be deceived if they will examine them.
Mortgages

But when deeds are not recorded the same reason holds here, so that we ought not to be ignorant of the Eng law.

Where there are several m.s. the one who has the legal estate has the prior right. A 3d. m.s. may purchase the 1st. m.s. title, protect himself against the 2. deed, 2 Bessy, 373, 2 Vent. 337, 1 Stra. 240, Hard. 313.

It makes no odd whether the prior incumbrances had paid for the legal title or not if he has it he can take advantage. The 8t. have even gone so far as to give the preference who has obtained the legal title by fraud; yet if he knew of the 2. encumbrance when he purchased, the legal title he shall not protect himself, and he is not benefited if the title is defective. 1 S. 340. The principle of a prior incumbrance obtaining the legal title protecting him. He against an intermediate incumbrancer is not warranted a violation of private right.


If the 1st. m.s. has a lien upon the land by judgment, as by H. North, H. St. L. or Receivers, he may tack this to his m.s. to protect himself against all other incumbrancers, unless he knew the prior incumbrancer.
Mortgages

If he had no notice of these, the 2d mortgage cannot redeem without paying both debts.

To give the 1st mortgage this advantage, the debt must have been contracted at the judgment obtained by himself, not purchased.

If a 1st mortgage is defective which would be made good in Chancery, the 2d mortgage shall have the preference although he knew of this defect. For he has the legal equitable title. Those together are superior to the equitable alone. 1 Stra. 240. The first mortgage's title is defective he shall be preferred to all creditors. 2 Camp. 491, 2 Tulk 449, 3 Barr. 644.

Some men, indeed, in particular frequently provide that the land mortgage shall be a security for all subsequent debts to be contracted between them. In those instances as between the mortgagee and the terms of the contract shall be literally complied with, the mortgagee cannot redeem without paying all debts.

The only advantage that such a mortgage has is that when he comes to foreclose the mortgagee must pay all the debts while in common mortgages he need only pay the mortgagee. But other mortgages not knowing the terms of the 1st mortgage shall not be affected by such a mortgage, yet if before they took the mortgage they
Mortgages

Knew the terms of the mortgage it was their own folly. The mortgagee shall have all his debts before they can claim. Section 52

If a mortgage is given to one as trustee a mortgagee shall not avail himself against a 2d. by purchasing the trustees title. Salk 630. 3 Atk 360. 1 Atk. 175.

It is common for mortgagees to join a petition for a sale of the mortgage premises. When this is done the money is distributed according to priority. If there is only enough to pay the mortgagee he takes all. In such case a mortgagee shall not avail himself of having purchased in the first incumbrance 2 Vesey 571.

Or 2 Atk 89. Finck 320.

If the principle is just that a future incumbrance should protect himself against an intermediate one by purchasing the first incumbrance, what need of these exceptions? It is manifest from the 6th Squewing these cases out of the rule that they are impressed with the injustice of unreasonableness of it.

Where a foreclosure has been obtained it can be proved that the mortgagee previous to the foreclosure had tendered the money to the mortgagee. The equity of redemption will revive. If a mortgage is obtained it after that the mortgage becomes
Mortgages

a Bankrupt A forced for the same land a
again alumno the 2nd mortgage did not know
of the Bankrupter he cannot protect
himself by purchaser the 1st incumbrance
for the in-jo's estate on his Bankruptcy
vested immediately in the Commissioners to
pay debts contracted previous to the 2 mortgage.

It will not avail a man to plead ignorance that there was a deed where
there are Records kept & he might have seen
it by searching. The Law implies that he
had notice. This is called called constructive
notice.

If a deed was misplaced or lost thru the
carelessness of the Register he shall be lia-
ible for damages that happen to be sustained in
consequence of it.

A deed is taken & recorded & another
deed is given on the same land & recorded
first, the 2nd grantee shall have the prefer-
ence if he was a bona fide purchaser not
knowing of the first deed. 1733 64

But if there had been no negligence on the
part of the 1st grantee he shall have the
preference as if he is at a distance from the
Records or means to just have the deed recorded
so in a few days when he shall be going half way
in 2 days.
Lecture 15

June 17, 1794

While there are several on fees, & a subsequent one brings an ejectment, he will eject the major unless the prior m-see interferes to prevent it. The major has no right to say that he has no title. For as to the major, a subsequent m-see has a complete title. If a prior m-see prevents a subsequent one from entering, as he may by ejecting himself in such case as between him & a judge, if a subsequent m-see, he must account for the rents & profits, as if A. the m-see ejects B. major, & suffers the major to take the rents. Upon a bill by B. to redeem A. has not to account for the rents, but if C. a subsequent m-see brings his bill against A. he must account for the rents & profits. 1794

If therefore the major m-see has suffered the major to remain in possession or to take the profits against the will of the subsequent m-see, he must himself account for the profits.

Nor can the m-see command the major to injure the major A. m-see to B. A remains in possession & leases to C. as he may for 5 years. If C. does not go out at the end of this term, A. may eject him; it does not lie in the month of C. to say that A. has no title. In this case B. brings
Mortgages

brings an agreement against C as he may.

He prevents A for C is not liable after judgment.

In favor of B to be ejected by A. If B having obtained judgment 

It prevents C to remain in possession, paying nothing. B shall account to 

A the money for the Rents & profits.

A m-sees to B & remains in possession. 

B sells to C. A brings his Bill to redeem a 

against C. Pays to him the m-se money. But 

B had entered & received profits before he 

assigned C to then & reads A read & profit. Suppose 

the m-se was for 100L principal & interest. 

when A brought his Bill the profits read by 

B were 30L; the profits C had read and was 90L 

A then owes but 40L yet C is to account only 

for what he read & B is to be made a party 

to the Bill that he may be made to account 

for what he read & the decree will be 

found according to the circumstances of the 

case so that A the m-se cannot look any 

thing. A subsequent m-se comes to redeem 

the account as stated by m-se & C sees binds 

him unless there is collusion 3 Bai 659

The mode of accounting where the profits exceed the interest. Suppose the interest 9L 

The profits 20L here is a surplus of 11L. The
Principal to produce 9½ interest must be 150L
Apply annually the surplus to sink the
principal, for the 2 year it leaves only 139L
on interest & so on 2 Ark. 594 —

The major dies the Equity descends to
his heir & the person estate to the Esq. The heir
wishes to redeem the shall have aid of the Affect
in the 2nd hand to redeem the Land. The enquiry
is what found to be benefitted by the more
& from that fund take the money to redeem
2 talk A19 6 3 P.C. 520 3 9 14 — Hard. 512

The devisees may take the like advantage
of redeeming by the personal affects 1 Ark. 489
& where lands are devised for paynt of debt
the legal construction is that this is to be done
only upon deficiency of personal affects 2 19th 349
3 P.C. 290. But a man may exempt by express
words his personal estate 15 51 —
The rule that the heir may have the
benefit of the personal estate to determine in the
case does not attain against Creditors or gen-
eral Legates for they must be paid before
any aid is given to the heir. When they are
paid what remains may aid the heir in prefer-
ence to the Residuary legates —
Mortgages

Lecture 16th June 18, 1794

To purchaser of an Equity of redemption due

Shall his heir have aid of person &c. to redeem?

No for in this case the person &c. fund was not bene

fited, the purchaser when he bought the Equity in

tending to make an addition to his real estate

In the other case the major had bettered this per

son's estate as much as the debt was over the debt

he owed the in-see, I on this account the in-see was

redeemed out of that fund. But the heir of the fur

nator must redeem with his own money. 10th Can. 101.

It has been a great question whether the heir of

a major might be enslaved in his Equity of re-

demption. This distinction runs thus the cases where

the major first retains the fee having m-jed only

for a term of years she is entitled to dower but

where the m-see is in see she is not 10th. 606.

2d. 526. Dec. Can. 137. The first cases in which this

principle was established were those where the land

was m-jed before coverture & the wife not enslaved

on the ground of the major not being foried du-

ring coverture. This circumstance was not attained

to when other cases came up where the land was

m-jed after coverture thus a lot of precedents

came to be established without even a legal reason to

support them.
Mortgages

The wife of a man is not entitled to devise it, being personal property.

If the husband be in possession of the wife’s land, he holds his interest therein but cannot bind her or her heir. Yet a mortgage by the husband alone may be confirmed by the act of the wife after coverture is ended (Doug. 53 Comp. 201 2 Opn. 127 2 Key 526).

When the wife’s estate is in fee by virtue of the husband’s death, she is entitled to possession after title to redeem her land 1 N.H. Law 526.

If the wife’s estate must go her lands in security for his debts, she may after the husband’s death take his personal property to redeem

Where the husband’s estate is in fee by virtue of the wife’s marriage, she is entitled to possession by virtue of her coverture. The lands are redeemable by the husband’s creditors 

When the husband dies, his wife’s debts in action go to her as a general rule, but if she gave a mortgage of the husband’s estate which restrain shall judge competent, then the estate will be considered a purchase of heracho in action

On his death they go to the Esp. So where the mortgage is in fee, if the mortgage is not redeemed during coverture, the mortgage is held unless the husband has purchased her estate by a competent settlement.
Mortgages

A settled after marriage first in pursuance of marriage articles but voluntarily will have no such effect. 25th 4th.

As the wife mortgage is personal estate the husband may reduce it to possession if then goes to his wife an alienation for a valuable consideration it reducing to possession, if the husband creditors have got hold of the wife’s mortgage they will hold it 10th 378. 378. 187. But had such mortgage been secured to the wife by articles before marriage it would have secured it from creditors 26th 316.

A Court of Equity would not even permit a major of the wife to pay the mortgage money unless the trust would make a suitable settlement on the wife. 38th 382. But it would aid the particular assignee to valuable consideration.

Interest

It is a rule in chancery that if the condition in a mortgage carries more than legal interest, the Chancellor will not find that the deed is void but will only enjoin the illegitimate interest. Where the contract is for a certain in trust below what is usual at 7 ½ % and a privity that if that interest is not paid by the time it shall carry 5 ½ % then Chancery will
Mortgages

consider this a jotter, I believe against it.

But if the contract is to receive legal interest if
paid at such a time an abatement is to be made
of the in for is improper, the abatement will be
made, tho' it not paid at the time then there
shall be no abatement 3 Am. 520. 3 Borr. 1974.

Where the in see sells the in see with the major
confers & the purchaser pays the in see prin-
cipal & interest the whole now becomes prin-
cipal in the hands of the assignee & carries in-
terest. But this assignee must be by the consent
of the in for to have the assignee take this advan-
tage 3 Am. 275.

Where the in see enter the profit,
fall short of the interest, yet this surplus of
interest does not carry interest

Of the major or in see like a Bill to have
The account liquidated & the Matter of the Rolls
make a report it is all consid/principal &
carries interest 10 Am. 728. But where there
are credits or subsequent in see, whose interest
is allowed by this compound interest the rule is
dispersed with 3 Am. 722. It is likewise dispensed
with when infants are concerned, unless they cause
The liquidation themselves 3 Am. 275. 2 Dig. 56.

10 Am. 447. In see. 112 After the account has
been made by you & see, the mere signing of the major does
not make the interest principal w/ a to draw interest.
Contrary to what it is now laid down in the last Lecture. Woodroffe says the wife can take power of redemption of equity except where the lands were in lend before marriage. The husband cannot be tenant by curtesy of lands held by the wife as in Doe.

Of Interest

Miscellaneous Principles

An agreement entered into at the time of the mortgage that the interest that shall arise shall be made principal shall draw interest as usual is a valid agreement. It shall be void talk 149. This Rule in Chancery is conformable to the rule of Law in just case. But an agreement afterwards that the interest that has already arisen shall be principal is good at Law and Equity. It will draw interest. 2 Atk. 931. So also in the case of a Book account if the debtor agrees to pay interest he gives his obligation for it if it is a valid agreement. 2 Atk. 931. If the title of the m-joer is attached the in see is not obliged to defend same to defend it, but he may sell he does it shall be added to the principal

Firm's Interest 9 Atk. 518.
Mortgages

When land is in fee and there is a tenant for life of the equity of redemption in possession, the remainderman can compel him in Chancery to keep the interest down, or the remainderman may redeem the tenant must pay from one third of the redemption money or quit the possession. Sent in trust is not compulsory by Remainderman to keep down the interest of the

The operation of a tender after forfeiture is, when the sum can be ascertained, it is to prevent any further interest accruing. The tender is to be made if it be made accordingly.

The rate of interest originally received upon a mortgage may be altered by a parole agreement. When the agreement is not to enlarge, but diminish.

3rd, 5th. This must be founded upon a principle operative in the English Law, that a man may waive his right, if evidence can be produced that he waived his right by an agreement, it will be binding upon him, to waive his

Provisions by the State of New York

we have a provision for the sale of the estates of absconded in-fide, to pay in fees one in 10 monies. The land is to be sold by the Sheriff,
Mortgages

must execute the deed of sale. The surplus is to be put into the care of Chancery to be paid to the mortgagee on his return—

Seven years are allowed the mortgagee to call the mortgage to account, when he has received too much to refund.

Wages are by this act to be registered & acknowledged or formed before a justice of the peace & to be subscribed in writing. When there is a secret defraudation, that is also to be registered. The first registered of two wages to prevail if bona fide made.

They have recognized the power of the mortgagee to authorize mortgagees to make sale of the mortgage & in such case no equity of redemption remains but a right to the surplus, does not extend to affect the right of redemption in a subsequent mortgage or other encumbrances. The power to sell is to be recorded, and not valid when executed by any person under 25 years of age. The sale must also be at public vendue.
Of Estates upon Condition

There are such estates whose existence depend upon the happening or non-happening of some uncertain event, by which the estate may be created, enlarged or defeated.

These are not a distinct species of estates but qualifications of others, as any quantity of interest as a fee simple, fee tail for life for years etc may depend upon these conditions. These conditions are called precedent or subsequent according as they are to commence or be defeated. An estate to commence on the happening of an event uncertain is on a precedent condition one to be defeated on a contingency is a subsequent condition.

Where the condition is subsequent the estate commences immediately. But where it is precedent it never can commence till the event happens. In the former case if the thing done which defeated the estate is unlawful the estate is completely vested the condition being considered.

In the latter case of a precedent condition if it lie to do an unlawful act the estate cannot commence till the performance of the condition. If it is to do an unlawful act it cannot vest on the performance of the condition. For no man
Of Estates or Condition

shall acquire property by violating the laws of the land.

No estate of freehold can commence on a precedent condition unless a prior freehold is given in present.

A grant or an estate to B. to be defeated upon the happening of an event. If the event happens the grantee will continue to hold the estate until the grantor or his heirs enter a claim for a breach of the condition, but if it had been limited over to a third person, the grantor's estate expires without entry.


These are Chattels & go to the Creditor for the mode of acquiring them & what they are see page 4 / Black. 2. vol.
The form of the action to recover is the same as if it was real estate.

Of Estates as it respects the number of owners in Severalty, Coparcenary, Jointtenancy, Tenancy in Common.

An estate in severalty is where one owns an estate for himself independent of every other person. This may be created by the abolition of jointtenancy or coparcenary, or tenancy in common by partition.
A Coparcenary Estate

This is where several own an estate that de
vanced from some ancestor. All of them are
in law but one heir; of course if an action is
to be against the heir as such, it must be against
all the parceners- in active by them also must
be in the name of all Colit. 164. The entry of
one parcener is the entry of all & the one who
enters cannot avail himself of the Stat of Limi-
tations unless there has been an actual outra-
tor. Sometimes a receipt of the profits may be
under such circumstances as to amount to an
actual outra, but the mere receipt of the profits
is not of itself sufficient, it must be a receipt claim-
ing them as his own. Holding up an adverse
proposition may amount to an actual outra:
When there has been an outra the other Parcener
may bring an ejectment the nature of which is not
to throw out the other parcener but to let in him
that is ousted.

Lecture 18 in 20th Partition may be made by agreement
in the coparcenary groups.

It is not an uncommon practice in Eng.
& Genn. to make partition by Great agreement. But
this is not warranted by the Stat of Frauds & it pro-
vides the practice is for one to divide & the other
choose. If the partition is to write the Genn. Law
of Parcellary estates

mode is for one to bring the action stating all
the circumstances of the case. That he who

agree to be the PP, must establish the title of both
the Sheriff to take

the Court order 12 men to make partition

their division is to be before a Court whose objections
may be made not to the justice of the division

but to the conduct of the Sheriff or judge

In Cor. the Sheriff takes 3 men then directed by the Stat. to prize the estate & divide
it he makes a return of this transaction to
the true Court & it is conclusive

As a action of trespass or Writ lies be
tween Parcellers but if one passes into Possession
stake more than his share of the profits the
other may maintain an action of account
against him. There is no right of sharing
ship among them. If one Parcellor dies this

estate is destroyed & the other Parcellor & the
newly made one tenants in Common

Where the estate is one thing that can't be
are divided in Long. The eldest daughter has a
right to pay the shares to the rest & take the
whole - but the most common way is by lot &

is to enjoy by turns &
Of a Jointure

This estate is always acquired by purchase, when an estate is given to 2 or more persons without any words explaining the grantor's intention that it shall be one other estate, the presumption is that it is a jointure. This estate may be for life, years, or in fee. Both tenants must have the same quantity of interest, it must commence at the same time, created by the same title. Jointure tenants have no action of distress, but they have of waste. Formerly, they could not compel partition, but now they may. The entry of one is entry of both. The trustee of the possession of both. In Eng. the survivor takes the whole. Here there is no jus accepiri or right of survivorship. This was abolished by our Courts with the interference of Statute. Of an estate is here created which in Eng. would be a jointure, it is a tenancy in common. In N.Y., every such estate will be a tenancy in common if not expressly to the contrary Statute.

Of a Tenancy in Common

Every other mode of holding lands together besides what we have mentioned is a tenancy in common. As if one holds by purchase & another by descent—one in fee & another in tail.
Of Tenure in Common

One by purchase from one person & the other by purchase from another; i.e., a jointtenancy or coparcenary any way only let the unity of possession remain & they are tenants in common. This estate may also be created by particular limitation in a deed, as "a moiety to one & a moiety to another" jointly. Generally, or "equally to be divided". They are compulsable by Stat. to make partition, liable to waste & account by Stat. to trespass.

Lecture 14th. June 21st.

Of a Reversion

Whenever an estate less than a fee simple is created, there is a reversion in the grantor. As if a man grant an estate for years or for life, he has the reversion. This reversion is an estate in reversion, desirable, in the hand of the heir, except in case of entailed estate, it is then of no value. The reversion is the residue of what was not granted with it. It returns to the owner by operation of law. It does not affect the heir as to grant of dower, tile he can obtain the reversion itself.

A remainder is where a fee estate is given that residue which would return to the
Remainder

grant, or part of that residue is at the time of the grant, of the particular estate, granted over as if A grant an estate to B for years remainder, over to C in fee simple. This is a grant of the whole residue had it been to B for years remainder, to C for life, there was a grant of a part of the residue only of the other part of the residue is in the grantor, or had it been remainder, to C for life, remainder to D in tail, remainder to E in fee simple then the whole residue, which would have been a remainder, an estate in the grantor is foiled with A grant for years remainder, in fee is not making an estate in fee simple to commence in future, or the remainder granted, which the freehold instantaneous, the the enjoyment is postponed, to make a good remainder, then must first be created an estate less than fee simple. This is obvious from the term itself—Suppose an estate to A for 20 years remainder, to B, in fee simple, good—but an estate to C in fee simple to commence 20 years without an intervening estate is good for nothing. Fee simple, estates cannot pass in this way, but estates less than fee simple may pass as an estate for years to commence 20 years hence. An estate at will is not such an estate as that a freehold.
Remainder Contingent

An estate can be limited upon it—If the particular estate is void at its creation or before as by forfeiture or surrender, the remainder is lost. The remainder must be created at the time the particular estate is given, the remainder must vest in the grantee during the existence of the particular estate, or co-incident with it as determined. An estate is given to A for years remainder to B in fee simple, the remainder vests by the grant; it is an interest in B descendent, devisable to for the person who is to take by the grant is invariably died. But when it depends upon some contingency that may or may not happen it is a Contingent Remainder.

When this contingency happens it becomes vested in A. An estate to A for life, remainder in fee to B's eldest son when born. At the time of the grant B has no son, of course there is no person in whom it can vest; it is contingent whether it ever will. But the moment B's son is born it vests provided it is alive, if it is dead at the B afterward has a son, it cannot vest for the particular estate is determined before there was an opportunity to
Contingent Remainders

The remainder to verdict to make these remainders good the event upon which they depend was not only possible but what lawyers call a common possibility not a remote possibility. As an estate to A for life remainder in fee to the heirs of B who then is alive. This is good for it is a common possibility that B being alive will have heirs. But suppose it had been limited to A for life remainder to the heir of B's eldest son B then having no son. But it is among the possibilities that B will have a son & he shall also have a son, yet it is so remote a possibility that the law will not settle such limitations.

To make a contingent remainder it is not necessary that the person be uncertain but he may in like wise & the event upon which he is to take be uncertain. As an estate to A for life remainder in fee to B if he survives A.

If it is asked 1st where is the fee in such case the answer is in B. So it passes by the grant

2nd where the lee is when an estate is granted to A for life remainder to B or eldest son who is not born. The answer must be either that the fee is in A before it wants to vest, or if this is a her
Contingent Remainders.

It is the prorisor to be devoted in the birth of his son. An estate to A for years remainder to B's eldest son not
for years remainder to B's eldest son not.

This is not a good contingent remainder, for to make it good it cannot be
limited upon an estate less than freehold for the freehold, if the fee does not, must
pass out of the grantor at the time of the
grant. These contingent remainders are dis-
charged whenever the particular estate happens
to end before their time of vesting as if the
tent for life should forfeit his estate or fur-
ther. To give effect to the grant therefore
a method has been introduced of granting to
A for life remainder to B as trustee (to pre-
serve the contingent remainder) & remainder
in fee to the heir of C.

The law as it respects wills in this
aspect is very different. The maxims of an es-
tate, commencing at first, is totally disregarded
A devise of a freehold to commence one
contingent in a future period is good tho
no particular estate is given. As a devise to
A on the day of her marriage. As to what
Remainder by devise

Becomes of the feoffors in the interim, it is in the heirs of the devisee. A Remainder by devise may be limited to take place after a devise or fee simple upon the happening of some contingency which cannot be done by deed. As a grant to A, this heirs for ever, if he die before he comes of age, then to B, this heirs for... To make the remainder devise good, the contingencies upon which the estates are to vest must be within a life, or 21 years after. As to the son unborn, A, when he comes of age.

The devise a term for years... may be given to A for life & remainder over, but by deed it cannot. For the life estate is at law greater than the year estate.

Remainders cannot be given to any person that is not in estate in the life of the first devisee.

Of the Law of Connecticut.

Whatever may here or in Eng. be done by devise, may be done by deed also. To prevent perpetuities no estate can be given by either, unless it be to a person in estate in the immediate descendent of the feoffor.

An estate to A for 20 years, remainder to B. In sec. is a good remainder both in Eng. & Connecticut.
Remainders by devise

2nd. To A for 20 years, remainder to the eldest son of A, if a son is not born, it is void by the English Law as the freehold did not pass out of the grantor, but such a devise would be good—By our Law it would be good either by deed or will.

3rd. An estate to A for life, remainder as to B, it is a good contingent remainder by the English, by deed or devise—good also by our Law.

4th. An estate to A for life & a remainder in fee to the heirs of B's eldest son, when B has no son is a bad devise as well as deed, for the reason see page 905—This would not be good under our Law.

Lecture 20th June 23 & 24
Here Mr. O'connel repeated the Lecture, to be found on page 68-94. 10th on the Law of Distribution as an introduction to the doctrine of descent.

Lecture 21st June 24 & 25

Our Law and the English differ in the Definition of purchased estate. In England, new estate by devise, deed of gift & it (purchased estate, excepting alone that which descends by operation of law) In Common Estate, by descent.
Def. 1. 

& by devise or deed of gift from an ancestor are 

placed on the same footing of every other mode 
of acquiring property is by purchase. 

The former kind of property viz. by descent & may 

with justiciary be termed ancestral. 

We shall now proceed to distribute property 
in a variety of cases by the Stat of Connect. 

This Stat embraces the whole English Law viz. 
the Stat of Bar. & those cases determined under 
that Stat be Courts, with some alteration & 
if well understood will lead to a thorough know 
lence of not only the Eng. doctrine of Rescents but 
of that of all the United States founded upon 
the Eng. 

Distribution of property by Stat. of Conn. 

In the district of the following cases these 
directions are to be observed: 

1. Calculate kindred as is done in the Civil 
Law according to the practice upon the Stat of 
Charies remembering always to take the express 
directions of the Stat. where that has preferred 
those who are more remote of kin & postponed 
those who are more. 

2. Treat the doctrine of representation as is 
guaranteed by the cases determined under the 
Stat. of Charles.
6. Left no issue. I died seized of Black acre which came to him by descent, or by devise or deed of gift from his father Reuben Stiles, and of White acre which he bought with his own money. He left a brother Sam. Stiles of the blood of Tom Saily Stiles of the whole blood of John & Susan Rowe of the 1/2 blood of Mary Stiles, his mother.

Ans. Sam Stiles, Tom Saily take black, Tom Saily alone White acre.

7. Same only Tom Saily are dead without issue.

Ans. Sam Stiles takes Black acre, Mary White acre.

8. Same only Mary is dead.

Ans. 1/2 acre as before, & J. H. Rowe take 1/2 acre.

9. Same only Tom left a son A. Saily in living.

Ans. Sam Stiles, Tom Saily take 1/2 acre.

10. Sam is dead without issue.

Ans. A. Saily take both 1/2 W acre.

11. The blood of the Stiles is extinct.

Ans. 1/2 acre eachake & J. H. Rowe take W acre.


Ans. 1/2 acre J. H. Rowe W acre.

13. Yes: is dead, but A. The son of Tom, J. H. & the sons of Saily are alive.

Ans. A. B. C. take 1/3 acre, J. H. Rowe W acre.


Ans. A. B. C. take 1/3 acre J. H. Rowe W acre.
Distribution by the State of Con-

15. Geo. is dead, T. A. is dead leaving B. & S.
   Sally is living
   Ann. Sally takes 1/4th of the estate equally
   Ann. Sally takes 1/4th of £300 being both B. & S.

16. Sally is dead leaving B. & S.
   Ann. B. & S. take 1/4th of £300. John Thr. Rowe W.

17. B. is dead leaving T. & S. is dead leaving £300

18. John Rowe is dead leaving S.
   Ann. B. acre as before. T. takes W. acre with Susan.

19. Susan Rowe is also dead leaving T. & S.

20. The Stiles are again extinct
   Ann. B. acre escheats to W. acre goes to T. & S. per capita.

21. T. is dead leaving M.

22. T. & S. are also dead. T. left A, T. & S. left P.

23. Same order Geo. Uncle of J. S. is living
   Ann. Geo. takes B. acre. W. acre

24. Solomon Smith, the Grandfather of J. S. is alive.
   Ann. He takes both B. & W. acre.

25. T. is dead but Hump, the Great G. Father is alive

26. Humphry is dead George but Geo. left a son.
   Ann. P. takes both W. W. acre.

27. The only relations alive. on the part of the Stiles are 2. the son of Geo. J. T. S. uncle Edmund H.
   Ann. Edmund takes both.
Distribution of Real Property under the Law of New York

If deceased, his heirs take equally.
2. A was dead leaving B; B was dead leaving C. D
Ans. The grandchildren take the capital
3. The grandchildren are all dead, each leaving their children in unequal numbers.
Ans. The great-grandchildren take per capita.
4. A was dead leaving B, B was dead leaving C.
   Ans. D & E, F take per stripes.
5. D was dead leaving A & D; C was dead leaving E.
   Ans. F & C, D & F, and E & C take per stripes.
6. Same, only C is living.
   Ans. C takes 1/3 = 1/3 1/3, A & F 1/3 per stripes
7. C is dead, his son is alive, his father Reuben.
   His brothers Sam, Tom, Dick & Sally.
   Also John & Susan Rowe are living.
   Sam is a half-brother as well as John & Susan.
   All the brothers, sisters take equally.
8. Same but Reuben is dead.
   Ans. Distribution as before. All the others take.
9. Same. But the estate descended to him from Reuben, i.e., it is ancestral.
   Ans. Sam, Tom, Dick & Sally take.
10. Mary, the mother of J., Tom, Dick, Sally, and John & Susan Rowe. The estate came by devise.
    The brother of Mary.
    Ans. It goes to Mary unless the State of James prevails which
    семей в пром. на которых F. и другие.
    2. A was dead leaving B; B was dead leaving C. D.
    Ans. The grandchildren take the capital.
    3. The grandchildren are all dead, each leaving their children in unequal numbers.
    Ans. The great-grandchildren take per capita.
    4. A was dead leaving B; B was dead leaving C.
       Ans. D & E, F take per stripes.
    5. D was dead leaving A & D; C was dead leaving E.
       Ans. F & C, D & F, and E & C take per stripes.
    6. Same, only C is living.
       Ans. C takes 1/3 = 1/3 1/3, A & F 1/3 per stripes.
    7. C is dead, his son is alive, his father Reuben.
       His brothers Sam, Tom, Dick & Sally.
       Also John & Susan Rowe are living.
       Sam is a half-brother as well as John & Susan.
       All the brothers, sisters take equally.
    8. Same but Reuben is dead.
       Ans. Distribution as before. All the others take.
    9. Same. But the estate descended to him from Reuben, i.e., it is ancestral.
       Ans. Sam, Tom, Dick & Sally take.
    10. Mary, the mother of J., Tom, Dick, Sally, and John & Susan Rowe. The estate came by devise.
        The brother of Mary.
        Ans. It goes to Mary unless the State of James prevails which
        семей в пром. на которых F. и другие.
In the above cases under the Stat of
New York the following rules are to be observed.

1. Lineal descendants are to take in equal degree of consanguinity per capita as if all were children.
2. If the claimants are of unequal consanguinity as if some were children, others not, then per stirpes.
3. When failure of lineal descendants: the estate goes to the father unless it came to P.S. on the part of his mother. In such case it descends as if the father were.
4. When there are neither lineal descendant nor a father, although there be a mother yet the estate goes to the brother and sisters, as well to the 1/2 as the whole blood unless the estate is ancestral.
   Then it cannot go to the 1/2 blood unless just in the brothers and sisters are of the blood of the ancestor from whom the estate came.
5. Representation goes to brother's sister's child, notwithstanding the old rule are optimum, as in Eng.

Every case not within the Stat is governed by the Comm. Law of Eng.

The distribution of personal property is according to the Stat of Eng.

In ancestral estate, those of the absent are excluded.
Distribute the following cases according to the directions now given.

1. I left no relative of the blood but Geo.
   The also left J.T. Rowe. Distribute B. acre which descended from Reality as if the word "of the blood" meant lineal descending from the time of the feudal sense.
   Ans. It escheats.

2. His relatives are Geo. the son of Tom; & B. C.
   The child of Sally are living & John G. Howe.
   Distribute both estates to as if "Representative" mean the child of the dead without respect to the old stock.
   Ans. A. & B. C. take both B. A. acre per stripe.

3. Same but Geo. is living.
   Distribute B. acre as if representation was confined as in the last case also distribute it as if representation was understood in the sense we have heretofore considered — also distribute it as if "of the blood" is taken in its feudal sense. Also distribute it as if of the blood meant "next of kin" to.
   & of the blood of, the ancestor from whom it came & distribute 12. acre as if representative is to be understood as is supposed in the last case.
   Ans. If representation is considered as in the last case A. B. & C. will still take their stripes to the exclusion of Geo. & the other relations.

If representative is to be understood as we have
hereupon consid'ed if Geo. being of the whole blood 
& equal degree with A. Orse will take with them 
If taken in the feudal sense the estate 
will escheat 
If of the blood mean of kin, & the Stat 
mean as is expressed 1/2, 1/8 of the blood of, the an 
cestor from whom it came Geo. will take the whole 
A. Orse will still take W. &c. for stripes 
4. As left no relatives but I the Son of JohnDove 
and his sister Susan, distribute W. as if the 
words legal representatives are rightly printed in 
the Stat. 
And Susan take the whole, yet if the Stein, 
"legal representatives" was placed as it ought 
to be I would take for stripes with Susan 
5. The relatives are M. the grandson of John 
Dove & K. the children of Susan now dead 
Distribute while aere as if there was no mis 
ake in the Stat. respecting the terms legal rep 
resentatives 
And M. & K. take stripes by the Stat as 
it now stands 
6. The relatives are Geo. Stiles, D. & L. & A. 
the grandchild of Tom Sally, & M. & C. 
the grandchild of C. & L. 
Distribute 
B. aere as if 't was the blood was used in its feudal b.
and white were as if the terms legal or representatives were rightly placed.

Ans. B. acre escheats 2 white acre goes

Ans. B. acre escheats 2 white acre goes 1/4

Ans. 1/4 to Geo. 1/4 to D & E. sons of A.

Ans. 1/4 to D. son of D, and 1/4 to C & E. sons of C.

Ans. The blood relations are

The blood relations are correctly placed to those of the whole in equal degree.

7. Same but Solomon still the grand father is living. Distribute B. acre as if

of the blood was used in its feudal sense.

Ans. Solomon takes

8. Solomon is dead but Humphrey the G. grand father is alive. Distribute B. acre as if

of the blood was in its feudal sense. Distribute W. acre as if the word legal representatives were rightly placed.

Ans. Humphrey takes B. acre, & W. acre is

Humphrey among Humphrey, Geo. & the representatives of A, B, & C.

9. Humphrey is dead & Geo. is dead leaving 2. Distribute B. acre as if of the blood

is used in its feudal sense. & W. acre as if the word legal representatives were placed rightly.

Ans. B. acre escheats & D, B, & C. 1/4 take W. acre

See page 324.
OF ESCHATS

In case of the intestate's death of these heirs, let the heir take the land and restitution to the lord in Eng. to the public here. The Lord takes the estate in fee simple. The public here do not yet make Assembly a feemote, but the money in the estate of Eschatas are 1st from default of issue, 2d When no issue but bastards, & 3d. When a monster.

Aliens cannot inherit. If they purchase it only pays them to the public. The alien law is here unsettled.

If an alien has purchased Par. The money, & the purchase is considered why would it not be just to suffer him to recover back, or does the public take pleasure in cheating strangers?

The question is undetermined. Who are aliens? But some determine a man an alien & then the only question has the descent of the lands he has purchased been cast. If so it may continue to descend forever & aliens be capable of intestating.

Mr. Reeve has heard that in Westminster Hall it has been determined that these lands do not descend.
Methods of acquiring property

1st by Deed. 2nd by Execution. 3rd by devise.

A Deed in Engl. is always a sealed instrument, but a sealed instrument not always a deed. A Deed is a sealed instrument in which it is contrived to let the consideration be behind the curtain, or where it is by no means certain what the consideration is. In case the action must be lost on the deed.

In Connec. sealing is not necessary and a writing is a Speciality or Deed wherever the consideration is removed behind the curtain. In Engl. if the consideration expressed on the face of the deed an action may be founded on the original conveyance of the consideration given in evidence. But this is not strictly a deed. Receipts also are not here strictly deeds. Whenever the deed is taken in & no man can learn from the face of it what the consideration was it is then a Deed of Specialty.

We are now going upon deeds as they respect the convenience of land. This law will not always apply to Personal Property.

For a continuation see page 322.
Distribution under the Corn Law of 1797

1. I died seized of real property acquired by purchase or descent in matter which he left.
   heirs: A and B sons, C and D daughters
   An: A the eldest son takes the whole.

2. Same only A is dead without issue.
   An: B takes.

3. A and B are dead without issue.
   An: The daughters take equally.

4. A left a son C and daughter F.
   An: C takes.

5. Same only A left F only.
   An: F takes.

6. A and B are dead without issue and C and D are dead.
   C left two daughters C and D and left 3 daughters.
   An: They take per capita.

7. Same only C was a son.
   An: C takes alone.

8. A left no issue. He left his father Reuben, his uncle Geo. B, and his son Sam (who is the eldest of the 3 blood) Tom, and sister Sally, and John Vi in.
   An: Tom will take the whole.

   Reuben is excluded as it is a principle that real property shall never ascend.
   Sam is excluded as being of the 3/8 blood.
   John V is also excluded. Sally is excluded on the ground of inbreeding. Those left are not to take when there are males for the whole subject see. William.
26-34

From the Committee of Deed.

1. The deed was recorded on the 12th day of the
   month of September, 18--.

2. The deed was recorded on the 13th day of the
   month of September, 18--.

3. The deed was recorded on the 14th day of the
   month of September, 18--.

4. The deed was recorded on the 15th day of the
   month of September, 18--.

5. The deed was recorded on the 16th day of the
   month of September, 18--.

6. The deed was recorded on the 17th day of the
   month of September, 18--.

7. The deed was recorded on the 18th day of the
   month of September, 18--.

8. The deed was recorded on the 19th day of the
   month of September, 18--.

9. The deed was recorded on the 20th day of the
   month of September, 18--.

10. The deed was recorded on the 21st day of the
    month of September, 18--.

11. The deed was recorded on the 22nd day of the
    month of September, 18--.

12. The deed was recorded on the 23rd day of the
    month of September, 18--.

13. The deed was recorded on the 24th day of the
    month of September, 18--.

14. The deed was recorded on the 25th day of the
    month of September, 18--.

15. The deed was recorded on the 26th day of the
    month of September, 18--.

16. The deed was recorded on the 27th day of the
    month of September, 18--.

17. The deed was recorded on the 28th day of the
    month of September, 18--.

18. The deed was recorded on the 29th day of the
    month of September, 18--.

19. The deed was recorded on the 30th day of the
    month of September, 18--.

20. The deed was recorded on the 31st day of the
    month of September, 18--.

21. The deed was recorded on the 1st day of the
    month of October, 18--.

22. The deed was recorded on the 2nd day of the
    month of October, 18--.

23. The deed was recorded on the 3rd day of the
    month of October, 18--.

24. The deed was recorded on the 4th day of the
    month of October, 18--.

25. The deed was recorded on the 5th day of the
    month of October, 18--.

26. The deed was recorded on the 6th day of the
    month of October, 18--.

27. The deed was recorded on the 7th day of the
    month of October, 18--.

28. The deed was recorded on the 8th day of the
    month of October, 18--.

29. The deed was recorded on the 9th day of the
    month of October, 18--.

30. The deed was recorded on the 10th day of the
    month of October, 18--.

31. The deed was recorded on the 11th day of the
    month of October, 18--.

32. The deed was recorded on the 12th day of the
    month of October, 18--.

33. The deed was recorded on the 13th day of the
    month of October, 18--.

34. The deed was recorded on the 14th day of the
    month of October, 18--.
Considerate of a Deed
detailing what it is, & it appears that it is in
fact none, the consequence deed would be good
for nothing.

5. If the consideration is an illegal one, this
may be always proved to destroy the opera-
tion of the writing. If the non-existence of a
consideration where one is acknowledged that
cannot be proved; but, the turpitude it may be
reached at any time.

6. This is true that the consideration cannot be
denied so as to prevent the transmission of the
property yet the sum expressed in the deed is not
conclusive between the parties, that that was
in fact the sum given. It is no more than the
immediate evidence. If any cause requires an
inquiry into the quantum, it shall be made
as in a suit for damages on a covenant. The
warrantie.

7. Where the conveyance is only on a good
consideration thus the good between the parties
may not be so as it respects to persons interested,
therefore it may be enquired into whether the
consideration was good, or whether there was any
8. Voluntary conveyance for a good considera-
tion are not as such fraudulent. It is only pre-
judgment, but this may be rebutted.
Consider of a Deed

9. A conveyance may be made to prevent oulaters from taking the land if yet not be fraudulent, as where there is other es late sufficient left.

10. When a conveyance is fraudulent it is good against the grantor his heirs &c but the right of oulaters cannot be altered by the death of the grantor, in what way then shall they avail themselves of the Estate seen a case in Durnford that they are not debarred see note page 333

11. The doctrine of fraudulent conveyances being good between the parties is not governed by the rules that govern other illegal transactions.

Lecture 29th July 3rd 1794

Under the English Law, fraud is in all cases governed by different rules from what other things are which are unlawful. If the fraud is in the contract, the contract is nevertheless good as to the intent of the grantee. But in the execution of the contract, the transaction is voidly valid. But in the future, the contract is void by fraud. Under the rule, the contract is void by fraud is granted. Under the article, a contract is void by fraud in the consent of law void by contract. In Donee, the contract law void it down a
Of Deeds of Land 1794

At Com. Law, lands passed by Parole with the ceremony of delivering twigs therein. It became necessary afterward that there should be deed sealed. Originally every person or family had its private seal; they were notably unable to write. Hence the substitute of the solemn of sealing. But family seals were found disused & any seal became sufficient. Afterward deed sealed became absolutely necessary by law. The by this time civilization had proceeded so far that men wrote their names, set reason for sealing ceased. This basings of sealing ridiculous to the present time. & so in Eng. is indispensibly requisite. With us they have lost most of their virtue. But custom still preserves them in deeds of land. See Co. Lit. 231.

There are a few instances when a covenant not sealed may operate as if there are signers of only one or 2 of them seal, 5 Co. 23.

2 Law 220. If a seal is broken off by accident the deed is in England void, only it is in the protection of a Court as if a pest is made of it & mice & jambe eat it off, it is then good.
When an exception is made an exception provided for sometimes the thing excepted will pass sometimes not. At first sight these authorities may perhaps appear inconsistent but they are reconciled by attending to a rule.

If the general term which would convey all that was granted is made use of and the thing excepted is mentioned by its appropriate term, the exception is good. As if a tract of land is granted & house standing on it is excepted the house will not pass to the grantee.

But if the specific term is used & a part is carved out of that, the exception is void. As if I grant my house excepting the plot the plot will not pass notwithstanding.

Or if I grant 20 acres of land excepting one acre, the exception is void.

A man grants all his estate at first excepting a certain farm. If it appears that he owned no other property in that place, that farm will pass.

See 31, 41.
Deeds must be delivered to be valid. No fixed rule can be laid down by which we can determine what shall be a delivery. But when that is done which convinces a rational mind that there was a delivery, it shall be so considered.

If the grantee has the deed in possession, it is presumptive proof that there was a delivery; yet this presumption is liable to be rebutted. (Ct. 7, 35. 2 Rob. 24.)

Of Escro's

When a deed is delivered to a 3rd person to be delivered over to the grantee on the happening of a certain event, it is called an Escro. On the happening of the contingency, the deed may be delivered by the stranger & is operative from the first delivery.

If the 3rd person misjudges of the fulfillment of the condition, delivers over the deed when it is not fulfilled, the point may be litigated, & if so, it finally appears that the condition was not yet performed, the deliverer will be considered as a breach of trust. The great Sages nothing. (2 Brok. 85. 6. Litt. 36.) This condition may be by parole—no writing is requisite.
Of Deeds of Land

If a man delivers a deed saying if you do not do what I say, I will sell this land at so much a piece, then I declare that this my delivery is nothing at all, yet the deed is good and the condition void. Mr. B. is of opinion that this is unreasonable. This point has been litigated before our Courts I determined to be good. The court fell in with the current of Op. authorities. Those against this decision are More 697. Cro. Eliz. 835. On the other side Brook Eliz. 520. 884. Rol. 24. 9 Bok. 137.

Deeds operate from delivery. The date is presumptive evidence of the time of delivery, but this may be removed if the delivery proved to be at a subsequent or an antecedent time. Yel. 133. 2 Bok. 5. 2 Rol. 21.

Lecture 28th. July 2nd. 1794.

1. In a Deed of conveyance there are 2 covenants.
   1. That the grantor is lawfully seized of the land.
   2. The covenants to warrant the title against any other claimants.

2. The grantor is liable to be sued when the title of the covenants
   as the covenant de injuria. The grantee need not wait til the bill has been brought, but upon the
Of Ejectment

Anable conviction of the deficiency of the gran-
tor's title he may bring his suit. If this suit is
lost & the grantor's title is found good, but the
grantee is afterward evicted he may bring another
suit against the grantor on the count of warranty.

If the grantor will be compelled to answer for dam-
ages as well as the original sum given for the land
When the writ of ejectment is brought against
the grantor he must notify the grantee of this that
he may come in & defend the title. The com-
mon way of notifying is by writ of vouch-
for which is not absolutely necessary.

If the grantee neglects to notify, the title of the
may be contested between the grantor & grantee. If
the suit is found to be good the grantee must give
damages or if the title is good the grantee has
its only remedy in a petition for a new trial
with the ejector.

Of Quitclaim Deeds

These are attended with no warranty & if it
is a bargain of hazard the grantee can have
no remedy against the grantor for the title is lost.
Thus if the grantee gives a full consideration for
the lands & expects that there is no hazard in the
business but that he has a substantial title he has his remedy against the person for many had received.

It is common to have subscribing witnesses to a deed. By the common law this is unnecessary, but by our Stat. is absolutely necessary to the validity of a deed — there must be 2 & if they are dead their handwriting is to be compared & if it appears to be theirs it is evidence that the deed was executed in their presence.

As it is a maxim that the highest evidence the case will admit of must be introduced, Courts have determined that if proof is not produced why the subscribing witnesses are not bound in when a deed is challenged, other proof is inadmissible.

If the person acknowledges the deed it is unnecessary that any reason should be called to establish it, as between G. & B. & between the G. & the P. persons the law is otherwise.

If there are not 2 titles to the deed it is good between G. & B. & it is defective as it respects the creditors. And the current of authorities establishes the principle that even voluntary joinders knowing such defect may take
Leeds on Ch. 10

in favor of it. The wrong is very bad & if the
fine rate he has for remedy against the
first a case of a settlement upon 6th. It is a
question whether other children can come in & take
advantage of the deed.

A deed must be recorded. This was not the
case by the Com. Law but made necessary by
Stat. The have also a Stat. ordering deeds to be
acknowledged before a justice.

A copy of a deed is consid as evidence of its
execution. This opens a wide door for fraud.

In cases where there are no 3d persons concerned
the judge's title is defective by a deficiency of suit
in cases, Chancery will establish his title.

When any person for fear of creditors de-
says to put his deed on record the creditor may
upon conviction of the land belonging to him
leave upon it & take it by execution. But in this
case the title would depend upon memory &
thus be defective. But Chancery the they cannot
give a title will establish his upon their
& this will furnish the highest evidence.

Of Fraudulent conveyances.

If a man conveys away his land to a child
by consideration under its value to defraud an
debtor it is fraudulent & void as to敟one will be
good as between the general & then C. It
will be
This is the case with all conveyances which
discover no intention of collusion in the
parties, noshare the go too bad, and
such insufficient to discharge his debts. In this
case tho' it is manifest that the go too meant
to keep that property from creditors they cannot
make advantage of it—

This is not the case with personal
property for that may be sold at the post
anytime & turned into money while P. B. &
cannot in this stake. W. in A. P. it may.

If a creditor purchases an estate at a low
in truth to secure his debt under its real
value & to keep it from the hands of other
creditors, he is liable not only to lose
his purchased estate but also his own debt
for it is just as fraudulent as if the person
owed him not a farthing. The death of a debtor
is never to affect the right of creditors as to
this fraudulent conveyance. 2 B. 537 29 &
In this case the 8th Coats have determined
that the go to of fraud fraudulent convey-
ance shall be "go" in his own wrong &
may be sued by the creditors.

But our Courts have determined
That after the estate has become insolvent & it is necessary to resort to such means as the Con. shall no longer be considered as a representative of the go. tor but as an agent of the creditors & as such may sue the go. tor in trust & pay the funds to the creditors.

The title of an estate must be clearly shown & may be considered as resting in the go. tor liable to be disputed by the creditors showing it to be a fraud.

The law regarding fraudulent conveyance is different from that which regulates other illegal transactions. When the fraud is in the consideration & not in the execution such contract is valid as between the parties but if the fraud be in the execution the case is different for no Court of Law will permit any contract to be the occasion where there is fraud exercised in execution. But in Chan. No there be fraud in the consideration, yet the transaction is void & relief may be had. In mercantile the goods were fraud in the consideration of law &缔约 did the contract. In Con. the C have laid it down as a rule that where the fraud is a whole fraud all its be in the consideration execution
It shall be the same at law as in Equity. This rule is not extended to cases where the power is only partial.

Of Alienation by Execution

At common law no execution could go against the lands of a settlor except in the hands of the heir for the payment of specific debts. The Executors at common law were

1. Levare facias against goods & land.
2. Fieri facias against goods only.
3. A capacit to satisfacientum against the body.

On the Lev. Fac. the land were not delivered to the creditor, but only the emblem of

[...] rents &c. See Bodle, 141.

A Fieri Fac. went only against goods & chattels. Chattels were included. Chattels are so far considered as personal goods, as to be taken by Fieri Facias. But the other profits are not as taught by 1 Taft 96 B. 8 Bod. Rep. 111.

Less for years may be taken by Fieri Facias.

[The text is difficult to read and seems to be a continuation of the previous points about execution and satisfaction of debts.]
Of Execution by Hat. Mercht & Hat. 133

Staple, & Exiguit

The Hat. Mercht went against lands & tenanted them for the Traght of Merchants & no other debts. The debtor must have gone before a Magistrate & acknowledged the debt.
The Hat. Staple is much the same originally only permitted among traders.

Exiguit goes against all goods & 1/2 of the land of the debtor. The creditor may take any or all of the goods & have them prized off & sold after. These are gone he may go against 1/2 of the land & that will beextended.

Of Connecticut Executions

These go against the goods & for want of them against the body of the debtor. If no goods land may be taken. It however goes against no lands but fee simple. The sheriff takes 3 freeholders from the County one appointed by the creditor, one by the debtor, & one by the Magistrate. & the land is prized off & a sale made. All other kinds of Real & Personal are daily extended by custom in that State. The more has been no adjudication of Court. That 1/2 of the goods taken in Execution must be posted up 30 days before sale & carried off.

Hull vs. B. Goodtaker in Execution.
Execution

As the first Queir. How can Emblems
Leaves for years to be lost to the Host? The
Host seems not to have contemplated this
but it is apprehended to be left us at both law
as rents due as
So deposition action can be taken
in execution as hands, deeds &
-After where in Conne we must resort to
the Corn Law.

1. To get an estate for life or in trust.

2. To get Emblems & leaves for years if
they cannot be sold under our Host which re-
quires them to be sold carried to the Host.

3. To get the rents yearly accruing on lease.

Lecture 30th July 7th 1794

Of New York Executions

Real Property is liable to an old
of execution. It is bound from the time
the judgment is obtained, provided certain
ceremonies are complied with. In Conne-
cord to all how the creditor may at any time
attack the estate & thus create a lien—
There a creditor may take out executors
against the land or the goods or the good
(f) law—In order to bind the land from the
obtaining of the judgment the time & weighing
Executions in NY—

If the judgment must be enforced on the whole
in New York the execution must first look to part
of the property for want of other land may be
taken & sold.

Subject to the Creditors elect to take
the land & imprison the prisoners dies in jail
if the creditor may sue out a new execution
the property is bound only from the time
of the execution being delivered to the Sheriff

Of Alienations by Devises

In general real grantees did not become devisable in name tho it did in fact
that the 32 of Henry 8. by the power to devise
was completed under Car. 2. But lands
were in reality devisable long before by means
of Ulsters. The inconvenience of this practice
gave rise to the Stat. of Henry 8. which executed
the ulster to the fee to the Woman
the Stat. 34 of A.'s. mentions only tenants
in fee simple—all persons have
there might devise.

It became a question whether feeable
estates were devisable by the former author-
ities they were not but by the latter they
are 3 Lev. 327. 4. Black Rep. 222
As Com. law an estate for ante vie might be
devised but that against that
OF DEEDS

Lecture 31st July 3rd 1794

In con. a devise vests the devisee with a
decease title & such devisee either whether
the will be proved or no

Any instrument for the disposition of prop-
erty made in contemplation of death is a
will, be the form of it what it may
Fin. 195 - 1 Geo. 11

It must be signed by 3 witnesses

If the instrument of conveyance be past as
a deed the grantee takes absolutely asto
creditors & they may find relief by appli-
cation to chancery or treat them as for
the present - Or if the instrument be a will
then the land may be sold for creditors by
the Court of Probate - Or if the instrument be
neither will or deed the grantor or devisee
dies intestate as to that estate & the land
is sold by the Chancellor for Creditors

Wills may be made at different times
in different papers. They will stand as
long as the different parts are consistent with
each other - If inconsistent then the last alone
is to be effectual Eliz. 721. Tit. 15

A deed may be good which in itself is un-
certain but depends upon another instrument
to which it refers - Pac. 14 4. 1777 15 5 & 6 20
Of Codicils

If a will destroy a former will, only by addition or subtraction, or by alteration, they are mere appendages.

Requirements of a Will:

1. It must be written.
2. Signed by the decisor, or by one by his desire in his presence.
3. Attested by 3 witnesses, and
4. Subscribed by them in the presence of the decisor.

It has been questioned whether a will of land lying in Eng. must be made according to the laws of Eng. 21 Geo. 291. It must.

If a contract be made out of the state to be executed in the loci where the contract was made, shall not prevail, but if made generally not alluding to the execution, any where in particular, then it will.

A man in his will may give a power to a 2d person to give certain land to 3 persons whom he desires. 7 Geo. 7-740. This 2d person makes a will appointing these 3 persons. Must it be executed formally? It is only a power of attorney, & need not be authorized of by will.

If a man gives many charges upon land, the will must be formally executed. 2 Atk. 216. 285.
Of Wills

It is customary in Eng. to give the Eas. a power to sell lands to pay debts; this must also be formally executed. 2 Bov. 179.

We need not go the E of Probate for liberty of signing.

Respecting this, the Eng. law is our law for we adopted the Eng. Stat. after it had its constitution. The will is good if signed by the testator any where on the will. But if it be in proof that the testator meant to sign it formally, then the will is not good.


The whole will must be present at the attestation.

The witnesses need not all sign in the same time. The 1st will may.
subscribe to the 1st sheet. The 2d to the 2d sheet.
& the 3d to a 3d sheet & yet he will be good
3d Prm. 1775. It is enough if the testator be in the
notable view of the witnesses when they subscribe
Talk. 35. 1st B. Can. 149. 1st. 17. M. 23 for 292 Can. 31
But if there is any fraud as if the testator
without the knowledge consent or intention of the
Testator the in his silence the whole being
is a nullity 17. Prm. 340.
A mental capacity is also understood
by his presence Lee Dug 240 Wright & Price
that a will was executed in the
sense of the testator is always to be proved
But suppose one of the witnesses dead then their
hand writing is to be proved but that only
proves that the will subscribed. In such case
the courts will presume that they did subscribe
in the testators presence & This presumption
may be rebutted.
In Can. 35 a case where 2 will signed the
will & afterwards a codicil was made & subscribed
by 2 will. The will was not good within the
Act. But if the will & Codicil be on the same
piece of paper the execution of the Codicil is
the execution of the will. And also if there
are several papers the last referring to the rest
the execution of the last is that of the others.
The Wills

That the Wills need not be together when they subscribe 2 P. 177.

There must be 3 credible witnesses -

2 R. 505. A credible witness is one who is competent & one who could be improved as a witness if he had not subscribed.

Can non-credibility at the time of signing be urged by any to post facto law? 2 P. 1153.

This question has been strongly litigated in Eq. & Con. In Eq. it has been several decisions. & the authorities are equally balanced.

6 judges have decided one way & 6 the other - Lee C. J. B. R. against Jennings - Mansfield in favor.

In Con. one case came up before the Sup't. & 8 they determined that the will might be proved - the C'st of Errors reversed their judgment - since then another case has come before the Sup't. & 8 they joined with the C'st of Errors - this went to the C'st of Errors also & they turned from their former decision & reversed the judgment of the Sup't. & 8 again -

Lecture 33: July 10 1794 -

What is a Publication?

Any act or declaration that imports a solemn intent of the Testator to have it a will - Some act
or words are necessary besides what the Stat. lays for this subject—see 3 & 4. Hen. 8. c. 125—
Where the testator said to witnesses 'take notice without mentioning that it was a will they were about to join. This was determined a public publication—

Who are excluded from devise.

On this subject it is not designed to include wills made under duress by which wills may be made particularly to all persons generally—but other persons particularly specified by the Stat.
The 32. Henry 8. says 'all persons having land may devise.' This did, by no mean, mean to create a new power to persons previously disabled but only 'that all persons capable of devising in other cases, might devise land.'—The 34. of 14. was made explanatory of the former Stat. This has excluded 'Feme covert, infants, idiots & all non free persons.' The Stat. means 'all natural persons' not bodies politic.

Our Stat. has all the other exceptions but 'Feme covert.' & declares that all persons of right understand 21 years of age (not otherwise legally incapable) may devise land & the question whether 'Feme covert' can
Wills

devise must depend upon the Common Law — for the adjudication of this subject see Mr. Reeve's Essay.

Lecture 34th July 11th 94

If a person conveys land not his own & afterwards buys it, the conveyance is good as against those who buy of him, but if a bona fide purchaser after the grantor's purchase has the land it will not operate. From this case the principle that no land can be conveyed by devise, but what the testator professed at the time he made the will. Also, if an executory will complete any contract by which a testator would acquire property, he is considered as owning such property & it will lie as under a devise. PM 691. Also, if a power of appointment clause as "all my real property," PM 528. This is a case where it would not do as the testator acquired it after the will was executed.

A man may not only devise away his estate but may devise another a power to sell it — the law on this point is well settled. PM 700. Also, if the testator's power of appointment is limited in any way, it is the law that it was not valid.

When one devises a man the power of appointment does not enable what he pleases. Cat. 95, 96. In other words, to give him no power. The
device is a nullity. The facts as they cannot
be what the testator means if he speaks in
the vulgar language. But if he uses a techni-
cal term, or any other extraordinary word, which
a man of common sense would not think of
using, evidence of his intention that the trustee
should
sell it, then the devise is good. One set of these ex-
traordinary words determined by Est to be sufficient
it—"To him to sell & give a title, such as I could
myself.” This the Est made out to understand.
When the land is sold the money is in the
trustee’s hand to pay debts, & is in the same
situation as the property of an intestate. Secs 774
251 Est has given the Est. The same power
to sell as may be given by will in Est.
Here when an estate is intestate. He, for
doing will descend to the heir—yet when insolvent, the
heir is liable to that amount.
If judge the Est will not execute. This power to sell Chancery will order him
in part if he is able or sell the land if he is unable. They will decree a sale.

But suppose he refuse to be so then
Chancery are trustees & may execute the
trust.
If the testator order his land to be sold without naming a person to sell it Chancery have
determined to do so to be the man.
Wills

Where there is no law & land is devised to be held for the payment of debt, the estate has determined the heir to be the trustee—1 Lev. 30:4.

Person property coming to the hand of the testator he may release, give away as he pleases but he is accountable for their value. Real property however, he cannot do this will manage in this manner. He does not sell as executor but as trustee & if he should renounce his executorship, still he may retain the trust.

When 2 executors are appointed & one dies, the English law is that the other can not sell lands devised to be held. The reason of this is that they are trustees as to the selling of land & the execution of their trust must be joint. Once established, they sell as executors & one may convey. When the land is more than sufficient to pay the debt, the executors must pay the surplus of the money obtained to the heir.

Lecture 35 July 12-74

Who may take by devise?

Courts are no diphoticator. For taking however depends upon the pleasure of the trust. This is the Roman law. But by application to the law, she may take in defiance of him.
Bastards are capable of taking by devise all who fictitiously, if however the devise is to bastard be of a suit person distinguished no other way, it is good for nothing. But if he is mentioned by his proper name, then he may take notwithstanding his father is immediately after added a bastard. Eliz. 309 Co.Lit. 123 = 3

There is a case where he look by being a bastard his mother's bastard son, but this has not been considered. See 14th Act 1.

In 10th Raym. 82 = 83 there was a devise of a man to one of his daughters who should marry a bastard. One of them married a sister, and the heir endeavored to invalidate the devise on account of the uncertainty, whether which daughter should marry, or that they might all marry bastards. Yet the 41 determined that the first who married should take. This is a strong case to shew that an expectancy devise may be good notwithstanding it depends on an uncertain event.
A devise to a child in venture for mere may be good. If the intention of the testator, independent of the words which give the estate, appears to be that he should take when born, the devise is good.


If the person is described so that there is no doubt the devise is good as to the Clerk of the County, etc. or the treasurer of such a state, Ab. 32.

If a devise is made to a particular family, the heir of the family takes.

Where such a man's prosperity is desired to, if he has none his collaterals may take—'To one's nearest relations' all as the same degrees take if personal profit, if both real estate, the real shall follow the person, 1 Vev. 335. But if real alone it is not so yet this is apprehended to be the best way—'To one & one's children is also a good term to help freely in a devise; if at the time he has no child, he will take the whole, if he has child, they will take with him jointly. 6 Rep. 17.

As to estate, yet his intention might be frustrated entirely as in child he might mean heirs, etc., 'Heirs' of itself, no word of specific persons.
Of Revocations

Any time after making a will the testator may revoke it. The only difficulty is in defining what is a revocation.

A revocation of the person itself would be a revoc. for them till the 29th of Bar.

* Here we have no rule respecting revocations. It seems therefore that our Law is the Com. Law of Byz. Previous to their wholesale revocations by Com. Law are express or implied. The former written by parol. There is no particular solemnity required to revoke. Any solemn declaration written or parol in decant of the testator's intention to revoke is sufficient. Words in a passion he will not do. But if he call in witness & coldly tell them he retracted his will of such a date, or says “This is not my will it is a good revocation.” 1 Bl. 271.

Implied Revocations are also from writing or from words. A solemn declaration while it compares with the will is found in conflict with it is sufficient to destroy the will ad to that point which is thus interrupted. As if a man had disinherited his heir in his will & afterward calls witnesses that his heir shall not be disinherited. 1 Bl. 711.

See page 432.
The existence of a 2d Will inconsistent with the former is a Revocation to the extent only of that wherein the Codicil differs.

Lecture 36th July 11th 94

A subsequent different will or Codicil is made when a false impression in point of fact or no revocation, but if it is false in point of law it is a revocation. The decis'd ideas respecting the law is a mistaken idea — where a 2d will is made so that it is an implied revocation of that 2d will is destroyed, cancelled etc it is a setting up the first Will 1. B. 2512. If the 2d will contain a clause of Revocation expressly or then is cancelled if the 1st will is found entire, yet it is no Revocation. But if it had not been contrary the judge said it should have been considered or if the 1st had been cancelled the containing of the 2d whether in what 2d there is a revoking clause or not, the first will is revoked.

Comp. 49-53. Any act evidential of a design in the testator with words or writing as well as cancelling, bearing the animo revocandi is a revocation.
Wills

An alteration of the testator's circumstances is also a revocation. As marriage afterwards issues born, marriage & issue. However, are only presumptive evidence.

But the testator would not have his will stand; testimony is admitted to rebut such presumption. If after all the wife & issue are provided for, it will not be a revocation as perhaps a part of this estate is given in a way enough is still left for his family.

PPMR 98, in note: 1 Biv. 2, 182 - Doug. 33, 97.

A time makes a will & marries. This is a revocation as to the personality of the property in the husband - as to the reality, the will is suspended. So that if she died, according to her husband, the will would not operate, yet if she becomes discreet, the will is good. 27 Rep. 3, 19.

The reason of this doctrine. The threat prevents her making a will. The total change in her circumstances are such that it is more than probable she would not wish to have the first will stand.

The will of a person who becomes non compos, if he remains his will. 4th Rep. 61.

The actual alteration of the estate of
The question is: The rule is not whether he intended a revocable or not, but whether he intended an alteration in the estate. If he did it in anticipation of a reversion, if a man should devise to men enfeoff another to his use or if he aliens then repurchases it is a revocation, 4th R. 576.

Before these instances. The true intention of the testator has been the leading rule. But in these cases that has nothing to do with the business.

A servant in tail made a will. He then suffered a recovery to give effect to his will. Still this was a revocation.

Even if he was in fact seized in fee simple and apprehended that it was an entailed estate, it should make the subsequent entailment on purpose to give his will effect, it is a revocation, 3d R. 303.

The rule is the same in equitable interests, only if a man having an equitable interest devises it, and then takes a legal conveyance, this is no revocation, 1st Will. 199. But to alienate a legal into an equitable estate would be a revocation after a devise. There partition is no revocation, 1st Ray. 124.

In only an actual alienation of the estate.
but an intended one, which fails the forme defect in the conveyance, is a revoca. As in Bp. from 108. where a devise was made & afterward a foestant of the land of which there was no livery. This was not a Revoca. P.L. Judge Black ref. 3:19. role 6:15.

These cases as we have seen depend upon the test's intent to alter the estate & if there was none, then it is no revoca. As where A. devised to B. & then enfeoffed C to his own use for life & there was no livery. He asked if it would destroy his will & was informed it would not. In this case there was positive proof that he meant not to alter the estate so as to injure his will whereas in the other instances the law presumed he meant to revoke by the alteration.

A man devises to a corporation which cannot take. This is a revoca. as it shows his intention to alter the estate.

3 R. 72. 19. P. C. 405. 9 Mod. 190


A man must be tried tile death, for if devised it is a revoca. But if the devisee is the owner it will not be a revoca. 2 Mod. 65. 378.

If the testator is deceased at the time he devises & afterward recons. it is no revoca.
Land reserved when in ped.- The above is a revocation free tants.- And if en ped. to the revius a revoc. pro tanto 2. 48th c. 18. Stat. 38. 204.

748-2. 48th c. 18. Stat. 963. This is an exception to the rule laid down before respecting alteration of the estate.

Where a man devised his estate afterwards for a particular purpose has said it to raise money for a debt, or if he gives in his will a power of dispersing of this estate to satisfy the debt—this only a revoc. pro tanto 2. 48th. 279.

Where an estate is devised in fee simple & a smaller estate is carved out of this it is a revoc. pro tanto as where a lease is made after the devise in fee simple. Bell 616. 18. Jac. 49.

The above revocats are by com. law. The English flat left the Com. law as it were free to imply revocats as was the law in the States. No specific revocation that is good unless by a subsequent will or writing under seal of his devisee to revoke signed in the presence of 3 witnesses.
A subsequent revoking will must be a good disposing will, or it will not revoke the first. Such a writing indicative of the Intent to revoke with one solemn act of signing the presence of 3 witnesses, is a good revoking instrument. Provided there is no disposition of property in it, or if a man will make a will & it is defective as to making the property devised & in the same will makes a revoking clause, it shall have no effect. [Note: 1760 p. 943]

Leaving, turning & obliterated the will by the Testator, or by his request annulling or revoking an executions, [Note: 1801 Ch. 111, see Comp. 52]

Parole executory revocations in Com. are good

This the Reeves opinion.

Lecture 98 - July 16, 1815

Of Reproduction of Wills

Reproductions are express or implied.

If express, these must be in writing. That they cannot be the fraud, is no doubt. Our law requires that they must have the solemnities reading to date to be good reproductions.

The general rule of opinion is that a partial reproduction done with a serious intent is sufficient, but the idea is most cutting false.
Of implied Replications — When there has been a subsequent will working a first & the 2d is destroyed with a design in the testator to destroy, then the 1st is republished by implication.

A Codicil also executed according to the Statute referring to a will is a repulsion in full strength. 3rd. 130. 9. Stat. 68. 78. Story 43. 133. Or in the publication the will speaks as a new will just made. And if the testator made a will afterwards purchases other property than that he first devised & the terms of the first will will embrace this after purchased estate, it will pass by a Republican — As if one devised "all his Real Property" & after such devise acquire other Real Property — a number of years afterwards he republishes the will all the real property he owned at the time of Replication will pass — 7 Pet. 275. But if the will cannot embrace the after purchased estate it will not pass as if black acre & white acre were devised & he afterwards purchased blue acre. Blue acre cannot pass by a Republican because it is not embraced by the will.

Parol Averments

Parol declarations of the testator to the heirs what he meant which would give an intent to the language of the will different.
from the natural import are inadmissible. 5 Rep. 68; 2 All. 216-217. Page 345.

But averments of facts to give direction to a devise consistent with a will are admissible as where a man had 2 fans of the same name, proof was admitted to show which the testator meant to—At where there were 2 farms of the same name—5 Rep. 155; 5, 68—213; 137.

A Rule to be observed respecting the averment of facts is—'As the uncertainty who or what was meant arises from the face of the Will no verbal proof to explain is admissible. But if it grows absurd the will as may be admitted. As a devise to A.B.—There was a father & a son of that name 6 Mod. 199; 1 All. 111. 2 Vesey 216

But proof is admissible to show what was meant where words of QUOTATION MARKS so that an ambiguity is created by the use of them. Moore 135, as where son is used for grandson & v e.

In a grant if a man's name is mistaken all the description is complete it is no conveyance but in a will the law is otherwise 1 All. 410; 2 All. 216—2 Vesey 216—1 Perm. 136; 80 Vin. 187.

Lecture 39, July 17, O 1791.

Wherever words are used which have a certain literary import, let this be clear so clear in the face of the will circumstances may be offered to prove that the intent import of
must necessarily have meant differently at in case of a devise of all my estate my debts being paid. The technical phraseology of this is that the devisee takes a fee simple an estate for life. The proof by parole was admitted to show that the circumstances of the testator's estate would not admit of such a legal construction as the personal estate was worth only 100L. The debts amounted to 400L. It was therefore manifest that the testator meant to devise a fee simple. If the devisee was allowed to take accordingly, 6 Rep. 18

If a man has child a devise is made to him and his child the child would take with him, but if he had no child it would be a word of inheritance & could be "to him & heirs." Parol proof is admitted to show whether he had or had not child.

In talk 234 there is a good case for this purpose. It has settled the law that such external circumstances might appear in proof to show the intention of the testator. Where the words used are not technical & no ambiguity on the face of the will yet if the state of the testator's friends would not admit of such a disposition.
Wills

would appear from the terms used, circumstances
may be let in to prove such inconsistency -
See a good case in. Brown 1st Ed. 472

Admissions to prove 1st

1st That the, are admitted

2nd admissions. Where the meaning
is equivocal. 2. Where from the will only
it appears that only a life estate is intended,
to prove that a fee simple was in fact meant.
3. To shew the circumstances of a man's family
as whether he has children or not when the terms
are “to him this child." 4. Where on the face
of the will there arises no ambiguity, to prove
that the circumstances of the testator are in conflict
with the disposition. &c. &c. To rebut an Equity
or any implication of law which means
the same thing. This test happens only where
there is a difference between the regulations
of Law & Chancery - As where no Legacy to
The Es. he will take the residuum, but if there
is Chancery have determined that he shall
not have the residuum. Proof of it admitted to
rebut this equity & show that the testator meant
The Es. should take the residuum 2 Th. 1261.

If a man owed another a firm & gave
him a legacy. The law was former, that the legacy
should go to offset with the debt. This Chancery
considered an implication of law, but proof was admissible to show that the testator meant differently. 2 Leyp. 1324. 11 Leyp. 323.

May not such cases come under the head of Equivalent expressions? They might with propriety without recurring to the compounding expressions of 'rebutting or equal.'

Lecture 10 July 18. 1794.

Of Injuries to Real Property and their Remedies

Of trespass vi et armis vs. R. Tref. This is any invasion upon the property of a man. Leases no Tenorship falls under this subject.

The remedy is the action of vi et armis. This is founded upon the possession of the Poss. It is not necessary that he be the actual owner. A Lessee or Disposee is entitled to this action. Whosoever trespasses first action must either be owner of the Absolute, or have some color of ownership otherwise. In Eng. to entitle a man to this action he must have entered & that he is in actual possession of the land. There no entry necessary as a man is in actual possession here as soon as he has purchased an estate, whether he has
if no person has entered or
if the debt has been discharged
he must have forced the tenant by entry.

Ergo, if a man has a right merely, as by descents without entry he is not entitled to the action. In personal actions the case is different. That is in Ergo on the same footing. Both here and elsewhere has a right to possession, is considered as in actual possession.

It may be that the owner cannot have
this action as if he has leased or been disposed.
In case of a lease the owner is considered as a stranger and if he enter an action of trespass, would lie against. This rule will apply to
lease for life or for years but not perfectly to a lease at will. In such case the owner may enter when he pleases, yet if he injures
the property of the lessee has a right to, as long as he is in a trespass for torts.

When the intendment is an injury to
the inheritance itself, the lessee is entitled to
this remedy and he has his election whether to
bring it against the lessee or trespasser. The
lessee may bring the action of the trespasser against
the trespasser, on the ground of his liability to
the lessee. If he that institutes his action first
suits the others right of action. For the lessee
Injurious to Real Property:

A defendant may bring the action where there has been no injury to the inheritance.

The lessor, for life or years, is never liable to this action, as he may be in another kind of action at the suit of the tenant at will is how ever liable to this action for injuring the inheritance — Co. Litt. 57. 1 Chitty 360 2 De G. & J. 551 52.

If a lessor may bring this action against the lessee for the act of default, but not for subsequent waste till he has regained possession when he may maintain this action to the whole time either against the lessee, lessor granted or found the authority on the part of the party.

11 Rev. 51

If a man has sold his land on which there was a trespass, he may have his action against the trespasser even after the sale.

Where land is cultivated on shares the claim alone is entitled to the action. Where, however, the cooper has yet actions in the name of the former cultivator on shares 8 has sustained them in this country.

Besides there is a valuation of trees in the gift of the lessor and he is liable to all other similar cases the latter may bring of action against the lessor.
A man is liable for trespas by his cattle. If the fault is in the fence of the owner of the land, the owner of the cattle may take them, but if the fault was in his fence, by entering the subjects himself to another action of trespas.

A man may have a legal warrant to enter a house: he may in some cases enter without a legal warrant & not subject himself to this action but if felony is about to be committed —

If one goes across land without the licence of the owner, he is liable to this action.
Where a trespass is committed upon the lands of the wife, if that part alone is injured to which the husband has a right, he need not join her in the action but if the inheritance is affected, she must be joined.

The master is liable for a trespas of his tenant, if none in the pursuit of the Master cut into this without his order.

It is apprehended that the tenant will yet preserve that the tenant must in all cases be joined with the master where the tenant is not alone liable.
A tender for an involuntary trespass is a sufficient compensation in the opinion of the Ct. is a good bar to an action.

Lecture 41 July 19 - D. 1794

on the Connecticut Stat of trespass as altered from the Com. Law

The action must be brought upon
the Stat. otherwise it will be presumed that he takes his remedy at Com. Law. This Stat operates upon none but voluntary trespassers for the Stat. which gives 250 damages. If the action is brought on the Statute there is not proof sufficient to convict a man on that Stat. the Ct. may give Com. Law which are only given with exhibiting a new Suit. Courts have adopted this rule. That when there is a remedy both by Stat. and Com. Law if the action is founded on the Stat & there is not proof sufficient to entitle the Pll to a recovery on that, yet if he could recover the thing at Com. Law then will give that damage to him without going him the trouble of bringing a new suit.

The Stat. has provided that if there is any doubt of the Pll's being guilty the Pll may swear that he suspected him.
of the Dem. and then either prove that he
had or did not. If that he did not he is clearly
under the PLF has other proof besides his
judgment. This is directly against the prin-
ciples of the Con Law & seems directly to hold
out a premium to a man in this situation to
commit perjury. The PLF in such case is
not to be examined as to the ground of his pe-
judgment. If in an action of trespass, the Dem.
claims to own the land, the mode of proceeding
is for the Dem to enter into a bond of 20L that
he will pursue his plea to defend his title
before the County Court or bring an action
of ejectment against the PIF. The practice is
for the record to be taken up to the County-
Court & there the Dem may pursue his plea. The case
then goes on just as it would before the justice
if he had come to try the title. This trial
of the title will be a bar to any action of ejectment
of an officer's power to break dores.

The General rule is that if the process
is served, the duty may be taken, but in civil cases
order doors & windows cannot be lawfully broken
down. The house or house is an Asylum or Castle
for the man and the owner of the house & his family.
Of Officers breaking doors

If the outer door is entered peaceably all in one door may be broken. The reason of this law is that in frequented places thieves might take advantage of a man's house being broken open & not him of his goods. To frighten the family, see Sect. 99 of East. Page 71 of the Stat. 11 Geo. 2. 1763.

After the officer has illegally broken in it has been a much litigated question whether a levy is lawful. In the above cases it has been determined here & in Eng. that such levy would be void & the officer liable in his伟大复兴. But the reason & policy of this is very questionable for this is directly encouraging a violation of law. There is a case where a man was arrested in presence of the Cst which a contempt of Cst. He being in their protection yet the Cst. said the levy was good & the officer liable for this contempt.

Lecture 42 July 21. A.D. 1794

Of Forcible Entry.

Formerly if a man had a certain right to land & enter & work it from an innkeeper by force. This practice is disturbed the peace of society. That far worse made to stop such violations in person though none is to be used only where by neglecting to use it a man would lose his remedy.
Of Forcible Entry

As the law now stands a man must not enter
by force (by any hand) nor with a number of
persons with a view to take possession. It is equally
criminal in this point of view whether the person
who enters be the actual owner or not.

The rule is that no person shall enter with
actual violence, nor with so many persons
as to excite terror, either of these would be a
forcible entry. In both cases they must come
with a design to enter & oust the present occupier.
The offender is then liable to be indicted & pun-
ished, see Bract. Fl. 32.

Forcible Detainer

1. This is where one has made a forcible entry
& detains forcibly. This is criminal whether
he has title or not.

2. Where one has got possession without force
& detains it with force against the true owner.

There may be a forcible detainer & forcible entry at the same moment. As where one
determines forcibly & the true owner is in possession
unlawfully & the owner enters & the intruder
repels with force. It is criminal in both the
owner & intruder.

Where the intruder is turned out
by the forcible entry of the owner, & brings his suit
against the owner for private damage, although
was a crime in the owner yet the intruder shall
not recover damages for it has not been in-
jured. But it is a crimeinvisible to the public.
Forcible entry
yet in such cases the T. has furnished no eccentric remedy - he may complain to a
Justice who may cause him to be required. Here the question of title does not come
up. The only fact to be enquired into
is the forcible entry - the same in a forci-le detainer, if there was a forcible entry-
also. But if there was only a forcible de-
tainer, the T. may punish, but not cause
the other party to be seized.

Of Waste

All tenants for life whether con-ven-
tional or by operation of Law are liable
for waste & all other tenants for years are
liable for waste.

For the com. law waste simple dam-
ges only could be recovered but by that
principle may be:

Waste may be committed in Hou-
es, meadows & all other lands - T. 53
If the house is suffered to be uncovered
an unreasonable time, it is waste in the
tenant. If the house was in a ruinous state
when taken it need not be kept any better
2 T. 818.

It is waste for a man to transform
a house & make it more valuable, to change
thorough land into meadow 2 T. 815. 60, 2 T. 53
82 T. 182. 1 Mod. 74. As a general rule it is waste
to alter the situation of the offices. One exception to this rule is where pasture was improved into arable land. The judge observed it was waste for this plain reason. It made the land better. 2 Roll B14.

Lecture A3 July 24 1791

Every thing that is considered waste in land is not waste here. In this country wood or timber cut in such a manner as to injure the farm would be waste. As the cutting down chestnut trees without leaving sufficient for fences to. It is waste to open new mines or dig gravel to build an old house. Every mismanagement is not waste as to suffer meadows to be overgrown. The wood is otherwise provided in the lease. The tenant must repair hedges, fences, etc. at his own expense. He may however take timber for necessary repairs from the land. See Law. 33.

If in the lease the timber is excepted, he has no right to take even for necessary repairs, but by taking it is guilty of waste, as any other person. If the term "without inspection of waste" is used, the tenant is not liable for ordinary waste, but he is liable for all wanton waste, and as an owner would not commit. In such cases Charity will interfere. I grant the lessor a proper recompense, or grant an in
injunction to stay waste.

If the injurer is the lessee of the tenant he cannot take the timber to repair Co. L.

The immediate receiver and is the only person to bring the action of waste. An action lies against the act for wastes during his tenure, not for that done in the life of the tenant. Ediz. 683-2 Roll. 828.

If the lessor brings his action against him who commits the waste, he cannot bring his action against the lessee, at an end of the term. No he had this election which to sue. A tenant having land priz'd to him for a term to discharge a debt, is not liable to an action of waste, but must account for all damages, & the same principles is thought to extend to markes.

Ediz 777.

Of waste as in Chancery.

Where waste is committing he have. In Chancery will grant an injunction when an action of waste would lie. In many instances where this action would not lie, & Trustee who has at Law, the inheritance may be restrained. If also a tenant in fact after possibility of issue extinct. This is where the waste is wanton & malicious. Whoever has an unceasing right in fee may obtain an injunction. 74a 353-524-546.
Of Nuisances Pub O Private


These authorities show the extent of the term

Undert Impediment of Waste

Of Nuisances

For a public nuisance no action will
lie for the general inconvenience, but if
any one has sustained any particular damage
he has his action. Public nuisances are

In summable by that

For private nuisances actions are laid
for this subject. See Black, Comment.

Actions may be perpetually lost & recovery
had till the nuisance is removed.

Building law works & statutes so as
to disturb or discommodi neighbors have
here decided nuisances

Lecture 44th July 23, 1794

Of the action of ejectment

This is the only action now lost in
England for the trial of title to lands.

At first it was only used to recover a
term for years, but by a course of fiction
they have got to try the title for the English
Law on this subject. See 3 Hoofer, 42 where it
is briefly & plainly laid down - 3 Black Co.

Cont. 41st of ejectee.

In suits of ejectee we have 2 notions. It may here as in Eng. be both to recover a fee, a life or a year estate.

The Law makes no difference between a right of title & a right of entry as in Eng. but whoever has a title has of consequence the right of entry & is considered as actually possessed unless he is disturbed & if disturbed has the right of entry & left when away by State the tisfor having remained an undisturbed possession 15 years. This is not been continued to take away the right of property as well as the right of entry. But Mr Dacee supposes this a false construction.

The has must state that he was in possession within 15 years last past. That he was disturbed & that must also describe the land. If judgment in the tisfors favor, the sheriff must court whoever may be in possession & place the tisfors. An execution for more profits in such case cannot be had in this State. for in the instrument they have these into consideration. If the tisfors after judgment but before execution the heir has his action for the Real Property & he & if damaged.
1. Of Slander.

There are 2 kinds of Slander, by word:

1. Where words are actionable in themselves.
2. Where there is damage in consequence of words.

Of the first kind there are several cases:

For the first kind of slander it is immaterial whether any particular injury follows in consequence of the words, but from the evil nature and tendency of the words themselves the presumption is that the person of whom they were spoken has received some injury. It must be stated in the declaration that they were falsely and maliciously spoken. If there was any damage it may be stated, but this need not be done.

If this first kind of slander where the words must be actionable in themselves, there are several cases:

1. All words charging one with a crime, which if true would subject him to corporal punishment are actionable, as if he was charged with stealing. The only question is whether stealing would subject to corporal punishment—If so, then actionable. But if charged with being a liar—Will this subject to punishment? No, then not actionable.
Of slander

In Cor a man guilty of adultery is punishable if charged with this he is entitled to his action. But in Eng. it is not punishable consequently not actionable. In both countries the same principle governs.

2. Words which affect a man directly in his business are also actionable. As to charge a physician of being a drunkard if of being a knave no action lies for those who employ physicians don't inquire nor care whether a man is a knave. The only question is whether he is helpful. But if a lawyer is charged with being a knave this affects him directly in his business. It is therefore actionable.

If a Blacksmith is accused of shewing him badly he may have his action, but not if charged with being a knave or of making bad saddles for these do not affect him in his line of business.

3. Such as affect a man in his office is a jure with reference to him in his office, as of a justice accused of bribery or any thing is said which affects his understanding or integrity with reference to any particular decision of his.

274. There is some contradiction in the authorities respecting the actionability of slanderous words against a man, a man with reference to him in his office not the current of the authorities are that they are all actionable.
1. Where one is charged with a disease which of law would banish him from society, as leprosy formerly was.

But it is not certain that the defamatory story was made. It must appear that they were true, or the story held false or no recovery is had. It is necessary also that they be spoken with malice. The legal malice is not exactly the same with malice as commonly defined. In law it means any thing spoken from an unjustifiable, wicked, or seditious motive. So that if it turns out that the words were false, yet if the defamatory story makes it appear that his motive was pure, there can be no recovery. If there was no carolepeny, the motive is not pure, but the illegal malice — no cause have been decided against these principles.

With regard to trespasses, sometimes a charge of this kind will furnish a ground for an action & sometimes no. This rule is drawn from the cases in the Book of Trespasses, with which he is charged would impair his reputation. The words are actionable, but if his reputation is not affected, not actionable.

As if one is charged with throwing ballast off New York Wharf — this would not impair his credit, & not as such but otherwise if charged with stealing goods.
Of slander
Of the 2 kinds of slander. When
damages have been sustained in conse-
quence of the charge—

The charge
must be stated in the decl. to
be false, & the damage must be stated.
It is yet an unsettled question whether
the words must be spoken maliciously.
The current of authorities are that they
must be maliciously spoken.

The Pll may be admitted to prove
other words besides those stated in the
declaration, unless these words are ac-
ceivable in themselves. As if one is char-
ged with a theft, the Pll may prove that
the Pll had called him a thief, but not
that he accused him of being guilty of

If the words are spoken in jest it
is no a justification, but where
there was a just provocation damages will
be mitigated. If there is no provocation.
The circumstance of their being spoken
in a jest will rather enhance miti-
gate damage for the law, tho' it casts a
veil over the truth, gives no guaranty to
the vice of mankind—

The manner in which the words
are spoken is immaterial. They cannot
be evaded by being thrown into the form
If conjecture be as some have supposed —
Words spoken of a man's evil inclination are not actionable. He must be charged with some evil act — Stat. 2-18, 2 Wills. 519
D. 180. 18, Art. 142.

There is another rule. That is, the words
Once spoken over to maliciously, yet if the Witt
can't be punished no action lies, as if a man
is charged with having killed his wife. But
The wife was found to be alive. So that the
man's character could not be injured so
he could not be subjected to punishment. See
2 Durny 473


When special damn is stated in the Declar.
it must be proved. To say of a Clergyman
that he is an heretic is not an
The only damn is the consequent discredit.
In the case in Ex. 239. There was a
charge against a man immediately affecting his business, but no damn, proved yet
The action was sustained. Stat. 211. 5 Geo. 1753

Charges actionable in their nature were to be
So when used in the Court of Proceeding,
But if used before a Court not having cognizance,
it is no excuse. They are actionable. Ex. 230

There is no such thing as joint
Hearsay, each one must be taken separately.
Hearsay words are not to be taken in
the midst or in the presence. Hence, but accord
to common acception.
Slander

Slander is not considered a crime here or in England by common law. But by our law, it is—

Of Libels or WILLFUL Slander

Whatever is WILLFUL slander would be slander if reduced to writing or made in other words which wound the feelings, in full, the honor of the party, there would not be slander unless written—Rep. 139, Hob. 215. 2 Wills 403. Whatever tends to disturb the peace of a family is a libel. 2 Wms. 980.

So far as the Libels respect the person against whom it is written, the truth of the charge is a justification, but if it is a charge against the public or a person, it is a libel. 3 Rep. 125. Some Libels are remediable, but not actionable, as a Libel against a dead person, or against government or its administration. 4 Co. 62.

Publication of obscene books was considered a libel 2 Rep. 788, or against the established religion 3 Bur. 196.

An action was brought in this State for a publication against the Christian religion. The Court would not permit it to be litigated.

Lord Mansfield determined that the jury should only say whether the fact of its being published is true or not; not to tell what the law is arising from itself.
By giving a general answer: "He has been accused by habit in my facts". He has been cursed for this decision, but Mr. Reeve thinks unjustly for it has been long a principle that the jury are not to decide upon the law unless where the law is blended with the facts.

There are 3 defences to this action:

1. A demurrer — where the part acknowledges the facts stated in the declaration, but denies their actionability.

2. A special plea in bar — where the facts are admitted by the def, if he says the charge was true, in this state the truth is a justification.

3. General issue — not guilty.

Under our Law we can prove the fact when the general issue is plead. See our Statute.

Lecture 17, July 26, 1794

Of the Pleadings in an action of Slander

First it is customary to state the excellence of the party's character, but this is unnecessary.

2. That the def spoke certain words "false,signed & scandalous" — the first of these is "false" is an essential allegation. The def. would be ill without it, but the other two are not essential — it ought always to appear from the face of the def. that the party is entitled to a recovery.
5. The words must be stated to have been spoken maliciously—This is also a material allegation.

6. That the words were spoken "in the hearing of divers citizens of this state."

7. If the words were spoken with reference to a precedent conversation of the word he or you are used as to you are a perjured villain or he a thief. It is common to include within a parenthesis who is meant as he (meaning John Doe) is a villain a thief. This is not to explain any term used or extend it meaning beyond its natural import, but only that to whom it or what they apply.

8. Then state the dam—either gen. or spec. as the case may require—If you state a special dam, the story must be told concisely. If the dam is for words affecting a man in his business, it must be stated that the def. was in such a trade. Against a Magistrate it must be stated that the words were spoken with reference to him in his office.

9. If it was for a libel, it must be stated that the words were published of concerning the plaintiff.
Slander

Of the Defences

See page 373 for the general Defences

1. That the words were spoken in the course of legal proceedings is a bar. Jac. 91.

5. A recovery of damages in a former suit is a good bar. The circumstances must be related particularly, the record itself.

6. Accept of satisfaction is a good plea. After accord the deft need not accept but may go on with the suit. This is a fair plea unreasonable. It must appear there was an actual receipt & the satisfaction must be valuable. 2 Rep. 96.

7. The Stat. of Limit. is a good plea. The time in Eng. is 2 years & in Cen. 3 years. The act extends only to words actionable in themselves, not to actions for special damage.


9. An award. It must be stated that there was a submission & award. It is no bar however only the deft has complied with it. If the award was to be performed before the action must it must be so stated. If this plea is made after the award is to be performed, the award must have been complied with. If there are 2 sets of words, one acts & the other not & the jury bring in a general ver
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The dict of "guilty" it may be arrested—1 Rep. 146. See a case in Cook. In that case the Dft might demurr to the fact, and not to Viz. read the pem. issue to the act of part.

As a general rule, this action lies, whenever the Dft in the original suit.

And so, if the Dft knew he had no personal when he lost the original suit, this action lies, 1 Sam. 26.266.

2. Or he may be to hold the Dft to and sure.* This action lies, in such a case, the Dft had a pound of action, but the Dft is a pound of action. As if an action is for a vast deal more than it is due to the Dft. If Dft is unable to find bail for so large a sum from 11th 124. 1 Sam 2:228.

3. Where one dies another before a Court having no cognizance of the cause. It must appear that the Dft knew the Court had no cognizance. 3 Wils. 302.

4. Where one fraudulently procures a judgment against another with giving notice. As if the Dft continues to have the f
from leave a copy of it to decease tho' there 20th cannot see it & then procures a judgment 20th. So
5. If one files with authority in my talk name where I have good cause of action &
but it is apprehended that if this was done
from motives of friendship no action would
lie
I commence this action until
there in and end of the suit claimed to be
malicious in Macenairue, but it is not
necessary that there be a design on one
of the action in the former action.
There must be an actual damage more
presumption will not entitle the 20th
to this actions that the least damage will
answer of the actual dam. in not the rule
of damage.
There is an imp. question who
then arresting a man away from home in
a foreign state, it's a good cause of action
as if one have a debt against another
which he could recover in this state,
to keep the 20th should take the oppor
tuinity to sue him in another state. This
might put him to great inconvenience
would furnish a ground for this action
This action is by our law denominated
a vexatious law suit to which noble dam
for are recoverable.
Of the action for a malice
ous Public prosecution

It is necessary in this action, that there be malice & want of probable
cause. 1 Bl. 172; 1 Dunn. 154.

Also, the prosecutor acts with malice if there was a probable cause no action
ties; also if there was no probable cause & the prosecutor acted honorably or hon-
estly no action ties.

The Off. acquitted in the former
case is prima facie evidence
that there was no probable cause; but
not conclusive—Thus the first step
in the Off. to show that there was no probable
cause, is to prove that the person in
the last action to show that he had pro-
able cause.

If a justice found sufficient cause
to bind the Off. over, it will generally
order the Off. 1 Will. 232; 1 Dunn. 193.

The several kinds of grounds for
damages—1st. where the law inflicts
damages—here no damage need be
proved. 2. For any other offense by which
means he has suffered actual injury
to his reputation. 3. For the expense
he is at in defending his reputation.

1 Bl. 172; 1 Dunn. 193.
There is no necessity as formerly that the
Defendant be acquitted. If there is
an end of the suit any way, this action
lies. Leop. 205. 2 Burnf. 225.

Any person who has aided in this
Prosecution is liable in this suit.

The defense direct defenses to this
action can only be—A justification which
is that there was probable cause, or no malice
or a denial of the act by not guilty.

In pleading the justification the 28th
Solicitor must state that the crime charged
was committed when & where &
his
in

Form of Prosecution Edin. 38.

Of the Evidence

When the Defendant declares or states an
acquittal, he must have a copy of the
Record 12th Bla. Rep. 385. The Defendant may
offer the evidence that was before given
to show the malice. The Defendant may prove
that the Defendant was bound over & need not
show any other probable cause unless
the Defendant proved direct malice that the Defendant
knew better, then the Defendant may rebut such
ground by showing that there was probable
cause. Whether the jury can find in jury
charges where several are joined up, the authorities are contradictory. If the offense charged be
not an offense the binding over is nothing.
Lecture 49. July 29. 1794

Of Actions respecting torts

Of Torts

This action lies in all cases where there is a wrongful taking or wrongful use or wrongful retaining of another man's goods.

1. If property is taken from me without my consent or knowledge this action lies & if it should be returned it does not wipe away the right of action but may be a cause for mitigation of damages. Note this action does not lie for real property, nor certain kinds of personal as chattels real, money &c.

2. The who comes by a thing rightfully but uses it in a way which he has no right to is liable to this action. As where one finds goods & sells them, or where a bailee exceeds the bounds of the bailment.

3. Also where a man gets a thing rightfully fully not exceeds the bounds of the bailment, but retains the profit after a demand of the owner.

All cases that arise fall under these heads.

In the 3d case a demand must be proved. For in the other cases no need of any demand. The former have embraced the erroneous idea that there must be in the 2d case 1 Fed. 284. Eliz. 45.
To lay a foundation for this action there must be a property of some kind in the light. It is not necessary that he be the actual owner. He may be bailee. There must also be a possession in the light and a conversion.

In the 1st case the tort in taking was the conversion. In the 2d. The wrongful use is the conversion. In the 3d. The wrongful detainee was the conversion. If there has been a demand and refusal the Law presumes a conversion unless some circumstances appear that shew it not to have been the duty of the light to deliver it to the person demanding it. If he had found a watch he would not know whether he was the true owner or not. If it would be imprudent or dangerous to do it if it should happen not to lie his who demands he would be liable to the true owner. If however he has satisfactory reasons that it is the true owner who demands, he ought to deliver it. If the owner demands the watch he—

If the possessor has a lien of any kind upon the property he may retain it notwithstanding the demand. 1 Bl. Comm. 175. 2 Bl. 732.

We are never to state a demand or the declaration. This being a matter of evidence & evidence is never to be stated—
In all instances of tortious taking of property is concurrent with trespass to
arms. But there was no motion but only a trial committed on the trespasser
then trover never lies—

Suppose this tortious taking is attended with a felony as for theft.
Then trover is concurrent with theft of the Off will waive the felony, he may
bring trover—

Suppose again one steals a horse and sells him. The actions of Theft, Trespass,
Trespass, & indeb. Assumps., are concurrent.

This last will be commensurate with what the horse was sold for. But this
would be lost only where the property
was sold for its full value—

2nd Case: 1st instance. Where the Off came
by the horse rightly trespass never lies
but in deb. Assumps. 2nd instance where the bailor
receives the bounds of the bailment—

action of trover lies—indeb, Off will not

special

action of trespass on the case lies but
not the action of trespass—

3. Case In case of an unlawfull detainer
no action but trover lies—Afr. 505.

If property is trovered from a
bailor—he or the bailor may bring
the action. If lost by the bailor he elects
to become answerable at all events, whe
Then he was so before or not. In this Subject the same rules obtain, as those in case of waste committed under a lease.

If the Bailee brings the action, the Bailor is entitled to his action of trover, but may bring his action of trust law on the case against the taker for special damages. 1. Lev. 252.

Mod. 37.

The owner of trovered property may have his action against any person in whose hands the property may fall, and if the person purchased it in market, orderly, or public auction, the vendee of the thief cannot be found, the vendee purchasing of him, must pay Dam. of. If, however, the article stolen is money or in the hands of a bond, the judge or the owns it absolutely, for obvious reason.

By a judgment in this action the property was absolutely in the 1948, the Off sets the value in damages on the property has been returned to the owner Previous to the judgment, in which case the Off recovers only special damages. 3. Wilson 296. If the property is sold it vests in the last bona fide purchaser.
Touer

Touer has been maintained, tho' the conversion is not to the 10th. See a case in 3 Will's 146.

This action has also been maintained for the whole, where there was only a partial conversion provided that was attended with circumstances of injury to the whole—see the liquor case in 1 St. Tr. 576. No person having a lien on good can be subject to this action. Touer lies against the Master or servant who does the act in his master's business (Will's 328). Of tenants see Coram, see Dur. 655, 280, 200, 444, 345.

This action—touer does not lie against the rent for the trower of the tenant. But in debt, account. It lies for money had and rec'd—Comp. 375.

Touer does not lie against a Cor. Euler if the article is stolen from & taken in such a way as he could not prevent—Talk 655, 585, 2827.

Lecture 50th July 30 1794

Declaration in Touer

It must he stated that the Old lost the thing & that the Old found it of converted to his use. The article must be properly described—A bond need not not be exactly described as to amount—
Dec. of Treen

It must be stated that by a subsequent conversion it is all that is necessary at the conversion—Jac. 428.

It is usual to state the time when lost & where converted. This is said to be absolutely necessary for the jury in England to know where the conversion was. This however is all mere fiction for if lost in Ireland it may be stated to have converted in England. De Cal. 290. The action is transferred may be lost where the theft, or where the theft, takes place. Contra. It is usual to state the value, but not necessary.

Of the 20th Plea

It is said this must be the general issue. But there are exceptions. Holt says there might be a special plea in one instance [Deer. 198. Dec. 73. Holt.].

An action to recover goods must be special plea good and special plea.

If the theft will come into Court, deliver up the article & pay costs. But the proceedings—[Rev. 142—8] 2 Jut. Black. 402.

Of Replevin

In Eng. there are 2 kinds.

1. Where goods are taken for rent by distress. This is peculiar to England—unknown in
2. Where beasts were taken damage 

2a. Where beasts were taken damage sea

2b. The same as the 2d in England

The law is attached the same way may get a landsman to give security, that the goods shall be returned or the debt discharged or either of these. The case goes to Court. It is tried on the replevin. If the P is on replevin is found to be nothing, he will be liberated with costs. And if the C finds that such P fails over, in favor of the C, against the P, if the P fail the bond given is the security. The bond given by the cattle, in replevin may get the damages paid. If fairly pleaded, this is the rule of damages. If cattle not commansble get into my lot, I may have damages, unless my fence be ever so poor. Cattle are commansble but horses are not. Hogs may be made commansble by law laws.

Replevin where goods are attached. I only getting a landsman & taking back the goods. The defendant goes against the original P, if he does not pay the Reply by bond is tried. If a case is tried by a justice & the damages exceed his justiciab
He must answer the cause.

**Contest of a Bondsmen's Liability**

I have a debt of 500L & attach 30L worth of goods. They are reprieved by B. & B. & B. If my debtor fails, ought B. to be liable for the whole debt of 500L or only for the value of the goods he reprieved?

There is no doubt but what in reason he ought, but the law is doubtful in the opinion of some. The difficulty is raised by our Stat.

**Lecture 51. July 31 94**

So far as I understand the Stat. asserts that the Bondsmen shall be liable to the extent of the judgment, and on the other there is no principle better established in the Common Law than that the Bondsmen need only feel the necessity in as good a situation as he was before the goods were pledged. The question is whether the Legislature contemplated this principle in the Common Law? I mean to note if it is whether this clause was thrown in incidentally and considering its consequence.

If goods are pawned & money tendered to redeem & refuse to receive them thereafter. Actions of Trespass vi et armis

All direct injuries done to a man's person or to his personal property by another or his cattle come under this species of action.
TRESPASSE AT ARMS

The injury must be direct & immediate. If it is only a consequent injury the proper remedy is trespass on the case. Trespass on the case will not lie-

A man may become a trespasser ab initio even where he acted lawfully at first but afterwards committed some illegal act. As for ms. If an officer enters a house with a warrant to take a man & in doing this had to break inner doors. He his entry is lawful yet if after entry he commits any unlawful act as beating the servants, the man's wife being he is a trespasser ab initio.

This however must be a misfeasance to enter it a trespasser in it not a mere non-feasance or neglect of duty as if one enters a tavern & calls for liquor he but will not pay. This is merely a mere misfeasance but this action does not lie but if he had beat the family & the action might have been trod-

This rule there is said to be an exception yet, with the suggestion it not to be any exception. As where an officer by legal authority arrested a man & committed him to jail but neglected to return his writ as was his duty for this an action of trespass on the case lies. And if it is supposed that the action does not lie for his neglect of duty in not returning
Respect your arms

returning the writ but for the real act of imprisonment, because the officer can not prove that this was a legal act, being the principal of the only evidence admitted in this case, viz. a copy from the Clerk's record. It was never set down there & he can not introduce any other evidence of the legality of the act. On this ground therefore it is plainly no exception. See a Capital Case and 8. & 9. Rep. 14 & 15. 117. The Carpenter's case.

Where the act is purely involuntary, & perfect accident, no action lie.

To elucidate this rule by examples:

One may be liable to this action notwithstanding the act was involuntary if there was any fault whether of malice or negligence. If one act is lawful which he is doing & he is guilty of another unlawful act he is liable as where one out of malice shoots his neighbour's horse. It happens accidentally & involuntarily to a person whom he did not conceive he is liable for both. These acts—But if he was only shooting at an Elk & another man would do & happen to injure a person no action will lie. 4. & 5. Gard. 1292. 10. Rep. 20 & 91. There was a case before the Houses of where a soldier in the service was ordered to injure him. He no man to bring a claim into negligence than there yet he was liable.
Causes

1. It lies for threats of such circumstances as would intimidate common men.
2. To an Assault, this independent or Pandering, is merely an attempt to strike, or threatening with some weapon.
3. Battery. This always includes an Assault. This is any violent or indecent act. It is to be remarked there must be some act more provoking than agreeing will not be sufficient. No there will go in the aggravation of damages — spitting on a man's face or throwing a stick so as to hit him is a Battery. Lee Bullens wife being Washington.

Justifications of Assault & Battery:

If an officer cannot execute his duty without compelling a Battery, he is justified. But he must not act summarily.

A master is justified in corrects his servant, a parent his child, and a Pedagogue, his scholar — these are all justified on the same grounds. If they exceed the bounds of moderation then subject themselves to
This action. The only difficulty is to determine what is a moderate chastisement. The true standard is this: They are to be their own judges and when they do what would be an offense in a judge they are liable. If they whip immediately with malice they are always liable. But if they correct only moderately they are not liable. If the whipping is ever so severe yet it is manifest that they acted honestly not maliciously no action lies. The instrument and the manner are evidences of malice. (Remember it to the hickory whipper. His school who dressed in women's clothes etc.)

The factor may in certain cases correct his prisoner as if the prisoner be insolent disturb the family etc.

If a friend correct a madman he has never been justified.

When assaulted. Matters in the opposite part is justifiable not in the grounds of revenge but self defense. He must however go no further than for purpose of self defense. One may defend by violence judiciously in his possession but he must be careful to proceed no further than is necessary to preserve the goods.
Trespass or in arms

May one take by violence his property from another? Yes if taken in false pursuit but not otherwise for he must not break the peace. Violence may be used to prevent the entry of a stranger into houses or upon land or if he has got into possession by violence, in the same act the owner may turn him out but not if he has received peaceable possession; yet if he has received peaceable possession the owner being in possession he may be turned out by violence as if while the owner was absent on a short visit & should come home & find a man & his family in his house, he might turn them out for the justifications of father & son when they find each other assaulted see an Essay on this subject. In Eng. the defence must be special but in Cor. it may be given under the general issue.

Lecture 52 - August 1st 1794

It has been a question whether greater damages ought to be given in a private action by the person injured, because the offence was high-handed. Mr. R. is of opinion that however abominable & aggravated the trep may be, the damages ought not to be enhanced, because it is notorious violation
of the Law for no man ought to be punished twice or doubly for the same act. & The Public are abundantly able to take care of themselves else, in an action for a breach of the peace, in case of an A. & Battery the Offense & Offender in life will be regarded as one rule of damage. It is not fairly the plain of any kind of damage. What is to be taken into consideration, but of mind likewise for an insult to one man may be more to another—

Of False imprisonment—

Any unjust infringement of one’s right of locomotion, is false imprisonment & subjects the offender to an action of false imprisonment.

The principal class of cases under this subject, is where men or Courts have mistaken their authority & gone beyond it. If a Judge issues a writ knowing it to the beyond his jurisdiction, he is liable. But if he signs the writ, as is common, without examining it, the Off only, & not the Justice, is liable.

When the Sheriff he is liable. See Judge under Evidence where this subject is taken up fully.

For damage done by Cattle & there are 2 Remedies

1. The person sustaining the injury may imprison the Cattle— 2. Or he may have his action of trespass.
By introducing he suspends his right to the action of trespass, but if the cattle escape this. The negligence of the owner or the person keeping, his action of trespass requires; yet if it were his own fault that they escaped, he loses his right to either remedy — this if the cattle die in the ground not this. The negligence of the imprimerder his action of trespass requires.

If an agister, or one who takes cattle to keep, suffers them to go out of a common trespass, the person injured has his action against either the agister or owner. If the agister had had fence & judgment obtained against the owner, he has his remedy against the agister for keeping bad fence. On the other hand, if the agister had good fence, but the cattle were un-live, he has his action against the owner.

If a man keeps a fenc, with ani-
mal, he is liable for all damages done by it. But with regard to tame animals the owner is not liable in the last situation unless they had been accustomed to mis-

take him by, or, then he would be liable to the full extent. In the declar
It must be stated that the owner was
wont to do the same sort of mischief &
that the owner knew of this.

Lecture 53, August 2, 194

In the first of Will. 155 see the
famous case of Wilkes where the whole

Search Warrants may
be bound.

No authority can be given
by magistrates for rummaging a man's
house after stolen goods. This has been
sometimes practised here, yet it is unau-
thorized by law. To justify this the officer
must 1. make out that he lost the goods &
that they were stolen.

2. That he vehemently suspects the
person who stole them to be G.S.

3. That he believes them to be in the
house where he is about to search.

The officer is not to search only within the
place described by the affidavit—

Whoever takes out a search warrant,
runs the risk of discovering no goods.

If they are not discovered, the whole trans-
The officer should keep it in trust & not deliver it over till the right of property is tried.

Shall a non-Jane man be punished for an assault & Battery? No—
not by the Public; but it is reasonable. That, in a private action, the party injured should recover damages—

Sec. 1931

A. Ministerial officer is always liable for what he does in his mistakes. But because he is only aiding to the wrong act, he is not liable as if a Judicial officer commands him to attach a man, & the attachment he can so unreasonable & unjust, yet if it is within the Judicial officer's jurisdiction, the ministerial officer must obey. But the Pal or the Judicial officer is liable & not the ministerial officer—

A Judicial officer is never liable for mistakes made in cases over which he has jurisdiction, unless they were manifestly this malicious—yet if he refuses to act where he has no jurisdiction he subjects himself to an action—Coup. 450.

Sir 851, 41 Rep. 62. This last is the case of a Jew's cutting wood. 2 fictitious vict
arms lies cutting the wood &c.

One tent in common cannot bring

upholps against another any more than

he could trespass, unless the article be to
totally destroyed.

1 J. Black, 392. The Squib case. 1871

other a man injured by the throw of a Squib

can maintain trespass against the 1st thrower.

He could not suppress it publicly.

See 1st 387. for curiosity only; abom

stirring one in a Church Yard.

Ex. 2. Admit as such cannot be

arrested. It is false imprisonment to arrest

them. 1 J. Black Rep. 119. Same case supported

in Wilson. 12th. At

An arrest on Sunday is false impr.

isionment. Doug. 446.

In this case all are Principals

of one hand by tinder such circumstances

that he might have prevented the fire.

If he be a principal.

The action is joint & several. The

action may be brought against one or all.

And when the action is against all, the

All may get the whole out of any one

of the others for their shares.

A release to one is a release to all.

One of the trespassers may be made sole

as a witness against the rest. This is an evi.
Trespass to try admission to the general rule of admission of testimony, but it is a case of necessity. A judgment against one offender is a defense for the rest. The defendants may defend jointly. If the jury find any guilty, they must not find the damages—all must be equally liable.

Lecture 54. Aug. 4th 1794.

Where the general issue is plead the jury may find a part guilty if a part not. They cannot when they all join in a justification.

If a judgment is reversed under the old court officer is liable for their conduct under the former judgment. Formally in such case the old court fine the officers in an action of trespass vi et armis & the old in trover. Wells 135.

If the officer had raised the money from the old & there had afterwards been a reverser of the judgment the old may recover back the money by an action of indeniff. The officer always takes property at this suit i.e. if the property does not happen to be the person against whom the suit has gone out, the officer is liable to be answer in an action of trespass.
But in case of the officer is never liable for these the particular party
is specified in the warrant.

Mode of the Off's decl' in
Assault & Battery.

If the Off means to deny the fact that he assaulted, or gave occasion to the
Battery, he replies that the Battery was thro' the Off's own wrong, without any such
cause as is alleged by the Off. But if the Off means to acknowledge the same
they specially state a disproportionate
battery by the Off or rather the Off must
be stated as that it may appear to the
jury proportionate.

That the Off first assaulted in prima
facie a good plea but this evidence may be
denied by denying the fact or acknowledging it & proving a disproportionate battery.

There is no room of alleging the time
when if it appears from the date to be
within 3 years & if he has stated once
he may state another.
of the mode of pleading a lease, a release, or judgment

The less in ch. defends 4. because he says although he did come and hit the trees 5. yet he had licence from the less to hit at such a time and that the less ought to be blamed because he committed a trespass before or after such time. In this case he must cover all the time before and after the licence.

In case of a release he must cover all the time after the release; for that covers all the time before. In case of a purchase or judgment he must cover all the time before the purchase, for his trespass before the purchase is not merged in the purchase. He is as much liable as any other person.

Action of trespass on the case

1. This is maintainable whenever one sustains an injury in consequence of a lawful act 17th. 314. as where one drays in Smout 8. the water runs into his neighbor's cellar.

2. From an unlawful act 410. as if one throws a log into the Repp, away, & another there gets over it at the night.
3. Where the injury does not arise from any positive act, but from neglect of duty.

It is said that where a man finds a thing & suffers it to spoil, this carelessness he ought not to be liable, but it would appear that he ought if no care was taken to preserve it. Looked into第二节
another man more carefully preserved it. The man would then have recovered it, but then it is no question but that if he had not taken it into his care, he would not have been liable, but if a man will undertake to keep a thing in trust, he ought to be liable for any damage as if he was a bailee.

It makes no odds about the intention of the person injuring; if the thing is damaged in consequence of his neglect he is liable whether intentionally done or not—2 Lev. 172 & 196. True he need not be perfectly careful but if so negligent that a common man would not have suffered the thing to damage, then liable.

If the act is a public damage the action must be brought by them, if no private can be found, the same private injury is sustained talk 12.
An employer is liable for damage done by his servants as if the person employed were his own. So the Master is liable 2 Str. 164.

(Several of those cases mentioned under the head of trespass which ought to be ranked under this head—are in case of injuries done by animals to another's property or person by letting go, jury, &c. 2 Str. 1264.)

1. Of injuries done to one's person in important classes (where) a man's body is injured by a regular physician or surgeon. In all such cases this action lies—but if done by a quick doctor there no action. For it was the essence of folly to employ him 2d May 1713. This was where a regular physician injured a man by attempting a new experiment. This ought to have been an action of &c. Battery—

2. Where persons are injured by corrupt liquors—wherever sold there is liable 1 Holt 2b. Car. 510.

3. This action also lies for beating a man's servant, or child, also where one's wife is beat. Both husband & wife have their actions however good fortune.
Freshen up the case, & see with him for the Battery. Mr. R. has marked this class of cases the ranked by authors under help. vi et amis. Mr. R. thinks they ought properly to be under this head.

The father also brings this action for gross servitude, amiss for debauching his daughter. Special damages are recovered, & the recovery is entirely on another ground. The loss of service is not the smallest ingredient in raising the damages. The damage for which the daughter was before a lawed woman, no recovery is had, & yet in either case their is equal loss of service.

The true ground is the injury to the feelings of the parent, & consequent disgrace as one but the father or mother can bring this action, & it makes no difference whether the daughter is of age, or not, if she is in the service of her parent to much as to milk a cow (says Dunning). The defendant has the action — 2 Burr.
Lect. 5. Respect for the case.

Of the liability of Sheriffs for their
under officers' wrongs.

The Sheriff is liable civilly and
in criminal for all the acts of his under
officers, whilst in the execution of his
office; 1 Ch. 16.

Formerly sheriffs were not liable
for the greatest outrages there are in their
offices—but since they have become lia-
ble it is easy to see that they must be
more careful to appoint faithful officers.

Where the action is for neglect of the
under officer, the Sheriff alone is liable
to the person injured by the under officer
himself.

There must be a capital change of case
under this subject in that when
the officer suffers the prisoner to escape.

It is a rule of law that whenever
the damages can be ascertained an action
of debt will lie. On this principle this act
also lies against the Sheriff for suffering
the escape of a person but not on mere proof

To constitute an escape there
must have been an actual arrest or that
which amounts to this. An actual arrest
is where there is a real touching—

A constructive arrest is where there
is no touching but the officer reads the
complaint & the Prisoner goes with the officer


perhaps in the case of this implicitly acknowledges himself as prisoner. This depends altogether upon the submission of the prisoner; for if he refuses to be taken & runs off, it is near rest short of assistants to the officer may arrest if in his company. He need not be in the officer's sight, but may be distant from the officer, however, must be out on the business.

If the prisoner escapes, then the sheriff becomes liable. The doctrine of escapes consists of positive rules & it is not to be questioned what is reasonable? For these rules are fully established as law.

1st. Ancietyly, by the common law, the sheriff who suffers an escape to stand in the prisoner's place & suffers the same punishment he was to suffer.

2nd. In the reign of Edward the 1st an act of debt was allowed by Stat. Westm. & C. 13, being sensible of the enormity of injustice of the common law extending the equity of this statute to all other cases.

3rd. A century & a half after the action of debt was brought, an action of trespass on the case was made by Stat. 36 Geo. I., & it appears the defendant is there, but not entitled to the benefit of the Statute 15 & 16.
case was adopted by the Act. See the
volume of the Lectures for the whole
subject & Recue's first ex. Law
Lecture 56. Aug. 6th. 1794.

Where the prisoner escaped thru the
neglect of the jailer or the insufficiency
of the jail &c. The Court 3 things this action:
it is a litigated & unsettled question,
whether judgment must be rendered for
the whole amount, of the execution,
or for damages at the pleasure of the
Court. Our Sup. Ct. & the Ct. of Errors
have each decided different ways
at different times, so that the doc-
trines is yet open to litigation. Mr.
 thinks there is no doubt but the prison
in the case ought to be the rule of dam-
gages. When the Court decided against
his opinion, they went on the ground
that it is the very nature of an action
in the case, that the damages should
be uncertain & the plaintiff must run his
risk of recovering more or less than
the c. 30. Mr. just says this rule.
would keep inviolable. At all events it is true that in an action in the case of the damages are frequently ascertained as where debts' case are concurrent. In all such cases he supposes that in many such cases the damages are completely ascertained & that the jury, over the C.J. can vary them—the Eng. Law & Can. differ respecting an escape on & in one particular—while the officers release the prisoner, the sheriff liable immediately to the jury. But here the prisoner may come & surrender himself within 60 days after the escape & it is as well as if he had been kept in prison. If the sheriff is not liable till after the 60 days, for no body knows but the prisoner will surrender himself in that time. But if the prisoner has been in jail, & escapes any way, the sheriff is liable immediately.

If the process is void the sheriff is excused as where judgment was obtained fraudulently.
In the case

The sheriff may sue the bondman before he is sued by the creditor—see
Eliz. 53 where more liability is set

to be a ground of action.

If the debtor was a bankrupt when

canon of escapes, in Eng. his bondman

is liable at the debtors could find the

creditor in a better situation. But

the law have adopted a more equita-

ble principle that if the creditor

has not been injured by the escape, the

bondman shall not be liable. See

Hurst, 27th 2 Will. 325, 40 Mr. 1060

To talk not the where an attorney is liable

if he neglects to have the act signed &

issued. Also a justice must sign if of

fired & if any damage or consequen-

ted his neglect then liable. So of all

other ministerial officers—

Where the naked bailee is liable

to this action—see 2 Th. 1019. 25 Pe. 903—

This action lies against a Comm. Carrier.

He is liable when the goods were lost

any other way except by the act of God,
The case or by the open enemies of the land 24, 25, 26, 27.

Where it is owing to the act of God alone, then clearly liable. But where negligence is united with this where it appears that the carrier was to blame then he becomes liable Burnford 27. This case says, the carrier must not be any way to blame. 1 Bent. 109. 1 Burd. 33.

To make him liable the thing must have been committed to his safe care.

If the owner is to blame, the carrier is not liable as if he deceives the carrier by making him believe the goods were under their real value 1 Wm. 145. Earl. 485 4 Burr. 2278. 2 Ialk. 640. 3 Burr. 2611.

3 Wills. 429. 443. about Letters in a Folk of.

The Consignor or Confieree may bring the action against the thief who steals the goods 5. Burr. 2680.

Coachmen are not considered Com. Car.

Postmasters not liable for the injuries of their under officers. Earl. 734.

Rule in pleading. If either party states new matter, he must leave it open for the other party to traverse.

Remember this
Lecture 37th. August 8, 1734.

The tenant is liable, if he uses the farm negligently, as he would not his own, to this action.

He is liable at all events, it is not excepted after tender or refusal on his part. It is a general rule that the tenant must not use the farm ruined. There are exceptions. As where the thing is not the worse for using as a jewel for inst. or where it is a charge to keep as a horse. If however the jewel is stolen or use the pawn is lost, but if the horse is stolen the tenant is not liable. 2 Sam. 5:22.

This action lies whenever any thing is abused by the bailee, or where it is applied differently from the design of the bailment.

Where the purposes of the bailment are exceeded, & damage is done, accident happen the bailee is almost universally liable, as if a horse should be stolen out of the bounds of the bailment but there
may be instances where it might be litigated
as where the horse died with some disease
which he evidently would have died of had
the not been out of the bounds.

Tavern Keepers are liable to this
action, like Common Carriers & like Men
have a lien till paid their fees. It must
be a traveller, if this traveller must have
entered himself as a guest, to make the
Tavern Keeper liable—Calleys case 8 Rep. 22 or 322
Moore 7B. Felix 692.

This action also lies for all deceit
in this subject see Lectures 1 Volume.

Lecture 38. August 14th. 1794.

When one sells an article knowing
himself not to be the owner, he is liable
to this action. If he was ignorant of the
fact, and dealt honestly, for many had
sold lies of any fraud in the transaction, special dam-
ages are given in an action on the case, not in indem. ap. 
Civ. Inst. 474. 2 S. 593 Mul. 21.

The 2 last do on the ground of ignorance of the
not being owner. If it was a bargain of hazard
whether of these actions lie, if the purchaser
knows of the defects of quality or title.
The rules then are these:

1. If one sells an article to which he has no title, being ignorant of this, an action for money had & received lies.
2. Where he sells the article knowing that he has no title an action on the case for fraud lies.
3. Where he has the title, but there is some defect of which he was ignorant, no action lies.

Where a person obtains property out of the hands of another by deceit as where one goes under pretence of being commanded or requested by a creditor to take up money from a debtor & appropriates this money to his own use, he is liable in this action.

Moore 589

Where a man sells an house & Skill in his possession he is not liable that he has no title. Talk 218, Dec. 196.

Dry the thing. law an in this is liable criminal. the not civiliter for fraud.

A common count & liable for fraud.

1. Where one Mercht lends to another, who owed him to the amount of insurance money, to insure goods, & self & he refused he is liable to this action on the case. Dumb 187.
2. Where Merchts have frequently insured for each other one refusing upon the request of the
other is liable also to this action.
3. Where one sends bills of lading to a foreign
Merchant with a request to consign the same
insure back, if this Merchant accepts the Bills of con
signeeship, but fails to insure he is liable.

Of the action on the case for adultery.

This is generally lost as an act of
malice, yet it is an act in the case
N. A. is not the word assault, but there were
even entirely needless.

The grounds of damages are:
1. The injury to the feelings of the husband;
2. The alienation of the wife's affections;
3. The imposition upon the husband a parasitic offspring.

It is settled that if these 3 ground of damages can be proved no justification can be made.

The old authorities, but lately a different
 opinion has prevailed. At least it is agreed
that circumstances may be admitted to mitigate
damages, as to an actual or implied agent of the husband, in imposition of parasitic offspring.

b. The lewdness of the wife's character & where
her character is put in issue by the pleading,
the Defendant may prove particular facts to exculpate her character.
Treatise on the Case

Damages are enhanced by the lesser hap-
iness of the couple. The good character of the
wife previous—any peculiar obligation the &
was under to the &—the & being a man
of great property—and the high rank of the
husband & his wife—

Lecture 59th Aug. 12-94

On the act—a adultery—the incontinency
of the husband is a ground for extenuating dam-
ges, his beauty—his former unhappiness.

Principles relating to a rescue

The Sheriff may bring an action on
the case, or treble, or double, against the rescuer
By the Stat. Law the return of the Sher-
iff (that the prisoner was rescued) is complete
Evidence in a criminal process, but in
a civil, may be rebutted.

In the action the original cause of action
The treble, the arrest & the rescue by the Sheriff
must be stated. The name of the
issue is in necessary. When the Sheriff fails in
this action, the damages awarded are al-
ways the amount of the demand ag-
against the prisoner. & the same is the
case if the creditor fails, instead of the
Sheriff providing the prisoner was taken
in execution, or on mesne process if a
Bankrupt. The personrocured is a good witness from the necessity of the case; it is the
he is interested to charge the rescuers for
then he is evanement. An escape is also
a good witness to charge the Sheriff; No
interested when he escape is involuntary.
He have a flat compelling officers to
do their duty, which besides the com. Law
remedy inflicts a fine for not returning
by writing, but to subject the officer the ac
fine must be on the flat. If not mend,
act at Com. Law on the rescuer and it
tells by a determination of the Sup.C
that the flat extends only to misbehavior
with a writ on mean process—Is this the
true meaning of the flat?

An officer is obliged to serve a
writ if his fees be not offered him

An act on case lies for enticing
away one's wife, no there is no charge of
crime, but if there be sufficient cause
of which he C are judges, no act a lie.

This act a lie for enticing away
a Jew. 2 Lev. 69. chaps. 54. 10 jour.
m a lien in a lie of this kind—By 1845.
...leaves the resuming of any
election Week. 25. Also for a voter if he ap
posed his privilege talk. 19. 507 yesterday...
In an action at what under ali corpus, matters which constitute the foundation for an action on the case may be given in evidence to prove the damages.

Directions for a declaratory in said escape shall be original suit before a competent jurisdiction. The judgment rendered by the Court specifying the sum and an act issued upon the judgment, that it was delivered to an attorney, named and properly qualified, that he did arrest the defendant on the charge of said after which he suffered him to escape. Or if it be necessary to state whether the escape was negligent or voluntary, for that will come further in the replication.

Lecture 60 Aug 13th 94

The lowest kind of contract is parole, these are either express or implied.

The technical terms for these actors is

An express assumption is where the parties enter into a particular agreement to build a house.
Assumpsit Indebit.

more apparent in the plea.

Implied assumpsit is where the law implies a promise from certain circumstances. These circumstances must be such that when taken together it appears that one man ought in good conscience to pay another a sum of money.

An implied assumpsit will lie where no express will except where damages are in their own nature ascertainable. Here the express assumpsit must be lost founded on the contrast.

1. In all cases where the sum in damages is certain, debt & ind. are concurrent.

2. This act lies where goods are sold & no price agreed upon, & is concurrent with the debt. & an act of debt for a quantum vale.

3. Where wares for another & the wages are not agreed upon. Here ind. lies for a quantum meruit & book debt & debt also lie, if being capable of being reducing it to a certain as the market price is fixed.

4. When an internal computation where the parties have accounts & a balance is found, debt is concurrent with this act.

5. For money loaned debt is concurrent. & if it a promise to pay special all lies.
6. For money laid out by request. The case is the same as to Debt &c. &c.
7. For money laid out without any request as to J. &c. He O's family in the ab.
8. For money had & rece'd to the O's.

This may happen different ways. In short whenever one has in his hand another's money which he can't injustic retain, this action lies. This whether there be any contract between the parties or not

as where one pays money by mistake, where it is taken by fraud, where a man finds another's money, or refuses to reimburse money delivered to him. Another is also concurrent in these cases.

This also lies to recover back money paid or a judgment of C.F. when circums.

jury's turn it & plainly showing that the money cannot in good conscience be retained, or which if they had appeared before trial there would have been no cause of action - & after a recovery upon a policy of insurance upon a vessel supposed to be lost, the vessel should return. But neither for a mere erroneous judgment.

Where there was a just debt but
The security for it was illegal & void, as if
sought by duress upon the avoidance of the
security itself. Aff., lies for the many due on
the contract—1 Doug. 2732.

Then money is extorted from another
as by taking an undue advantage of his
situation or in any other oppressive means.
This act is lies. 1 Doug. 672 Bro. & Smith
But where the parties are equally in
fault no relief is granted.

Aug. 14th, Lect. 61. 94

Upon the Stat. of frauds & see page 35

Aug. 15. Lecture 62. 94

Assum. lies not only upon parole
contracts but also upon such written
contracts as are not specialties, which are
such as do not detail the consideration
as length but simply a blank "for value rec'd".

Of this kind are receipts in this county.
In such cases the act of Bank debt is un-
finally lost which is a species of aff. & the
receipt given in evidence

It is doubtful whether an act
may be sustained on a receipt of more
than 6 years standing that being the limit
of Bank debt action. Some determinations of
our Sup. Ct. seems to favor the idea that
such an action might be sustained.
It is common especially in important bargains for the buyer to make a deposit of some money as a security for the bargain. In fact if the vendor refuses to deliver the article the vendee may have recourse, or attempt to recover back the money or if the vendee will not complete the purchase the vendor may either retain the bargain free in abstract, for the remainder of the purchase-money, or he may let the matter rest and keep the deposit which is a forfeiture in law & equity. (Citations)

At a vendue when the article is struck off to the bidder the bargain is closed, but if the purchaser does not pay down the price unless an agreement to the contrary the vendue-masters may resell. He is obliged to strike off to the highest bidder & can not adjourn the vendue till he has without being liable in an action to the form ever so small. He must not employ one to bid for him, or the owner of the goods to prevent their going to the highest fair bidder. If he does strike off the article to the such employees bidder the property belongs to the highest fair bidder. (Citations)
Wagers in Eng. are recoverable at
down costs where they are cut off by
Stat., but No Cts. suffer recovery, rather
in account of former precedent, than
because such a practice is consistent
with principle. There has been no
decision on this subject in this county
but it is apprehended on Cts. would
adhere to principle notwithstanding
No precedents.

The requisites to make a
wager binding in Eng. are, 1. The
must be contingent, *in unknown to
parties, 5 Brow. 2803 Const. 474 must be
of such a matter as will not give
occasion to the introduction of in-
decent evidence or injure the feelings
or reputation of a 3rd person Const. 729.
2. No wager will be good, made use
of to cover an illegal transaction, or 4 is
in its immediate effect; contrary to pub-
ic policy. 5 Brow. 356. Wagers are never
considered in the light of a debt, contracted
neither debt nor indent. will lie a specia
affirm. is the only action.
Lecture 63, Aug. 16, 94

Humphreys

Humphreys will not lie to recover back a voluntary counterpoise done for me advantage of the person with an expectation of a reward, but if the person be affected a promise to pay it he is bound to do it. Such cases are to be distinguished from those where negotiations advanced by in great degree.

In almost a promise to pay so much on any future term is the rule of damages. The rule if there was no express promise for a certain form, but the jury are at liberty to determine what in equity is due. Yet there is one exception to the rule. That where there was a promise to pay a sum of money, the recovery is to be accordingly, where the promise was instigated not knowing the extent of his promise. The early case for example:

When the consid is illegal the contract is void, if it is stated in the declaration, as it must be in advance. That
The consideration the equitable claim
might be formally demurr to the dec-
laration & if it is in a specialty & con-
tained in the condition may offer
recite the condition & then demurr.
But if there be no condition but mere
"for value rec" plead the illegal consid-
eration & substantiate this plea by para-
testimony for there is no obligation how-
ever solemn if given for an illegal
consideration but when the condition
be gone into for the purpose of vacating
the contract or for any degree of illegality.

Cf. 199.

Many won of playing hazard and
can't be recovered & if hazard can't be
recovered back at common law the by
of Anne it may for in all cases where
the parties owe in pari delicto the law
leaves them where it found them.

If A promise B. 10$ to beat C. He
does it he cannot recover it & if A has paid
it he cannot recover it back. Yet if one
of the parties come into court upon the ground
of rescinding the contract, he may recover.
back his money as if B. does not
best B. accord to agree, A. may re-
cover back the money. Equitably
bad policy. It encourages B. to tell
scull B. for if he does not lose his cash
Doy. 43. Aug. 81.

Where one by deception gets ano-
her to do an illegal act unknowingly
towards a 3rd person as to imprison
him or the like, the person imposed
is sued & damages recovered of him
for that mistaken act, he may recover
against the person deceiving him. 175.
If one promises another a reward
to do what the law obliges him to do
as to an officer to serve a writ, the
promise is void & no recovery can
be had. 92.4

The case in Comp. 79.3 seems
to have established a rule that in a
which is in its nature an equitable ac-
tion, a 42 can never enforce conscin-
tiable demand.

Where there is no cons that at all
or a frivolous one, no recovery can
be had. What is meant by a fri-
tious cons is not that it is inadequate
but one that may be removed at the instant the promisor wills to deny as if the considerate to make an estate and it is determinable instantaneously & consequently is no consider.

When the consider of the promise was past, the law anciently was that no engagement to pay was binding, that is, it was no legal consider unless there was some kind of previous request. But the law now is that if the act done was beneficial in any way to the promisor it is a sufficient consider for a future promise to pay it, but if not beneficial, it would not only then was some kind of previous request. *Ant. 4. Colin. 292.*

If one being indebted to another promise him that in consider he would not sue him by just a time, the being specified (for promise is would be of no force) he would give him just a year it is recontractible. If A. owe B. 90 on note for any time & afterward for the same thing promise to give him more the promise that advance being
A judgment equitable may waive the note &
true in this case. It is made on the promise given
notwithstanding the gen. rule, that
you can't sue upon a hand
contract, when you have authority
of a higher nature.
N. Wills & Revocation

The Stat. Hen. 3d requires no particular solemnities to void, and consequently none were required to revoke any contract. Accordingly, a variety of cases arose where no solemnities were required to revoke a will. But afterwards, the Stat. 29 Car. made certain solemnities requisite both to make a will or revoke a will so that many things which before would revoke were cut up by the words of the Stat. of Car. But since this Stat. it has been adjudged in a number of cases (for which see Powell on Devise) that this Stat. referred to express Revocations I left implied Revocations as at Com. Law. Our Stat. has added the first part of the Stat. of Car. respecting the making of Wills I has left out that clause relating to Revocations so that it would seem that our Stat. has left the doctrine of Revocations as at Com. Law. Tho it is strange that the Legislature should break in upon that universal principle, running thru all contracts. "That no contract of a higher nature shall be avoided by one of an inferior nature" on the footing of reason I common sense a will attested by one made with great deliberation I attended with special solemnities ought not to be revoked lightly by an instrument made I attended with the same deliberation of solemnities unless indeed in those cases of 'cases under the rod of implied Revocations.'
The writ of Mandamus lies to restore persons to offices, to compel corporations to elect officers & to compel Officers to execute their respective duties. As if a Register to record deeds this writ lies to oblige him to do his duty. See Esp. Kirby's Rep. where it is settled that it lies in this Country. It is a settled rule in the Sup Court that witnesses may testify what a Party in the suit said against himself, but not what he said in favor of himself unless it was in the same conversation in which he spoke against himself. Remember.

It is also a settled rule in Sup. Ct. that
An Essay on Descents

By T. Spry,Receiver Esquire.

The law of descents both of real and personal property is manifestly derived to us from the early law of Charles II respecting personal estate. So far as it respects the distribution of estates among the lineal descendants of the intestate it is in terms the same with these differences. The law of bar respects personal property, whilst our law embraces both real and personal. Besides, with respect to collateral kinsmen, there is a greater difference. Formerly, there was none before the revision of the law of this state A.D. 1784.

The present law differs from the early law of bar as it respects chiefly that came by the gent, deed of gift or devise from some kinsman. The new law prefers brothers, sisters of the intestate, and their legal representatives to the next of kin, that is, the parents of the intestate. And instead of dividing the estate "to all the brothers, excepting the intestate, of the intestate," or, in failure of them, to "the next in degree," it vests it in any of his kinsmen that are next of kin, as is clearly the meaning of the early law, it restrains.
Desents
the distribution to male brothers & sisters for failure of them to such kindred as are of the
blood of the ancestor from whom the estate came—In this our Stat. agrees with the Eng.
law viz. that it is immaterial whether such
brother or sister be of the 1/2 blood or whole
proportion they are of the blood of the ancestor
from whom the estate came—
With respect to personal & real estate as was acquired by the intestate and
the way than by descent, deed of gift, or devise from some ancestor—it differs in
indicating brothers & sisters of the whole blood
to the next of kin viz. parents & in making
a difference between brothers & sisters of the
whole of the 1/2 blood & this is the only
difference for all the Stat. proceeds to
point out that in default of brothers of
the whole blood &c. shall take the
estate & for the want of such claimants
brothers & sisters of the 1/2 blood yet this
is no more than would have been effected
if the Stat had after the preference of
the brothers &c of the whole blood made use
of the same terms used by the Stat of Can.
Viz. the nephews of kin & their legal representa-


Descent.

The mentioning brothers and sisters of the ye blood in the Stat. expressly serves the purpose of ascertaining that brothers be are to be preferred to grandfathers, grandmothers be who are in equal degree with them from the in-testate.

And although this express provision is not made by the Stat. Stat. yet the Courts at Westminster have by custom understood the Stat. as to give the preference which is secured to them by our Stat. In all other respects our Stat. &

The Stat. is a literal transcript of the Stat. of Car

In discussing the subject I have computed the degrees of kinds by the Courts as is done by the Comp. Ct. when distributing estate under the Stat. of Car. I have supposed the same construction of terms is to be given under our Stat. as have been given to the same terms by the Comp. Ct. for whenever the terms used in the Comp. Stat. have been used under the same construction of certain determinate Ideas are applied to them by the adjudication of Ct. & if we exact a Stat. from the same subject, & use the same terms, it carries evidence in the highest degree that the Legislature is contented with the construction given to these terms, for if it had
been otherwise they would have expressed themselves in other terms, or at least have given an explanation to the terms used conforming with their own ideas—since the terms used were well understood to convey certain definite ideas in that country from whence we derive our language itself.

The Legislature must be supposed when they enact the law to have adopted the construction given it by the English in all cases where there are English habits, which we have adopted or copied at a time when such habits have been a custom. I apprehend such construction is emphatically our law. It is the same when they use technical terms without defining them. We have no where to refer but to the Eng. law books where we shall learn their definition. We shall acquire from them the determinate meaning affixed to such terms. If these definitions are as truly our law as the legal definition of such terms in this country as it is in Eng. as much to indeed as if the Legislature had defined the terms in the same language used in the books.
As far as law, so far is that precludes murder without informing us what murder is or how distinguished from other species of homicide, we must resort to the books of the law & form them, we may learn what was intended by the legislature to when the legislature enacted a code of an Eng. Stat. The rea's construction at the time our Stat. was enacted ought to be discerned & deemed of the highest importance. I shall therefore consider the decisions of the Eng. Cts. in such cases as have come under the Stat. of Can. at Frederic which will foreclose our Cts. in their decisions with the exception of those cases where our Stat. has so clearly enacted differently which have already been pointed out in all that clause of our Stat. which provides for the distribution of the estate of a dec'd person among his children & his legal representatives. Since the Repeal of that Stat. which regarded primogeniture in so great a degree as to give the oldest where there were no elder for a double portion. Such children & their legal representatives share their estate in equal portions that is if the children are all living, they take equally. If some of the children are dead leaving child or
Descents
whilst others are alive such grandchild of
the intestate take what their parents would
have taken had they been living. If all the
children had been dead leaving children such
children will now take her capias each in
his own right an equal share. And per both
purs and among lineal claimants representa-
tion is continued ad infinitum. and as long
as any lineal descendants are to be found colla-
teral kindred are excluded. It is immaterial
what kind of estate the intestate owned at his
death whether real or personal or whether the estate
came to him by descent it was acquired in any
other way it is distributed all in the same man-
ner. It is remarkable that the law does
not design to contemplate the estate of women
but I presume no doubt can be entertained
but that the estate of a dead female is to be
distributed in the same manner as that of a
male. It has been a question in the laws
whether a posthumous child was entitled
to a distributive share under the rules of dis-
tributions, but it is settled that such child shall
share equally with his other brothers and sisters
if he has any whatever may be the ideas enter-
tained on the subject by the common law.
Detent.

It is clear by the Civil law that such child
is entitled to his share equally with his other
brothers or sisters of the totum sibarum; whatever
ideas may be entertained on the subject by the law
of the Civil law has always governed
in the construction of the Stat. of Distributions.

In the case in A.Ch. the Chancellor says
that it is fully settled that the Stat. of Distribu-
tion is to be construed by the rules of the civil
law. It was objected that it was impossible
that such child should inherit before it was
in age for the distributary share under the Stat.
vested in the claimant immediately upon the
death of the intestate. So that if such claim-
ant should die before distribution yet his share
was irremovable. It would go to his representa-
tive, &c. it is admitted that such distributary share
vests upon the death of the intestate but the
estate where there is a posthumous child, to which
in the language of civilians, vests in ventre jamine
It that point see the case of Wallis v. Hodgson 2
H. 115. which is an authority where the case was
of Wallis litter of J. Wallis born after the death
of the father should inherit a share of his estate
with her another child by the Stat. of James 2°
Descents

All the other cases of line to the child
than a brother or sister could be is placed upon
the same footing with deceased sisters. It was
determined that B. Waller should share equally
with her mother, and all the doctrine
laid down in Palmer & Alcott, & Judgeon vs
B. is recognized as good law that the disburse
ment share vests immediately upon the ten
foots interstales death. Yet, it was held to be
no objection that B. Waller should not take
her share. The Chancellor held that she was a
person in rem natural & capable of taking
in rem at any more. So it was also held
that a decree to such a child was good &
will in his favor might be writ to ob
tain an injunction for committing waste.

A distinction obtains in the Civil
law between a child in venti fa ever &
the only conceived. The former is entitled to
a share of its parents estate while the latter
is not. I find no case in the Eng. Reports re
ognizing this as a sound doctrine & I appre-
end in this country where posthumous child
es, no such difference has ever been
contended for.
Descendants

Of the cases of the gift of descend, which declares that all to real estate which came by descent or deed of gift to the intestate from some ancestor or kindred that the same shall in case there are no lineal children of the intestate no legal representative of such children descend to the brothers or sisters of the intestate and their legal representatives of the blood of the ancestors from whom the estate came, if in case of persons who shall descend their descendants such estate shall descend to the next of kin to, & of the blood of the ancestor from whom it came. In this branch of the gift, if there are no children of the intestate, or their legal representatives it descends to the brothers or sisters of the intestate provided they are of the blood of the ancestor from whom the estate descended & if it is immaterial whether they are brother or sister of the whole or of the half blood, they shall inherit equally if they are of the blood of the ancestor.

The requirements of the gift are that the person to inherit shall be a brother or sister of the intestate & that they be of the blood of the. Suppose J. S. dies intestate having need an estate from his father. Then he leaves, by ascendants, leave S. S. his brother of the whole blood & also leaves his brother Dick, q
Descents

Title of the 3/4 blood, the son instead of his father Reuben but not of his mother Mary.

Title in such case Dick shall inherit equally with Tom, for he is brother of J. as well as Tom, & he is equally of the blood of Reuben from whom the estate came.

Let us suppose also that J. left a brother Tom. Then the son of his mother Mary by her first husband. In this case Sam is excluded from the inheritance of such estate to descend from Reuben, for although he is the brother of J., he is not of the Blood of Reuben to which the law requires. If there was no authority to guide me as to this point, the general intention of the law which man justly intends to preserve the estate in the family from whence it came would furnish an answer to any objection; as the general object is that the estate shall again return to the blood of the ancestor from whom it came. If the 1/4 brother Dick Stiles has an equal quantity of the Blood of Reuben from whom the estate came with Tom. But this idea is supported by Precedents, for it has been adjudged by the Sup. Court upon questions that have arisen between brothers of the whole 3/4. The 3/4 blood that whole of the 3/4.
shall take equally with those of the whole, for as discrimination was made betwixt brothers of the 1/2 & those of the whole blood it was out of the power of the Ct. to make any asale that the law required was that the person claiming should be next of kin, which was to be ascertained only by computing the degree of Kindred & by doing this we arrive as soon at the 1/2 as the whole blood. It was propriety of blood & not the quantity that was regarded by the Stat. Vent. 916. 323 In the case of Tracy & Smith this point was settled by the whole Court which has ever since been adhered to. There seems to have been before that time a different determination. The same observations may be applied to our Stat. No discrimination is made in this branch as respects ancestral estates it requires that the claimant should be the brother of the intestate & such is Dick. It also requires that the claimant should be of the blood of the ancestor from whom the estate came & Dick this qualification also it is therefore out of the power of the Ct. to add a qualification not required by the Stat. & if no relation of the intestate who is of the blood of
Descents

Remember when such estate does escheat, it is not so expressed in the Statute but this is a necessary consequence of the restriction laid upon the inheritable quality of such estate. As the doctrine of escheats is not applicable to person, estate it will be impossible to find any precedents respecting this matter in cases that have arisen under the Eng. Stat. of Disturbance but it is analogous to the Eng. law of descents furnished by the feudal maxims that whoever inherits an estate must lie of the Blood of the first purchaser of the known consequence so that it could escheat rather than any other person should inherit it. Therefore in this instance happen. Thus according to the feudal ideas of the Blood which means by near descendants only whereas a person purchased an estate it could be inherited by no person but the heir of his body. This was the law as it respects to the purchase, estate or not in fiction as it was called for the purpose of letting in collateral; it was to the inheritance just previously the narration a fiction of law.
was invented that every feudal power should be held at antiquum & that the law stipulated that it descended from one ancestor and as it was impossible to know from what ancestor whether from maternal or paternal lineage; it was to be considered a law of indefinite antiquity that might have descended with the same probability from one ancestor or another. This fiction let in all the collateral kindred of the deceased to inherit such estates in their order, for it being uncertain from what ancestor it descended there was a degree of probability that it came from the ancestor of the claimant whomever he might be. So that he was a kinsman of the deceased and entitled to all. This probability created by fiction was sufficient to prevent the estate from extinguishing but when the estate was actually a descended estate, it could not be inherited by any kinsman on the part of the mother & vice versa, & in failure on part of the father or on part of the mother such estate ceased to have any inheritable quality. The last article hung, provided by
Descend

for brothers' heirs and their legal representatives, proceed to direct the descent of joint estates to the next of kin to 8 of the blood of the ancestor from them.

It is apparent that the legislature has not used the terms 'of the blood' in the Scirial sense it being a maxim of the feudal system that no person shall inherit an estate unless he was of the blood of the 1st purchase which was understood to be some person lineally descended from him to the exclusion of his collateral kindred.

It cannot be so understood in this State, for when the State made provision that the estate should descend to the next of kin to 8 of the blood of the ancestor if it descends from a parent it was in the event of a total failure of all lineal descendants of the ancestor from 8, absolutely unmeritorious if thus understood. For in the case but if he dies without brothers & their legal 8 of the blood of the ancestor then when the 8 shall descend to the next of kin to 8 of the blood of the ancestor 8, but in this case all the lineal descendants of the ancestor have
Descent

utterly failed therefore it can't mean his lineal descendants for it is clear such estate is already descindible by a previous provision of the statute to the brother sister of the intestate & their leg. rep. if they are of the blood of the ancestor.

If the estate came from a father or mother it is manifest it is then feasible to provide that on failure of such estate should go to the next of kin of the blood of the ancestor intestate for there would be no such persons. It may be said that notwithstanding this. the feudal sense may be a just one for the estate may have come from some collateral relations as an uncle or a brother & that it is intended when the estate comes from them that it should on failure of brothers & of the intestate & their leg. rep. to go to some lineal descend of him from whom the estate came as to instance the lineal descend of an uncle or their leg. rep. However this might be this is a case if the terms were no
Debents

when used only when providing for the
rest of him. But it proceed farther
if says the estate shall go to the brothers
& sisters of the intestate & of the blood
of the ancestor from whom it came. But
in the literal sense of the word, the in-
testate could have no first brother &
sister when the estate came from an Un-
cle or Brother for his brothers & sisters
would none of them be 'linen' descendants
of such Uncle or Brother. In all
such cases then there would be no reason
to take— at least the brothers & sisters of the
intestate would be excluded—manifestly
inconsistent with the intention of the Stat-

Of the Blood of the ancestor

must mean something more than mere
by some lineal descendant of the intestate
it being demonstrated that the Stat
did not intend that it should be used
in the confined sense appropriated to
it under the lineal system. I cannot
conceive of any other meaning that can
with propriety be applied to it than
that the person entitled to inherit
must be related to the person from whom
and then to us for this purpose inordinate whether he be a Father or an Uncle if related he is of the blood of said ancestor. This I apprehend must be the true meaning of the terms since it can not mean that only who are descended from him. Admitting this construction to be a just one there is a tautology in this clause of the Stat. for the estate is to go to the neast of him to $8$ of the blood of the ancestor to which is the same thing as to say "to such person who is nest of kin to such ancestor $8$ at the same time related to him" or in other words "to the nest of kin of such ancestor who is nest of kin to him" that "of kin to him" and "of his blood mean the same thing we have the opinion of the Big lawyers who translated the Latin Stat. of Hen. whose administration is directed to be given or grant "to the nest of kin" which in the original word is "Proximo de sanguine". In this case I will hazard a conjecture that there has been an omission of the words "the intestate" to be inserted immediately after the words "nest of kin"
which will rescue the Stat from the impu-
tation of tautology—The Stat then will
stand thus "to the next of kin to the in-
testate & of the blood of the ancestor from
whom it descended" As the Stat had before
directed that the estate should descend to the
brothers & sisters of the intestate of the blood
of the ancestor &c. So now on the failure of
such relatives of the intestate the next
object in view is the next of kin to the in-
testate with the same qualification of be-
ing of the blood of the ancestor It is as
much as to say If we can't find a brother
or sister with this qualification we will select
his next relation who has that qualify.
In addition to this when we examine the
subsequent parts of the Stat we shall find
that when other estates besides ancestral
such estates are to be distributed among the
brothers & sisters of the intestate as the first
objects of its bounty upon failure of them
it next contemplates the nearest of kin to
the intestate Therefore to preserve an a-
alogy in all parts of the Stat it would ten
as if the Stat intended to contemplate the same
objects of its bounty in this clause of the
Desc. Stat. as in other parts, only requiring to an -

swer a particular question that just repairs

should have the qualifications of "kin" of the
"blood of" or in other words "of kin to" the ance-

tor or if the word "to" & "of" were erased

the Stat. would then have the construction con-
tended for. For it has been determined that

when the Stat. speaks of the next of kin it
uniformly means the next of kin to the

intestate. Of that clause of the Stat. Nat directs

"that all the estate except ancestral shall in

the first place descend to brothers or the state

of the whole blood or kin by. Rep. & on failure

of such heirs to his parents or on failure of

parents to the brothers of the "o blood & if there

are no heirs of this description to the next

of kin to the intestate & their leg. Rep.

I apprehend it will be found that the term

leg. Rep. in the last clause of this Stat. are mispla-

ced ought to have been inserted next after

brothers of the "o blood for to further them

to remain in the place in which they are

printed in the Stat. Book will not only destroy

the symmetry of the Stat. but manifestly

oppose the intention of the legislature & render
The Statute in the former part of this clause
negatory & contradicatory to itself. Where
we find the Stat. in the former part of this
clause providing for the Brotherstke of the
intire of the whole & their Leg. Rep. we should
expect that when provision was made for
the Brotherstke of the whole & blood that a like
provision would be made for the affection
atives, but the Stat. as now termed falsly
House of this & makes provision for the Bro-
therske of the whole & blood without mentioning
their Leg. Rep. Do in the case but of this
death who purchased an estate with his
own money & having left neither child nor
their Leg. Rep. or brothers & or their Rep. of
the whole blood or lastly any hearets; but
Sam & Sally Rowe, brotherske of the whole
the Stat. provides that Sam. Sally shall
take such estate, but if Sam is dead leaving
child Sally will take the estate, but if Sam is dead leaving
child Sally will take the estate to the
exclusion her brothers childr. so they are,
not provided for by the Stat. at it now stands.

It can hardly be supposed that the legisla-
here meant to exclude Sam's child for had
Sam & Sally been heirs of the whole blood
Sam's child would have taken an equal
Share with fully & to preserve the symmetry of the last we should expect the same provision made for the Rep. of the 1/2 blood as was made for those of the whole blood & by the transposition of the word "and their legal rep." as proposed this provision will be affected for in that case the hat will read "to the brethren of the 1/2 blood & their leg. Rep. & for want of these to the next of kin." And it ought to be remarked that in the former clause of the hat respecting ancestral estate when it provides for brothers & sister of the Issue of the whole blood of the ancestor from us it also provides for their legal rep. We may therefore reasonably suppose that when in another part of the hat where provision is made for brothers & that it is also made for their legal representative. & that also in this part where provision is made for brothers & sisters like one would do taken of their representatives. & provides it seems extraordinary that the hat should go on & make provision for relations more remote than brothers & sisters & then provide not only for them but their leg. Rep. & neglect to make provision for the Reps. of such brothers & sisters.
Descendants

Let the word remain where they are & the
Stat. is plainly repugnant to itself, for pro-
vision is made that there shall be no repre-
sentation after brothers' sisters' child i.e.
if GS is dead leaving brothers' sisters' child
such child take with their uncles, but if
call the brothers are dead leaving child & som
of their child leaving children, such last child
shall be excluded from the inheritance, no
representation being admitted but among
brothers' sisters' children for example GS died
leaving his brothers John & Harry they inher-
et equally & if Tom is dead leave Geo. he takes
by rep. what his father would have taken.
But rep. Geo. also dead leave a son Alfred,
which son could not take with Harry for
this would be to take by rep more remote
than what is provided for & indeed it is
repugnant forbidden. And the case would
have been the same if Harry was dead
leaving a daughter Susan. She would have
taken the whole of her uncle John Miller's estate
to the exclusion of Alfred for representation
is not admitted among collaterals further
than brothers' sisters' children. But to let
in Alfred would carry the right of rep. to
the grandchildren which is forbidden by
The Stat. That if we admit that the words legal representatives are rightly placed it will let in Alfred to inherit with Susan which is expressly forbidden in another clause of the Stat. We will suppose Tom, Harry to be brothers of the same blood & both dead & for want of first hecators to descend to Geo. & Susan for they are next of kin & if Geo. is dead then must the estate descend to the next of kin & their legal Rep. id est to Susan & Alfred who is the leg. Rep. of Geo. Thus that which is forbidden in one branch of the Stat. is effected in another & Rep. carried on among Collaterals & extincts. But if we suppose the terms misplaced the Stat. will read thus "to brothers & sisters of the Geo. blood & their leg. Rep. & for want of such to the next of kin" in such case Tom & Harry would inherit equally & Tom being dead his son Geo. his leg. Rep. would inherit equally with his uncle Harry & admitting Harry to be dead would inherit equally with his cousin Susan but Geo. being dead Susan would inherit the whole as being next of kin & Alfred would be excluded for Rep. cannot go further than brothers sisters children & Alfred is the grand child of first brother. If indeed Susan was dead
it was determined that they were yet that they
should take equal shares of the estate of the
intestate — see Wells case 1st P.M.; where
it was determined that a brother's grandchild
could not inherit with a brother's child. See
also Powers case 1st P.M. where it was deter-
imined also that an aunt or son could not
inherit with an uncle.

"Of that clause in our Stat. No.236;
provide that in failure of lineal de-
scendants the estate shall go to the brothers
of sisters or their leg. neph.

It will be found upon examining
of the cases which have arisen in this Eng.
case under the head of distributions where
the terms leg. neph. are used from whence
we derived them & introduced them into
our Stat. that the child of the brothers or
sisters of the intestate do not in all cases take
as they to their parents, that is, they do not
take by representation what their parents
would have taken. As for instance suppose
JS to have died leaving his brother Tom &
his nephew Bob each brother the sons of his broth-
er Harry who died in the lifetime of JS.
In such case Bob & Peter would take a moi.
The estate of the deceased are now before the court. The will of the deceased is as follows:

1. The children are to be cared for by their father and mother. The eldest child is to receive $1000.
2. The second child is to receive $500.
3. The third child is to receive $250.

The will further states that in the event of the death of any of the children before the age of 18, the inheritance is to be divided equally among the surviving children.

The estate is valued at $5000, consisting of:

- 12 pieces of jewelry
- 2 pieces of silverware
- 1 piece of gold

The executor of the estate is named as John Smith.

The will is witnessed by:

- John Doe
- Jane Smith

The will is dated: September 1, 1852.
have been otherwise had one brother or sister been living – Sec as the case of Loyd'zinda.

From this construction of the term Rep. there necessarily follows this conclusion that if there are any relatives of J.T. as near of kin as brothers or sisters child where the right of Rep. has ceased by the death of all the brothers or sisters in J.T.'s life then such child will only take equally with such relatives – the nephews & nieces of the intestate as in the case of Tom & Harv.'s death before J.T. leaving their child James Peter, Bob & their Uncle Geo. In such case as James Peter & Bob do not take by step but as next of kin & as Geo. their great uncle is in the same degree of kin & near to the intestate with themselves Geo. must take with them.

That this idea is justified by an authority see the case before cited in 2 B.R. 273 & 1 M.K. 454.

It will not only happen that where the right of Rep. has ceased that Uncle & Aunt will be let in to share equally with nephews but if there should be any person in a nearer degree to J.T. than they are they will be excluded.
Descents

for in the case put of the death of Tom
Tanner leaving his child James, Peter
& John if Solomon Stiles the grandfather
be alone he will take the whole estate
for he is in the 2° degree, whilst his neph-
ews are in the 3°. This is a necessary con-
sequence of the doctrine laid down in
the case cited that the nephews do not take
jure representationis, but as next of kin

Salk 251. 206. 213.

We have already seen that the
aunts & nephews stand upon an equal
footing. What if the nephews can take
where there are no brothers or sisters, so also
can an aunt to where one takes so does
the other both being in the 3° degree.
If therefore the aunt is excluded by
the grandmother who is in the 2° degree
so must nephews & nieces be excluded
for the same reason.

It has been mentioned that our Stat.
gives to brothers & sisters whether of the
whole or a blood a prioritu, to all other
persons in equal degree for by the expre-
luced of the Stat. they are to take before
other kindred, only that parents take
before brothers & sisters whether of the whole
of the blood which is no more than what
they would have done had there been
no priority mentioned by statute or if our
statute had like that of Ckt. 2. distributed the
estate to the next of kin parents would
have first taken as being in the 1st degree whilst
brothers & sisters are in the 2d. But all the grand
parents are in the 2d degree as well as brothers
& sisters our statute gives the preference to brothers
& sisters in that no question of this kind can arise
under our statute between a grandparents & brother
or sister the same has been a subject of litigation
in the Court of Error.

We have seen that the grandparents
is preferred to the aunt she being in the 2d
degree while the aunt is in the 3d. For the
same reason the grandfather ought to share
equally with the brother of the body being in the
same degree.

We have likewise seen that an
aunt inherits equally with nephews & nieces
when they do not stand in loco parentis
because they are in equal degree for the same
reason an uncle's child & brother's child inherit
equally both being in the 1st degree.
Deserts

It seems in all those cases the rules 

prescribed by the Stat.

have been sacredly adhered to, & why

they should be disregarded in the 

influence of a godfather & brother I have 

found no reason assigned. & Who no such

question can arise under our Stat yet 
it may be important for us to know that

these cases are to be considered precedents 
founded on principle, for the reason of

them will extend to cases that may hap

pen with us--for the same reason that

a brother is preferred to a godfather, a

nephew or niece should be preferred to

an aunt & sister is not provided 

for by our Stat only in those cases

when they stand in like parent

With respect to the Stat of James

2d which places a brother upon a footing 

with brothers & sisters it may not be ac

cepted to observe that although she is to take 

only an equal share with them yet 

it has been determined that where there

is no brother or sister or cop. they of them

alone there may be other claimants in
A man who will talk the absurd, as above, 

as well as the wise, is worth listening to.

The man who talks nonsense and mixes it up with sense is quite the man to be amused and listened to.

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Descent.

A freed in loco parentis — And upon the same grounds according to the decision of Deedyn & Deedyn if she is consid as a brother she would take the whole from a grandfather although he is in the same degree.

In the construction of the Hat of Car it was always understood that where there was a father and mother the whole vested in the father not indeed as being nearer of kin but as that God was considerate merely about personal profit if the share should vest in the mother it would at the same instant become the father's. It might then go as well to suppose it in the first instance to vest in the father. But where our Hat which is considerate about real as well as personal profit gives the estate to parents upon failure of the brothers sisters of the whole blood I apprehend a very different construction would be given since the mother although a fine covert is as capable of accepting real profit as the father she ought therefore to be considered as a tenant in common with the father. As to the personal profit thus given by the state it might be consid as vesting only in the father with the same propriety in this country as in England. The End.
An Essay on Bills of Exchange
by Tapping Reeve Esquire

A Bill of Exchange is nothing more than a written request from one to another to pay to a 3rd person a sum of money. The maker of the Bill is called the drawer, and the person on whom it is drawn drawer; & the person to whom it is payable the payee. It is regulated by the Law Merchant which is the general usage of Merchants in the Commercial nations of Europe & their Asiatic, African & American colonies & also among the Merchants of the United States of America.

This Law Merchant is recognized by Courts as the law of the land & is not provable by the testimony of any person whatsoever. It is true the Law Merchant is not universally the same in every country. And wherever a usage prevails in one country variant from the general usage of nations this local usage is the same to the Law Merchant as a custom is to Common Law & this like other customs is provable by witnesses, &c.

It is to be presumed that the drawer
Bills of Exchange

has received money of the Payee & that the
drawer has the effects of the Drawer in his
hands to the amount of the Bill if he ac-
cepts it. But this is by no means necessa-
ry to the validity of the Bill—for whether
the drawer has seen money or not, or whether
the drawer has effects of the drawer or not,
the drawer is liable to the Payee if the
drawer does not accept the Bill or has ac-
cepted it & refuses to pay it. When the Pay-
ee has a Bill & presents it for acceptance
if the drawer refuses to accept it, it then
becomes the duty of the Payee to give the
drawer notice of such refusal, that the
drawer may have an opportunity to with-
draw his effects if he had any in the draw-
ee’s hands, & by means of this notice the
drawer becomes liable to the Payee in an
action of debt or indebitatus Assumpsit.
If the Bill is accepted & not paid according
to the tenor of the Bill the Payee must give
the drawer notice of the non-payment, that he
may charge the drawer as in case of non-
acceptance—and if this notice be not sea-
onably given any loss occasioned by the re-
moval or Bankruptcy of the drawer must
full upon the payee, for in case of non-acceptance the neglect of the payee in not giving the drawer notice is considered a discharge from the payee to the drawer, for the drawer may have withdrawn his effect in the hands of the drawer, or in case of non-payment the payee is considered giving credit to the drawer and has an action on the case against the drawer by giving notice of non-payment he has an action against the drawer; it is optional with him against whom he pursues his remedy. And if he elects to sue one in preference to the other, he cannot obtain payment of the one whom he suits he may resort to the other. The mode of giving notice to the drawer of a refusal to accept or to pay after the acceptance is ordinarily by protesting the Bill which is done in writing before a Notary Public which protest is entered by the Notary to have been made. If there be no Notary the same is done in the presence of two or more respectable inhabitants or by them certified, which protest is sent back to the drawer by the first post after the time of payment and when this mode
Bills of Exchange.

of notice is pursued not only the contents of the Bill as in Com. Bills, but the damage sustained thereby in most countries estimated at 20L 5% and are recoverable. If the Bill be accepted to be paid agreeable to the tenor of it and not paid at the day of payment there are by the Law Merchant 3 days allowed called days of grace. If the Bill be drawn payable in a month & accepted payable in six months, this shall bind the acceptor according to his acceptance. Yet if the drawee would charge the drawer he must set the Bill protested for non-acceptance.

The Law is the same when the drawee accepts the Bill for part & refuses to accept for the remainder. Whatever opinion may have prevailed in Courts respecting partial acceptance, it is now settled that such an acceptance is binding. Any words which indicate the drawee's agent to pay the Bill is an acceptance & although in other contracts the Law requires that there should be a consideration or the evidence of such consideration
Bills of Exchange

from the acknowledgment of value receiv’d
yet in the case of Bills of Exchange, if
there be no consideration for the engagement
or if it be upon a partial consideration the
person contracting is bound. When a Bill
is made payable to the payee or order the
payee may endorse it over to another if
the property becomes the endorsee’s who has
the same remedy against the drawee & drawer.
as the payee had it also against the indorser
who is considered as making a new Bill.
If there are ever so many indorsers he may
have his remedy against either whom he
elects if they in their turn against any
prior indorsee. Whichever discordant opin
ions may be found in the Books it is now
settled that an indorsee may sue any indor
nor without making any demand upon
the drawer or endeavoring to recover the
money of him. 2Bun. 673. When an in
 dorsee suits an indorser he need not prove
the drawer’s hand writing. For if it be forged
the indorser is liable. Talk 127. When a
Bill has been accepted it is the last indorsee
Bills of Exchange

who has a right to the money & can sue the
drawer—but if a prior indorsee pay the last
indorsee he may sue the drawer. If an indor-
see or payee accords any part of the Bill of
the drawer he can never resort to the drawer or
indorsee. It is not in the power of the payee
to indorse part of the Bill so as to subject
the drawer to more actions than one, but if
such indorsee will acknowledge satisfaction of
the remainder upon the Bill such indorsement
is good talk 85. An indorsement in blank with
only the indorsee’s name puts into the power of the
holder to file it up as he pleases either with an
assignment of the Bill, or a power of attorney
of whatever it be the indorsee is concluded thereby
talk 128. But until the blank is filled up it is
no evidence of the property talk 130. A Bill “to
one or beaver” is not assignable talk 125. If such
Bill be found or stolen it vests no property in the
finder or thief yet if the drawer pay such Bill
it shall be allowed him by the drawer if
such finder or thief pays the Bill to another
person who is not party to the writing a property
in the Bill is acquired in the transfer. If a
drawer refuses to accept the Bill may be ac-
ccepted by a person on whom it is not drawn
for the honor of the drawer & such acceptance
is binding. In this case the Bill must be protested
so that the drawer may be charged by the payee & by
The acceptor. In some instances the drawer may have an action on the case against the drawee as if the latter accepts & afterwards refuses to pay & the drawer has been obliged to discharge the payee for the acceptance of the drawee is prima facie evidence of his having the drawee's property in his hands to that amount & this by the custom of merchants justifies the drawer to the drawer. But in the acceptance is just prima facie evidence yet if it appear that the drawee has not the effects of the drawer the drawer will fail of a recovery. If the acceptance is for the honor of the drawer no action is maintainable by him against the drawee upon the custom for from such acceptance no presumption arises that the drawee had effects in his hands. A Bill may be indorsed to the drawer & the indorsee may maintain an action against the drawer after acceptance on the other hand the drawee may have his action against the drawer for so much money laid out at his request. But if it appear in evidence that the drawee at the time of payment had in hands property of the drawer to the amount of the Bill he will not prevail. When the drawee accepts the Bill is indorsed the indorsee may maintain an action against the drawee although the drawee's name was forged but the payee could maintain no action for he would be receiving benefit for his own wrong yet an innocent indorsee is not to suffer who probably rec'd it upon the evidence of the acceptor who is presumed to be acquainted with the handwriting of the drawer. When the holder
A Bill of Exchange means a negotiable instrument. The note is not a Bill of Exchange, for every Bill of Exchange must be made payable to order. And yet it appears an ineffected point whether it be good without acknowledgment in the note, "Valued at..." The better opinion is that "This is not negotiable." When an endorsee has receiv'd part of the sum of an indorser, he shall notwithstanding receive the whole from the drawer.

A Bill made out of a particular fund is no Bill of Exchange nor one payable upon a future uncertain contingency.
Essay on the liability of infants for their Contracts.

(By Tapping Reeve Esq., of Litchfield.)

By the term, infancy in our Law is understood a person under the age of 21 years. During the period of infancy the infant is subjected to the authority of his Master, Parent or Guardian as the case may be—his services belong to them. If it is generally true that he cannot by his contract bind himself in such a manner as not to have it in his power to avoid those contracts if he pleases to avoid them...The contracts of others with him shall bind them even when there is no other consideration than the infant's contract. Although an infant is not liable upon his contracts yet he is liable both civilly and criminally for his torts. If a minor at the age of seven years or under do that which in other would be an offence, he is not liable to punishment, for the presumption of law is that he has not understanding sufficient to commit a crime against which presumption no proof is admissible. Between the age of 7 & 14, the presumption is that for want of understanding he cannot be an offender; but evidence is admissi...
able to remove this presumption, of if he be found doli capax he shall be punished as a criminal, in this case militia supplens a lamen. Between 14 & 21 infancy can in no case be any expense. The same rule obtains as to his liability for any injury done by him. If he is liable to an action of fraud or indictable as a cheat. Although an infant may avoid his contracts generally, yet he shall be bound when those contracts are for necessaries which are Physick, Clothing, Food & Instruction and that must be such as are suitable to the infant's age in life, which it is reasonable to suppose that a person under his circumstances should procure. For it may be very necessary that an infant who has no parent, master or guardian, or who by the Providence of God is separated from them, so that he can make no application to them for relief, to contract for his comfortable subsistence, for those things which whilst with them under their care & protection would not be necessary for them to contract for. Since from them he would receive all that was necessary for him to receive; or when a child is so treated by an unnatural parent or cruel master that a comfortable
reasonable subsistence is denied him, the law will substantiate his contracts for necessaries—that is, the law puts it out of the infant’s power to refuse payment for necessaries afforded him under such circumstances as have been mentioned. And even in this case whenever his contract is so managed that the consideration of the contract from the nature of the security cannot be enquired into, such security is void. If the law was otherwise, the infant might be compelled to pay much more than a reasonable price for his necessaries & thus this indiscretion ruin himself. Here we find that the infant cannot bind himself in a bond with a penalty, for in this case the court can not enquire into the consideration, but judgment must be rendered for the whole sum in the condition with interest, when perhaps the real worth of the necessaries was not half so much as the sum contained in the condition. This I conceive to be the true reason why a bond with a penalty does not bind the infant—and not the reason commonly mentioned in the books “That it cannot be for the advantage of the infant to subject himself to a penalty,” as the Court are constituted with power to chance.
down to the principal sum & interest. And however this may be a reason in Courts of Law before the Statute of Ann vesting the Lord with this power of chancery, since that it has certainly ceased to be a reason. Upon this ground the consideration of a single Bill may be enquired into & altho' the Bill acknowledges a debt of 50L yet the judgment may be for 5L only & if it be found that the necessities for which the Bill was given were of no greater value. We find also an infant is not bound by a note of hand negotiable; for the consideration of such a note cannot be enquired into—he is however bound by a note not negotiable; for in this case the consideration may be enquired into. So again he is bound by a bill of exchange when no inquiry can be made respecting the consideration. No action is maintainable against an infant upon an Insurable contract. And altho' it is true that an Insurable contract may be enquired into the reason of the case seems to be that the only consideration set up as a ground of the promise is an account stated where the law does not consider the infant as having sufficient discretion to state an account. In all these cases
who the security is void yet the contract remams good. Thus stands the English law respecting the contracts of infants. So in no case shall the infant be liable for more than the value of the necessaries purchased, this case indirecly implies giving a security which from the nature of it would prevent any angving into the nature of the necessaries. And yet in no case shalle it be in his power to avoid the paynt of the just value of the necessaries. That infants should be bound to pay the real value of the necessaries is an idea that has been adopted by one Court, and that they shoule not be obliged to pay an exorbitant price for those necessaries is certainly to be wished by most on all hands; be acknowledged to be a doctrine highly reasonable. But would all the doctrine utterly destroy the rate of an infant in this Country? A note of hand is treated by us as a bond is treated in England. If the consideration cannot be enquired into, might not an infant in this way be subjected to great loss when he has indirectly given too great a price for necessaries, or given his note for them. If thus, project himself fall a sacrifice to his own in
discretion of the awance of the Shurer, which
most undoubtedly the Law means to protect
him against? Is an infant's note to be consid-
ered void if no action maintainable. These or all the
given for necessaries? This would be contrary
to practice & yet the Law can never afford that
Protection to infants it means to do unless
the idea is admitted, or when infancy is plead
the rule should be relaxed respecting the en-
quiring into the consideration of finding the
true value of the necessaries without any res-
pect to the sum promised in the note? The
adoption of this method of rejecting the note
& compelling the creditor to refer to the origi-
nal contract where the value of the article
sold may be ascertained by the Shiors, will pre-
sure entirely the principles of Law in compel-
lng the infant to pay the just value of the
necessaries and at the same time prevent his
suffering any injury from his own indiscre-
tion. It is the most necessary to adopt the me-
thod prepared when we take into consideration
that the articles themselves which are necessaries
do not convey to us the full legal import of
the term, for that which is necessary for one
infant may not be so to another. The circum-
stances of the infant must always be taken
into consideration, for whenever the infant is
under the care of a Guardian, Master or Guardian. If the government is duly exercised in a contract for the articles termed necessaries, shall bind the infant, if they were not necessary for him in his situation. But when the infant is the subject of their government or protection, or when an unnatural parent or cruel Master, or avaricious Guardian shall so conduct towards an infant, that a comfortable subsistence is denied him, or if they should be incapable of affording that subsistence, the infant's contracts for necessaries should bind him. This may frequently happen. A minor is liable to be called into the field in the time of war in a distant state separated from his connections and cannot resort to them for relief, let his circumstances be ever so distressing. The same may happen when on a journey upon business or for the recovery of his health. And the case is not altered if the infant voluntarily leaves his parent with or without reason, for it is the situation that gives efficacy to the contract without any reference to the preceding cause which occasioned that situation. Thus I conceive stands the Common Law. It is said by some, that our statute has made a material difference, & considered all contracts of infants void, so that their contracts for necessaries are equally void as those.
other contracts. I conceive the Statute has made no alteration, but is only a statute in affirmance of the Common Law. The mode of expression made use of in the Statute is "All persons under the government of Parent, Master or Guardian shall be incapable of contracting." The true construction of which I conceive to be such as are the subjects of their actual government for such can never want to contract for themselves. There was no occasion for trusting them. But this incapacity ought not to be extended to all such as true parents or to be situated with respect to them, that no government or protection can be afforded them. In this view of the matter it differs not from the Common Law unless it may be supposed that the Statute intended to protect minors from contracting when under the actual government of parent. But however miscall the government was exercised, it can hardly be thought that so important a provision could be the object of the Legislature or that the term "government" in this Statute was meant to extend to a government miscall exercised. I conceive such a case ought to be considered as an exception which the Statute never intended to cover. Besides if the Statute had intended any thing of this kind it to over
The doctrine of necessities, a doctrine in the time the Statute was enacted thoroughly understood, then terms more decisive of the intention of the act would have been made use of. This has long been the law of this State. Yet the doctrine of necessities has never been questioned. The Statute at the time it was made received no such construction as was subservient of this doctrine. A total silence in all our Courts respecting any alteration actually made or intended is confirmation of the construction I contend for. In the revision of this Statute we find that after the Statute has declared that "all persons under the government of Parent Master or Guardian shall be bound thereby." The Statute enacteth that "in such case the Parent Master or Guardian shall be bound thereby." The last clause was not the Statute previous to the revision. But I conceive that was no alteration of what the law before was, but a more explicit declaration of what the Statute intended for the obscure manner in which the Statute was before expressed might lead to this construction. That a person allowed by his Parent to contract was bound by that contract which the Statute never intended. The license to contract added no efficacy to the contract so as to bind the person contracting but only operated so as to make the person thus licensed binding upon the Parent. In other words, the contract of the mi
This would occur as a consideration for inducing a party to enter into the contract. The contract itself contains as essential provisions as to the duties of the parties. It is an agreement between the parties as to the terms and conditions on which the contract shall be fulfilled. The contract is enforceable by either party against the other party to the contract as a written agreement. It is a legal instrument that binds the parties to the terms agreed upon.

As such, it is an agreement that the parties have made in writing, and it is enforceable in a court of law. The terms of the contract are binding on both parties, and failure to fulfill the terms of the contract may result in legal action. The contract is also enforceable in equity, and a party may seek damages or specific performance if the other party fails to fulfill the terms of the contract.

The contract is also subject to the defenses of the parties, and a party may be excused from履行 the terms of the contract if there is a legal or equitable reason for doing so. The defenses of the parties may include breach of contract, fraud, duress, or mistake. If a party is unable to perform the terms of the contract due to a legal or equitable defense, they may be excused from履行 the terms of the contract.

In summary, the contract is a legal instrument that binds the parties to the terms agreed upon. It is enforceable in both law and equity, and it is subject to the defenses of the parties. The terms of the contract are binding on both parties, and failure to fulfill the terms of the contract may result in legal action.

The contract is also subject to the defenses of the parties, and a party may be excused from履行 the terms of the contract if there is a legal or equitable reason for doing so. The defenses of the parties may include breach of contract, fraud, duress, or mistake. If a party is unable to perform the terms of the contract due to a legal or equitable defense, they may be excused from履行 the terms of the contract.
And a word, promise by an infant can not be considered sufficient to establish the promise of another person to him. All other consequences would be the result of establishing the idea that an infant's promise was absolutely void, which is all opposed to the general received opinion which is founded upon the idea that the promise of an infant is voidable only. And although expressions in Law writers "that an infant's contract is void" nothing is meant more than that such contracts may be avoided by this construction has often been given to the word "void" when used in a Statute as an English Statute which declares all leases by tenants in tail for longer term than the life of such tenant, to be void. This is construed not to mean "absolutely void," but only voidable by the new in tail after the decease of the tenant. Upon this it is thus by the Eng. Law when an infant has executed a bond he cannot plead 'non est factum,' but must avoid it by pleading specially whereas a mere covert may plead non est factum for her incapacity to bind herself is such that it renders all her acts absolutely void. As this I conceive it to be generally true that the acts of an infant are only voidable, yet I can easily imagine a case...
where I conceive their acts void, for at the same time that it protects their indiscretion from injury, it enables them to do binding acts for their advantage, the design of privilige to protect infants. So that object therefore must all the rules respecting it be directed. Wherever then a case arises in which an infant cannot receive the protection designed him unless his act is void, I conceive it ought to be so considered. Many acts of an infant besides contracts for necessaries are considered in law as binding upon them him—fore when ever an infant does a right act which the law will compel him to do it shall bind him—As if he should make equal partition, an act which the law may compel him to do, this act is binding. So when a lease is made to A. & this assignee for a term of time & for a yearly rent A. assigns to B. an infant who enters upon the lessee he is bound to pay this rent. And when the infant is barely a trustee & executes the trust he cannot avoid such act, for in equity he is so compelled to do—As where an infant executor duly receives, or quits, pays & administers the assets of a testator. As a Mortgagee in fee & dies, the mortga-
ged premises descend to B. his heir & an infant.
the mortgagee pays the mortgaged premises to A's
executor by which means he becomes entitled
to the land & B. the infant conveys to the mort-
gagee, the conveyance is binding upon him
for by law he was compelled to convey. And
by the Eng. Law the assignment of dower by an
infant binds him, for he was by law compel-
lab to assign the dower. In trials where in-
some is plead & necessaries replied it freque-
tly leaves a subject of enquiry, What are nece-
saries? For as I observed before the situation of
an infant is always to be taken into consid-
eration. When an infant lives with a parent
who provides the articles termed necessaries the
infant is not bound. Necessaries of an infant's
wife & children have been adjudged his neces-
saries—money lent to an infant to be laid out
in necessaries has been adjudged not necessaries
unless the loaner took care to see that the mo-
ney was laid out for necessaries. But why
should it not be considered as 'necessaries' without
the loaner's seeing them actually laid out for ne-
cessaries? On the Replication it has been deter-
mined that the replying "necessaries" generally is
sufficient, without pointing out what those
necessaries are. But since what are necessaries
is what are not is manifestly a question of
Law, I should conceive that pointing them out in the Application would be the most eligible method; as it would preserve the question of law to the Court, the constitutional forum for the trial of all legal questions.

See Buller page 187-188. It would be on this view that a single bond of an infant was void but remark that there is an action of quasiprivation, whereas it ought to have been brought on the bond of the promise made after age since in evidence.

In the sub: of more liable rememb. the case of wrong being joined on the conv of better before damages.
An Essay written at the Office of Tapping Reeve Esqr Litchfield
December 5 1798

Baron and Frame
As it respects the liability of the husband for the contracts of his wife & for her tort. When she is liable with him & when he is liable alone

Legislators have found it necessary to consider husband & wife one person. It was found however that the 2 parts of which this person was composed did not always appear to have precisely the same uniform notions. On the contrary, when both were employed in one affair there frequently seemed to be 2 contending dispositions bearing some resemblance to the 2 opposite propensities which influence the human heart. The one to virtue, the other to vice—differing however in one respect, the 2 parts of the person being unfortunately provided with organs of speech which sometimes carried their debates to such extraordinary heights particularly upon the question "Which should be commander in chief of their transactions?"
that the peace of families & of society was highly disturbed. In order therefore to pre-
serve a proper degree of harmony it be-
came expedient to vest one with the prin-
cipal executive authority. And as the law
by reason of the superior strength of this
constitution was conceived to be best cal-
culated to transact business, it was de-
termined that the executive authority
should vest in this part of the person,
with full power to contract & be con-
tracted with to sue & be sued, in short
to represent the whole person in all exter-
nal affairs leaving to the fickle intrigues
of the female part to operate in secret &
effect what they would. The trust
therefore was always supposed to con-
tract & when the wife contracted for
her, even the smallest, necessary, it was
by the trust's impulse, the law being
always careful to presume that it was
by his command, or at least by his
agent. For it made no difference as to
the issue which contracted so long
always liable as long as their behaviour corresponded with that darling unity which the law was pleased to predicate of them.

After having thus related the origin of the husband's liability for the wife's contract, he will proceed to distinguish the several cases of his liability. The husband is liable for all the wife's contracts made before marriage, provided the suit be brought before the determination of the coverture. A false maxim formerly obtained—'That the husband was bound to pay none of the wife's debts contracted before marriage.' This idea, compared with the other principle of law which throws all the wife's property into the husband's hands, appears very unreasonable. For as the wife has no command over property, it immediately on marriage vesting in the husband, it is evident she cannot be liable. But creditors ought to be defrauded—somebody must be liable; it is reasonable that this liability should
falsely upon that property which the
husband, by operation of law, has been taken away from
wife possessed when she wastrusted. This
property is in the husband's hands, he ought
therefore to be liable. This old maxim
however is hardly worthy of a reputa-
tion. It has long since fallen with much
other rubbish of ancient law into its mer-
ited oblivion. The law now is that the
husband runs his risk in marrying— if the
wife has property, it is his. If she is involved
in debt, he becomes involved with her—
or as the marriage contract expresses it
he takes her "better for worse". This Maxim
of the husband's liability for the wife's con-
trats before marriage is an universal
one. It embraces all the cases that can
arise. But with respect to the hus-
band's liability for the wife's contracts after
marriage, the law is a little more
complicated being crowded with
plurality of maxims to ridiculous pre-
suppositions which have no founda-
tion in reason and are entirely
derogatory to that dignity which
The law ought never to presume.
The rule is that the trustee is liable only where there is an express or implied agent of his. But this maxim is twisted if torture & every way to embrace all possible cases, it will on examination be found extremely inadequate. Where there is an express agent the trustee ought not is unquestionably liable. But let us examine a moment the evidence that English lawyers offer for this implied agent. Where the husband allows his wife generally to contract for him, her contracts are binding upon him or where this licence is not general, yet if he suffers her to contract for him in a certain line of business, her contracts in this business are equally binding upon him as his own. So for the evidence of his implied agent is clear. In this case there is a fair presumption that he ought to be liable.
If the wife runs in debt for articles for family use, the trust is liable for it is presumed that any reasonable being would wish to have his family provided for. Now, the evidence of the agent begins to grow a little obscure, but if there was no greater absurdity in any of the presumptions they might be borne with. We will now suppose the wife is turned out of doors by the trust, he is still liable for her contrivances in necessary. The law here introduces the strained presumption that no man (even if he had a disposition to kick his wife out of doors) could possibly be so hard-hearted as to refuse her the necessary of life. This may be the case, but it strikes me that the trust had proceeded to...
far as to drive his wife out of doors.
She would conceive it a tolerable de-
cent thing that he was willing to de-
pive her of any thing—and contrary
to what the law presumes I believe
she would be apt to presume “that
her husband had no idea of attempting
“to her dispair”

We have not yet arrived quite
t the pitch of their inconsistency.
Let us go one step farther & we shall
may mark out the true scene—The
me plus ulterior of human absurdity
When the husband in sound mind abso-
lutely prohibits his wife any persons
trusting his Wife, even in this case
where there is as express a different
as language will admit of. The case
will merit for an agent. Here in
a judgment force the faculties of the
husbands mind are to be so disordered
That he is directly made a lunatic.
The mode of proving this lunacy is
a little curious. It is taken for granted that human nature is so perfect that no man in his senses could help but accept the contracts of his wife for necessaries.

The ultimate design of the law is well enough. It is founded on the good policy that when the husband turns his wife out of doors, or unreasonably refuses her the proper necessaries of life, she may herself contract for them upon his credit. But why should not the law apply itself with as bold and firm solicitude "that the husband should be liable in these cases, his disentitling or assessing being altogether immaterial and can conceive of no necessity for this permissive of terms in order to discover an agent where there existed by can be none." It seems to encourage an diabolic mode of thinking which is degrading to reason.
Where the wife voluntarily elopes if the person trusting her had no notice of her elopement she is not liable. Yet if the return and he refuses to receive her he again becomes liable.

The husband is liable for all the wife's torts committed before or after marriage. For her torts committed whilst she is liable with the husband on his death she becomes liable alone.

In case of torts after marriage committed in his company, they are in law his torts & he alone is liable. According to some lawyers they were done for the great crime of Love.

For the wife's torts committed before marriage & those after marriage committed in the husband's absence she alone is liable.

But for those committed in his company he is liable alone unless those torts which are called crimes & it be for the greatest benefit of the state.
That they must have been done by his compulsion, as the wives while in their husband's presence lodge all allegation, if we find there self-machines that they can do no wrong unless by a mechanical impulse. This principle is nearly related to the notorious paradox beforesaid, in which the husband's agent is implied where his dextrum is espoused.

Of Parent & Child

As it respects their right of justification of each other in case of a Battery.

Parent & Child are allowed reciprocally to justify or assist each other in case of a Battery. It is however a duty incumbent on them when one is about to assist the other to enquire into the motives of the quarrel, and if the motives are justifiable the one may assist the
father & vice versa. If on the con-497
trary the motives are unjustifiable, no
violence is permitted to be used against
their antagonist with impunity. The
law being careful to observe that
they do not improve their privilege
as an instrument to shelter themselves
from justice. There may be instances
however where the circumstances of
the case will not admit of a discov-
ery of the motives. As where the son
finds his father fighting & is igno-
rant of the motives he may assist his
father & the question is whether
the son was guilty of the violence or
whether he was on the justifiable side.
The son is not liable for the dam-
age to the father. In that case if
the son had had the means of know-
ing the motives of the quarrel they
being unwarrantable his privilege
would not have protected him.
When one of them is engaged on
the defensive the case is clear, they
have a mutual right to beat the offender without liability to pay damages. This reciprocal right of justification which the law allows parents & children appears to be a reasonable indulgence, as it encourages that natural affection which is expected as indispensable from parents to intimately connected by the bonds of nature.

Master Servit

As it respects the Master's liability for the Servant's fraud.

As it is inconvenient & indeed impossible for men always to transact their business personally, the law indulges them with the privilege of doing it by representation.

To prevent any mischief that might arise from this practice, the Master is made liable for the Servant's fraud. It is a general rule that the Master shall be answerable for the Servant's fraud practiced when employed in

his business. The venerable Holt & I believe other judges have regarded this as a sacred maxim liable to few, or no, exceptions, although some of them have widely departed from it in their decisions. As the authorities upon this subject are totally irreconcilable, no governing principles can be drawn from them. We must therefore have recourse to particular decisions in order to come at the law.

Then there is the case of counterfeit jewels reported in Broke James, 116, in which the Master was not made liable. It appeared that the servant was sent by the Master from England to Barbary for the purpose of selling jewels, that they both knew them to be counterfeit, that the servant ascertaining them to be good jewels, sold them for 70l. above their real value— and that the Master received from the servant the money fraudulently obtained. But be
because it did not appear that the servant was ordered to conceal them being counterfeit. The Master was not made answerable for the fraud. It would seem by this authority as the Master cannot be liable unless where he commands or solicits the servant to practice the fraud. This principle however will not hold good in a thousand other cases which are established to be law as where a Merchant's Clerk uses fraud in selling goods, the Master is liable whether it was by his command or not. But in case of the jewels this rule is entirely disregarded— an innocent stranger is imposed upon, defrauded of his money by a rogue in the immediate execution of his Master's business, and finally this the captive of the judge's delicted in his name against the very man whom the Court and jury acknowledged to have received the money. As this case was attended with
The hands of Mahomet are also called the hands of God. For this reason, Mahomet is sometimes called Allah. This is a matter of dispute, for it cannot be decided in the end what Mahomet means to God. The question of Mahomet's jurisprudence is a matter of dispute. Allah is the Lord of the world, and all the things in the world are subject to His will. Allah is the source of all knowledge, and all knowledge is derived from Him.
of the value of the Vessel Aground.

As there are no Statutes establishing any principles by which these cases are to be guided, the law is extremely fluctuating—& it appears a little extraordinary that a subject of so much importance should be left, with the whim of judges, the more extraordinary when we reflect that these judges have not only unnecessarily departed from the respectable old maxim of common law—but are continually running at right angles with their own adjudications—Finit.

Curious opinion of the Sup. Ct. Litchfield adjourn'd 5th Nov. 1795—

A deed of land was offered as evidence—It was not introduced to fix the title which it conveyed but came up incidentally. It was moved to prove the execution by comparing the handwriting of the witnesses to that which acknowledged (this was done) on the ground that the best evidence ought to be produced. It did not ask for but that the witnesses might have been bad at the very minute of the sale—Judges Wigg & Huntington were for proving the handwriting of the Justice & the adversary; they considered both on the same footing but admitted neither to be prove. Adams agreed that they were on the same footing but was for admitting both to be proved; he distinguished this case of the deed as coming up incidentally & where the title to the land was in question.
Now for defects in pleading may be aided or cured by a Verdict—by N. D. Esquire

After judgment upon issue to the jury the verdict may be averted for the insufficiency of the declaration, plea, replication &c. But all defects which would be fatal on demurrer are not causes for arrest for they are said to be cured by the verdict of a jury—Since then some defects are curable by verdict & other not. The difficulty is to draw the line between these cases—

1. All irregularities in pleading as duplicity, ambiguity &c. The omission of immaterial facts are cured by verdict—and defects are cured not because they are supposed to be supplied by proof to the jury as is sometimes pretended but because it would be unreasonable to suffer one party to lead the other this a trial and after a verdict obtained against him to unravel the whole business by reserving a mere formal objection to the end of the proceedings. A party therefore when he puts himself at issue to the jury is supposed to waive every objection which he might have had to the form of the proceedings.

2. Where material facts are imperfectly stated that is where they are stated, though not so fully as legal strictly requires, and which possibly might have been bad on demurrer yet they are aided by by verdict.

3. Also where material facts are totally omitted
if they are the necessary concomitants of any material fact laid in the declaration, the jury must necessarily have found the fact omitted and therefore curable by their verdict.

To attend to the reason of these rules—
The reason why any of these imperfections or omissions are cured by verdict in the two last cases is that they are supposed to be proved to the jury & hence it follows that when there is an omission of any material fact which could not be proved to the jury, the defect cannot be cured by verdict. It is obvious that where material facts are imperfectly stated they are notwithstanding to be proved to the jury, for although they are imperfectly stated, yet they are so far stated that the opposite party could know what he had to defend against. In many cases also facts which are totally omitted are so necessarily connected with facts alleged in the declaration that those alleged cannot be proved without at the same time proving those which were omitted. But where material facts are totally omitted and not thus connected with those stated, the party cannot go into the proof of them, for the opposite party has had no opportunity to prepare his defence against them. Therefore as it would be improper to prove a fact of that kind to the jury there can be no presumption that it was proved; there can be none that they have found it.
For instance in Assumpsit where notice to the 24th is necessary to be stated if notice is stated but the time where & the place where omitted which are material facts now as notice could not ordinarily be proved without at the same time proving the time & the place these may reasonably be presumed to have been proved to the jury. Then if suppose notice is totally omitted there is no room left for presumption for the reason before mentioned. If a "corrupt agreement" is omitted in a plea ofAccessory it is not cured by verdict for the same reason. Again if a consideration is omitted in Assumpsit it is not cured by verdict. An action for keeping a promise not cured by verdict. So it is in every case where any fact truly omitted or only fully omitted which makes a part of the gist of the action. See Bach's Vol. 316 page Doug. 683. 2 Walk. 667 Walk. 364-129 and other cases in the books where it has been adjudged that the verdict covers defects in the pleadings, if carefully attended to will be found to come within some of the rules of distinction before made. But it is by ingenious gentleman that all omissions in declarations are cured which lie any possibility might have been stated that and in most to have a declaration bad after there must be enough stated not only to show that the 24th had no right in that action but also to show
that he never could have in any other
This appears to be not only carrying the matter
further than the reason of the rule will warrant
but directly opposed to authorities. For in the action
for keeping the malicious Pall. Science might have
been stated—so might a consideration in the Aspmp.
I certainly notice might in the implied Assumpsit.
Besides whenever a declaration is drawn of the
general issue pleaded the jury are bound by their
oaths to find for the Pflf if he prove the facts
which are alleged in his declaration. And this
being the case how can we presume they found
found any fact more than what is alleged?
in his declaration? And this being the Opinion
we never can unless the fact omitted is circum-
staned as before mentioned. But it is said
that the jury are supposed to find every fact
which in point of law is sufficient to support
their verdict & that in the case of Assumpsit
where notice being necessary is omitted the jury
in finding the Assumpsit must have found
the notice. If this be the case then every de-
claration is added for there is none so bad
but what in finding a fact or facts the jury
may make it good—for inst. A says B. for
charging him with lying & the general issue
pleaded the jury find guilty, now why not say that as the jury have found guilt, and in the eye of law there is no guilt in the charge of being in man with lying, therefore it must be the jury have found actionable words, viz. a charge of theft. And yet nobody will pretend that this is the case. In that the jury have nothing to do with any inference of law. Their business is to find the facts to be true or false which the Plf has stated, and whether he has stated enough or not must be determined by the Court whose business it is to decide all questions of law. Finis

A posting is nothing more than the history of the proceedings after issue is joined, if the case is sent out to trial before the posting of charge of misprision till it is brought back to the Court firm; whence it was sent. The proceedings are entered on record which is called the posting. New Trials are granted only for matters dehors the record. But arrests arise from, intrinsic causes appearing on the record. If an Ex parte is issued by a Justice for a sum beyond his cognizance the officer would be liable as well as the Justice. If the Ex parte was under £20 the officer could not be liable. It does not appear on the face of the Ex parte that it is beyond the Justice's jurisdiction for it might have been for an acknowledged debt, in which case it was within his cognizance.
Of the Jurisdiction & Proceedings of
the Several Courts in Connecticut

By S. Fane

In Connecticut there are several Courts for trying causes at law and punishing offenders, with very different jurisdictions. A Justice of the Peace has jurisdiction to try all demands which come before him as a Court of Law when the matter in demand does not exceed £4, except where the title of Land is concerned, to which his jurisdiction does not extend. Securities for monies due, or Bills of credit vouchsafed with two witnesses, are cognizable with him where the Sum in demand does not exceed £10. Whenever an Officer receives a Writ upon an Issue process or a Writ of Execution, returnable to a Justice, he shall not execute the same, or make a false or undue return for every such neglect or misfeasance the Officer is liable before the Justice to whom such writ was returnable, unless the damages demanded exceed £4. Justices are empowered to take confessions of debtors to the amount of £20 & this is not to be understood with costs inclusive. The judgment of a Justice is final in a suit brought on a Security for monies due or Bills of credit with two witnesses, & in which the demand does not exceed £10, likewise in debt in judgment of a Justice if it does not exceed £10, or on an Officer's receipt for an exec. purposing the Stat. mode of suit, except where the
Judgment on which the exec. issued was by confis-
cation of the debt for more than £20.

In all other cases within the jurisdiction of a
Justice where the sum due exceeds £40, there lies an
appeal to the next County Court which ap-
peal may be taken from a judgment, on a plea
of abatement, or demurrer as well as the merits of
the case.

If the Deft pleads Title in an action of trespass
before a Justice, he cannot try it, but must try
the Deft in a Bond not exceeding £20 to prose-
cute his Plea & bring forward a Suit for the
trial of his title at the next County Ct.

Justices have no cognizance in matters of Equi-
ty, neither can they grant a new trial—All
actions before a Justice must be brought in town where
one of the Parties lives—When a Justice sends a
judgment for more than £4, including costs, yet
a sequestration may be levied against the Bail to
recover the amount of the Judgment before the same
Justice—

In all matters cognizable by a Justice, he
has exclusive jurisdiction except when an Officer
is sued for not executing a mandate & making a false re-
turning of a writ returnable before a Justice de-
manding more than £4 damages in which the
County Court have a concurrent jurisdiction
with the Justice before whom it was return-
able—As there is no provision made by Law for
Justices to appoint auditors, it may be a ques-
The Court of Common Pleas

The laws of Pennsylvania, as well as all the common law and equity in the United States, are applied in the Court of Common Pleas. The decisions of the Supreme Court of the United States are followed, and the decisions of the Court of Appeals of Pennsylvania are also considered as authoritative. The practice in the Court of Common Pleas is similar to that in other courts of chancery, and cases are decided on the evidence and the law applicable to the facts presented. The judge has a large discretion in the management of the cases and the presentation of the evidence. The Court of Common Pleas has jurisdiction over all civil cases except those in which the amount in controversy exceeds $500, and over all cases in which the title to real estate is in question.
The date is June 7th, 1660, which is surely wrong. The
first page is cut off, and the next reads:

"A new discovery of gold in a mine of foot in the

floor of the earth."

The note seems to be a record of some event, possibly a
mining operation. The text is difficult to read due to
the condition of the page.
Defeult

Upon a default the Clerk of the Court makes up the damages (or, as it is termed “to be heard in damages”) Likewise on a demurrer judgment is in arrears, yet if it be requested the Court will hear the parties in damages.

Upon the forfeiture of a Bond the Court will chancery down the penalty to the principal and costs.

So upon a Bond with a condition that may be broken at several different times & a writ is but for the first breach the Court will render judgment for what is then in equity due & lodge the bond with the Clerk of the Court & upon a subsequent breach the obligee may have a seire facias to cite the obligee to show reason why judgment should not be rendered for a future breach.

In trials in Chancery the Court may enquire into the facts themselves by a Committee.

Supreme Court of Errors

This Court has no original jurisdiction but is constituted solely for the purpose of trying faults in Error from the Supe. Ct.

Of Courts of Probate

This State is divided in districts in each of which there is a Court of Probate consisting of a single judge who has cognizance of the Pro- bate of wills, of granting administration of appoint- ing guardians and acting in all testamentary matters. Form this Court there is an appeal to the next Superior Court.
General Assembly

The General Assembly of this State is a C. for the purpose of trying all suits brought against the State by an individual. It is also a C. of Chancery for determining all cases in Equity which exceed £1000.

In all these C's they appoint their own Clerks except Justices who have none.

The General Assembly also grant divorces where the Sup. C. cannot.

Process

The ordinary process in civil actions is by Summons or Attachment. These if returnable before a Justice may be signed by a Justice unless the debt be found to answer out of the County in which he resides. In such case it must be signed by an Ass't or Judge of the County, or Superior Court or by the Governor or Deputy Governor of the State. Unless it be a Scire facias which may be signed by a Justice of the Peace.

Writs returnable before the County Court may be signed by the Justice or Clerk of the Court unless the debt belong out of the County, when they must be signed by an Ass't or as in case of a Summons, unless it be a Scire facias which must be signed by the Clerk, or an Qua
dita querela which must be signed by the Chief Justice of the County Court. The Judges of the County C. can only sign writs returnable before themselves or Justices of the Peace.
Writs returnable before the Super Ct. may be signed by a Justice unless the Def. be deemed to answer out of the County in which he resides in which case it must be signed by an Assistant De. Also in case of a Scienter which must be signed by the Clerk of Ct. to which it is made returnable in all cases yet if it be a writ of Error it must be signed by one of the Judges of the Super Ct. If an Actita Inreala by the Chief Judge. Writs returnable before the Supreme Ct. of Error must be signed by one of the Judges thereof.

Of Service

When one is sued by summons the writ must be served by reading it in the hearing of the Df. or by leaving a true & attested Copy at the Df.'s last usual place of abode. But if judged by attachment it must be served on the Chattels of the Df. and for want thereof on his land, or body & by reading it in his hearing or leaving a Copy. When served on the person the body is held in custody to respond judgment & when the body is attached final judgment rendered Copy must issue. The served on the body within 5 days after the rising of the Court when personal property is attached if it is helden 4 months. If the estate is attached the officers must leave a true Copy of the attachment with the Df. or where he has last dwelled with him, return thereon describing the estate if it be real estate he must also leave a Copy with the Register of the Town where the land
lies with a description thereof within seven days after the attachment of the property. The time limited by law for the service of the writ is sufficient. When the suit is against one not an inhabitant of this State a Copy of the Writ being left with any person having in his hands the debtor's property or of him who sells the debtor's property to the debtor, or attorney for the debtor shall be good service if not only so but shall lie a good lien on the estate of the debtor in such persons possession or in debts due to the debtor. And after the judgment against the debt is had and non est as to the estate is returned on the Ex'c., a fieri facias will issue against such attorney and a recovery be had against him de bonis propriis to the amount of the debt if the attorney has so much in his hands and in that case the trustee is called upon as a witness to answer upon oath what effects of the debtor he has in his hands.

Of Service on a Community

It is a sufficient service to leave a Copy of the writ with the Clerk of the community or a committee or if it be a township a selectman.

Of Joint Debtors

Wherever there are joint debtors & any one of
When a writ is returnable before a justice, service must be made six days before trial, the day of trial inclusive. When returnable before any other court, service must be made 12 days before trial, including the day of trial.

When service is made on an attorney, there must be 14 days notice whether the writ is returnable before a justice or other court.

The same rule obtains where an officer is to be for not executing or making a false return.

Bonds for Prosecution

When a summons is issued if the officer lives out of the state he must procure a bondman for prosecution and whenever it shall appear to the signing authority that the officer, although he is an inhabitant of this state has not sufficient estate to respond the bill of cost which may be recovered against him he ought to require the officer to procure a bondman to prosecute. And in any other stage of the proceedings the court may order.
Of Entering Bail

Whenever the body of the Deft is attached by the Office and Bail is offered, the Officer must keep the body in custody and have him in Ct. Whenever he enters Special Bail (or as the Enr. Law terms it "Bail to the action") he is again at liberty. If no Special Bail is entered he is to be committed to gaol & if he pleads he must plead in custody. When a Judgmt is entered by a Justice or the County Court and an appeal is moved for, bonds to prosecute the appeal are required. Where personal property is taken a Replevin may be issued to restore the property to the deft., upon his procuring Sufficient Bonds to answer all damages which the Deft may recover against the Def. When a writ is returned second it must be returned to the Ct to which it is made returnable—When an appeal is made it must be entered in the Dockets A. of the Ct. of the Ct. before the 2nd Term of the Ct.

Of Pleas & Pleadings & 1st Of Abatement

When a suit is brought to the Ct. & the proceedings are commenced, if the Ct. has not cognizance of the case, a plea to the Jurisdiction of the Court
is the proper plea. This is what is called improperly a plea of abatement. We term it such by pleading it as such. When it is found that the C. has cognizance of the case, the next plea in order is a plea of Abatement. This is assigning reasons why the D. should not answer to the Pleading. It may be for some defect in the Writ or irregularity, or it may be for some requisite to obtain a Writ (as not paying the duty by law required) or for an alteration in the Plaintiff's circumstances since the date of the Writ (as when a party is freed by marriage) This is a ditatory plea. If the Plaintiff succeeds the judge is a Respondeas as before. If the Judge be that the Writ abates, the Plaintiff may commence a new suit. But when the Defendant pleads a fact on which issue is taken, the Jury try it. The judge is in chief. It is a rule in abatements that when they are pleaded they must be so pleaded as to enable the Plaintiff to bring a true Writ. A Writ of declaration in this State both go out together to be served on the D. We confused the terms Thinking them synonymous. But they do not mean the same. The Writ is the mandatory part address to the officer & continues until the action is named. Then begins the declaration. The date is applied to both the signing & duty of the Writ. For any fault in the declaration a plea of abatement is not proper but a demurrer either general or special as the case may be. Yet it is very common to plead by way of abatement for a demurrable fault. So that if the plea proves insufficient there may be a respondeas instead of a Judgment in chief. A custom which encourages ditatory pleas & cannot be justified upon legal principles.
There lies an Appeal from the Judgment of a Justice of the County Ct. upon a plea of abatement, if the case be appealable. If it be a question of law to be tried by Error lies — When the Def. pleads a latent and appeal of again in the upper Ct. pleads an abatement also (for he may upon such removal change his plea) and judgment of respondent on it is again given against him, execution shall issue for that case all the more recover on the merits. It is usual in Petitions in Chancery or for new trials to plead by way of abatement matters which go not only to the form, but to the substance of the Petition. That which could be a general demurrer to a declaration is an abatement to a petition. When a plea of Abatement is found defect. The Def. shall have liberty to amend if the defect be in its own nature amendable. As in case of a misdemeanor in respect to the place of residence — Amendmnt may not be made when the matters to be amended are contrary to truth. As if the service of the writ appears by the Officers endorsemt to be on Friday the day after the time of service expires, yet in fact if it was the day precedent it shall be amendable — but if it was served after the time there can be no amendmnt. Amendmnts are nor allowed without paying costs —

Demurrer

When we find that the action is brought before the proper forum & there is no cause of abatement we then attend to the declat & if we find it defect in point of form only we take advantage of it by Special demurrer which is parti—
a demurrer admits the facts as laid in the declar. to be true but denies their actionability. That there is no ground for a recovery even supposing them true—In many cases the demurrer goes only to the declar. which shows that there ought to be no recovery where something is omitted which if stated & true would be a sufficient ground. As where an action is brought in which the law requires that notice should have been given of a service performed or a debt due before an action could be maintained. Here the omission of notice would be a ground of demurrer for no indeed notice may have been given & there is a ground of action yet both these ought to appear to the declar. Upon such declar. being defeated a new action may be brought & the sufficiency amended. At other times the demurrer goes to the action viz. when the pretended cause of action is such an one as is not recognized by law as a cause of action. In this case no declar. can be drawn consistently with the truth of facts which can be possibly supported. And a demurrer is not only that particular action but a judgment will be a bar to any subsequent action for the same cause as if an action be brought upon a charge of lying such a charge not being actionable no declar. grounded on it can be supported. Where the demurrer should be special & where general it is difficult to give a rule. Our practice is to close in this respect that no very
accurate distinction can be made. I should suppose that a general demur ought to be confined to what I have called a demur to the action & that all demurers merely to the declar. Should be special. This I mention as what would be a good general rule but not in fact what takes place in the English or our Courts so that we may continue to draw the line that in all cases where the demurrer goes to the action it is general, but where there is a demur for a defect which is merely an informality it must be special. For other defects of a more considerable nature as not alleging a consideration in Asumpt which if alleged would make a good declar. The common practice is to Demur generally. The judgment on demurrer is in chief. A demur may be taken in any stage of the proceeding as well as to the declar if to a plea it admits the truth of the facts but denies them to be a good defence. So to replications, rejoinders &c.

**Pleas to the Action**

When the action is tried before the proper tribunal & can neither be a bated nor defeated by demurrer the DEF may plead a plea in bar or the general issue & the case may demand. The general issue may be said to be a total denial of the facts alleged as not guilty in trespass &c & nil debt in debt. Indeed the under the general issue we are permitted by statute to give almost every thing in evidence as justification in manned &c. Indeed there
is nothing required to be pleaded specially by our Stat. except where the Dff. is fault of the Act of the Pff. as by a Release &c. And in some cases where we may give the Special matter in evidence it is common to plead specially and in some cases the practice of pleading specially has been so uniform that I doubt whether the Court would permit the Special matter to be given in evidence the seemingly warranted by Stat. as Usury, &c.

Plea in Barr

A Plea in Barr is an answer to the Pff.'s charge in the declaration which admits as in case of the Demurrer the truth of the facts but assigns some new matter not appearing upon the declaration as a reason why the Pff. should not recover. As in debt or Coa. the Dff. admits he gave the Bond but that he has already made full payment of it which is pleading in Barr. When this reason is assigned the Pff. must answer it which is called a reply. This may be either by demurrer which admits the truth of the plea but denies its sufficiency in law to overthrow the Pff.'s claim. As if a Dff. in a suit on a Note should plead that it was usurious & neglect to allege it to be a corrupt agreement the Pff. can demurr for want of this allegation which would bring the question before the Ct. whether such allegation is material or not, or it may be by traverse of the
facts alleged in the plea, which is a denial of the
truth of facts & brings the question of the facts to
the trial of the jury, as when the Dfts plea is
infancy. This is traversed. Infancy or not is
the question. Or the Plf's answer may be
an admission of the facts stated in the plea
at the same time assigning some reason not
inconsistent with the decl. and which does not
appear on the Decl. or Plea why the Dft
ought not to avail himself of the matter al-
ledged in the plea as where the Dfts pleas
in bar his infancy, the Plf admits this fact
but says that it is an insufficient bar to the action
because the debt alleged in his decl. was for
necessaries. To this replication the Dft must an-
dwer by demurrer or traverse, or rejoining some
new matter which has not appeared before,
in the course of the pleadings and so on till
some issue in fact or law is joined between the
parties. Whenever the issue is joined on a dem-
ner, the demurrer pervades the whole pleadings
& goes back to the first defect—As in an action
of Adsumput, the decl. states no considera-
& the Dft pleads just a plea as the Plf thinks
insufficent defence be therefore demurr to it &
it is found an ill plea—yet it is good enough
for the Plf's Decl. which the demurrer reaches.
Whenever the declar. counts upon some writing
and does not recite the writing but counts upon
it as the Plf considers to be the operation of law
and the Dft conceives it to be directly controv.
and wishes to bring the question of law properly before the court, he will pray over of the writing & recite it verbatim if having then made it part of the accord will deem for it now becomes the same as if the party had recited it at large which if he had done the debt would have demanded to in the first instance. Whenever an issue of fact is joined to the conveyance of the evidence admitted to support the facts as in the opinion of the opposite party is insufficient in law he may demurr to the evidence. This is done by stating exactly all that was testified at the trial in writing & if true the opposite party must join. The question is then before the court whether the evidence is sufficient or not. There is no contention what the evidence is. This is all settled by the demurrer except the decision of the court if it is frequently litigated in the course of trials whether the witness offered be legal and whether the matter offered be pertinent to the issue. The first may happen when contended that the witness is interested. The last may be exemplified in this manner—When Usury is pleaded & the defendant knows that it cannot be proved & offers evidence of another kind. Then therefore you suppose the court admit an improper witness or suffer improper matters to be given in evidence you may file a Bill of exceptions stating the whole matter.
as it appears before the Ct. which the Judge must certify to be true—This lays a foundation for a writ of error, in which will be the same question if they reverse it is tried in the Upper Ct. as in the lower Ct. If the Upper Ct. affirms the Judgment of the lower Ct. there is an end of the matter——

Of Motions in arrest

A motion in arrest may be made after Verdict for the insufficiency of the Declaration or Replica in it, as in Handel, the charge is for calling the P's a liar—the P's plead Not Guilty Verdict Guilty. The Df't may arrest the Judgment as no suit is maintainable for such charge—So also in Using of the Df't omits to insert a concept a agreement. Although the Jury find it to be erroneous & judgment is the P's favor it may be arrested—and in this case a repleader is ordered——

But where is such deficiency or no good ground for a suit no repleader is ordered for this puts an end to the business. Many defects which would have been fatal in former are aided by Verdict I cannot be taken advantage of in arrest of judgment. If upon reviewing the declaration something is omitted which if it had been alleged would have rendered it sufficient it shall be presumed that it was proved to the Jury otherwise they would not have given a verdict for the P's since it was necessary to be proved in order to entitle him to recovery such omission is aided—As suppose a decla—
notice to be given and notice is omitted there is good cause of demurrer, but on motion in arrest it shall be presumed that notice was given to the jury or there would not have been a verdict for the P.C. See Gay, 507 where this doctrine is denied – But if it appears from the declaration that there could not be a ground for a recovery that no supportable allegation could have been inserted which would have rendered it a good one the verdict does not fail. Defect – As if here we is said for calling another a liar. 

When there is motion on a suit for damages or damages for error. It would seem that the rule did not attain respecting a verdict aiding a plea in bar or other judgment proceeding or in case of a declaration or contract. For a plea of thing in put in & no corrupt agreement alleged at the the jury find in the words of the plea. That the contract wasurious yet the want of the term "corrupt agreement" is not aided by the verdict. It would seem that by finding Usury they had found the compensation as case of "notices" to be before put, but in that case as notice is necessary to constitute the Usury it is fair to conclude that when they had found the Usury that they also found the notice – see the Essay page 506-7. But when there is a verdict on a special plea they do not find generally, but undertake to find specially the whole matter – therefore when they find that is being the whole matter of all the
particulars which they can find do not mention a corrupt agent! it is not fair to presume that they have found any corruption — but. had the jury inserted in their verdict "corrupt agent as they might have done the plea would have been voided."

By our Practice there may be many things which are reasons for altering the verdict — as mistake in casting a posting an account, improper writings being delivered to them in 6th & 1st

**A New Trials**

After an final trial before the County or Sup’r 6th

Petitions for new trials are very common. The reasons for granting new trials are misleading: as where one has demanded where he ought to have pleaded the general issue 2. The discovery of new testimony which is material in the case. In this case the names of the witnesses must be inserted in the petition and the substance of what they are testifying or the petition must brate. If these be inserted the 6th will hear the witnesses & if reasonable will grant a new trial & whenever the petition is granted the first judgment is vacated. A petition for a new trial before granted is no superseded to an error on the first trial alike the evidence is new & if the petitioners knew of such testimony at the former trial it might have introduced it; it is no reason for granting a new trial. And if a witness at a former trial now undertakes to remember more than he testified then, no new trial will be granted for this reason — 3. Another ground for granting such petition is
damages. This hardly ever prevails, it being a rule with the Ct. that they will never grant a new trial for excessive damages unless they are erroneous or flagrantly excessive, such as raise a strong presumption of partiality in the jury. When the damages arise from contract there is no necessity for this presumption, but it discretionary with the Ct. in any excess of damages. A 4th ground is the smallness of damages. This like the last scarcely ever prevails. Courts have in some instances granted new trials because the verdict was against law but it is apprehended they do not view it as a ground for a new trial.

5th. That the verdict is against evidence. But this is not to be understood when it is the opinion of the Ct. against the weight of evidence, but when there was no evidence adduced on the successful side. When the jury misbehaves, when one of them is corrupted, when the witnesses are tampered with, new trials are granted.

**Special Verdict**

When a case is committed to the jury, they may if they please find the facts as proved by a Special Verdict and leave the question of law to be tried by the Ct. This answers the same purpose as a Remitter to evidence or filing a Bill of exceptions after the Verdict. It lays a foundation for a writ of error.
Of Writs of Error.

A writ of error lies both for errors in fact and in law, but it is not to be understood that it lies for any error of fact enquired into at the trial for it is a settled rule that no such errors are to be alleged in the writ. What is meant by an error in fact may be thus explained - an infant is sued without mentioning any guardian of the infant. Judgment is rendered against the infant. This all the more does not appear on the record whether they appointed one or not is an error in fact and a ground for a writ. Also having been served with judgment rendered by default it is an error in fact. Instances of these writs are rare. But writs of Error in law are very frequent. They may be set in all cases where a question of law is without mixture of fact has been decided by the court, provided the question made decided appears on the record. Hence it is that error lies upon a judgment in abatement when the matter in abatement was a question in law upon a demurrer to evidence as a special verdict, a bill of exceptions & a matter in arrest provided the motion be some cause that appears on the face of the proceedings. To error lies on an interlocutory judgment till the final judgment nor can an error in law and an error in fact be joined on the same writ. The general issue is in nullo est emptum. Upon a reversal of a judgment of a court of the 3rd in error recovers all that he has been
damaged but recovers no cost in the suit of Orr yet we find in our State that where an erroneous judgment by a Justice of the Peace may enter this act in the Supreme Court, it came there by appeal. This in practice would be abused in many a case, but in general it is as well as where a Bill of exceptions has been filed for the admission of a witness. And in pleads of abstention where the merits have not been tried, it may be proper for the Petitioner for instance. A. sues B. & offers C. for a witness he is objected to by B. but is admitted. B. is cast in. The suit files his bill of exceptions & brings error. The witness is adjudged inadmissible—now it would be unreasonable if A. might not enter & have his action tried on the merits. Judgment in abstention is reversed in favor of the original Petitioner he must or in the event he would have his cause tried. 

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

Writs of error may be had in proceedings in Equity as well as law. A Writ of Error is a superceding to an excess. Writs of error without a Bond & all the subject to try the question of law and on which there may be a reversal or affirmance; yet it is no superceding for it would not be reasonable to allow an otherwise security was given to withstand the damages which might delay might occasion. And when a reversal is obtained in the suit of Errors upon a
Grant collateral to its merits as upon place of a
talent where the Ct had rendered judgment
that it should abate - or for the admission of
Testimony the cause must lie sent back to be tried
upon its merits for the Ct of Error have no jurisdic
tion over them. When the cause is in fact it is
to be tried before the same Ct if that Ct be a
Ct of Error

Judita Quueela

When the Dst is unsuccessful in his defence
Ct will issue upon the judgment on
him unless some matter has arisen since the judgment
which if it would be taken notice of ought to
operate in his favor in such case if he has had
no day in Ct to show this new matter in his
behalf he shall be entitled not pro speciali but
in debito to a writ of audita queela

In this writ are stated the reasons why Exn
should not be exhaused such as paymet since
judgment which by negligence fraud or accident
is not endorsed on the Exn. The writ is directed
to the officer who has the Exn to pay all proce-
ceedings on the same until the complaint is
heard. It is signed by the Chief Judge of the
Ct after having examined & found probable cause
for the complaint. Upon this writ bonds are
entered to make good all damages that may
be sustained if the complaint be not sustained.
The object of the Writ is not only to set aside
the Exn but also to recover the damages which
have been sustained - As if after payment of
the money it had been again collected upon
the Exn it would be to recover it back.
in this case a concurrent remedy with an act of Indeb. Assumps. It lies in all cases where a man has by fraud been prevented from having a day in Ct. where A sues B. & after service they came together & entered into an agreement to stop proceedings so that the suit shall stop & be withdrawn & B gives himself no further trouble about it but a & pendently proceeds & obtains judgment by default. In this case B shall be relieved by an acta quaestio of the Levy of Execution.

Executions are levied upon the estate of the debtor. If personal estate be turned out by the debtor the officer cannot levy on the body—before levy demand must be made of the debtor (if he can be found) of the money due. If personal estate is not turned out the creditor has his election to take the body or real estate of the debtor. When personal estate is taken it must be advertised 20 days on the public sign post & then sold at ven due & the creditors paid. If levied on the body he is to be committed to jail & there remain till released by the payment of the money or taking the poor man's oath or by death. In these two last cases the debt is not extinguished while the body was alive—it was a temporary satisfaction but as soon as re-located by the payment of the money, taking the oath or by death, the debt is revived. But the debtor's body cannot again be taken but his estate remains which could not be the case while the body was taken.
It will also require the Examiner in Appraisings Real estate to be taken, it must be appraised by 3 freeholders of the town where the land lies, and the return to the office of the CL. of the CL. made by the executors which shall be sufficient evidence of a title for the Creditor. If chattels, real, or life estates are taken they are held by the profit and stock by the appraiser shall pay the debt. They then revert to the owner.

It is a doctrine of the Books when an Ex’ has been justified by taking lands & the lands did not belong to the debtor but was taken by mistake, the debt is extinguished. This appeared ridiculous, my unreasonable, although it might not be in the home of the Creditor to buy another Ex’; yet I see no reason why he might not have an Ex’ of debt or judgment on which an Ex’ or fier facias might issue. So if an Ex’ was levied on a mortem estate & the same was appraised at £10 per annum. Let it be lent for 10 years & the wife at the end of 5 years should die, £50 of the debt is paid & if the life estate I should suppose a fier facias against Ex’ would recover the other £50.

Notes on the above Essay

III. New trials are not commonly granted to the P. where the action is founded in malfeasance, but they are granted in favor of the public good. Can they be in favor of individuals?

Bail.

Bail upon writs of Error & audita querela should be sufficient to answer all damages as well as costs, otherwise the P. in Error being delayed until the property attached is liberated by the intervention of 60 days after the judgment on the writ of limitation, due to the Ex’ bail might lose his
security at the judgment should be affirmed. 

Bill or an appeal on judgment of a justice at the peace in criminal matters is conditioned to appear to abide judgment. I am of opinion that all kinds of appeal ought to be large enough to cover all damages that might ensue from the appeal, such as bankruptcy, absconding the power of personal estate.

Our statute gives 1/3 of personal estate to the wife on the husband's death, yet she may not hold it as the very 1/3 of the real against creditors except such necessary house hold furniture as is by law exempted from execution. Of a seire facias against Attorneys.

When an issue at an ascending letter upon judgment, the officer must repair to the last residence of the debtor & make demand. He also make demand of the attorney. If nothing is shown him & he can find nothing whereon to levy he returns what he has done & I think sometimes non est inventos.

The seire facias goes out against the attorney. It is in the nature of a petition to the C. On where the judgment on which it was recovered is stated to the C. the suit, judgment & return be praying a remedy in the premises. Then proceeds the precept to the sheriff to cause the defendant to appear & show reasons why judgment should not be affirmed against him. Signed by the C. of the county at the time it is returnable. But the attorney may lay out the estate & satisfy the ex. if he please.
and the principal shall account with him for such and such.

**Process**

Under the head of process it ought to have been observed that where there is a default to be heard in damages the 6th without the intervention of a jury after the damages $ from this judgment there lies an appeal as in other cases and when such a judgment is rendered upon some event in writing for damages that have arisen and yet there may be further damages by reason of some future breach of the event that when that event takes place a joint liability issues and so on to the quotes.

**Finis**

A suit is brought against the husband of the wife to recover a debt of which the husband has given the wife while the wife was living and the suit is brought against the husband and against the wife. Can judgment be rendered against the husband and against the wife? On the side of the husband it is argued that the husband should be joined with the wife as in any other case but that if it was so he would not be liable if he died before the suit commenced which clearly is not the case. But the true reason is that the wife whose property is taken away by the operation of law the husband is thus rendered incapable of discharging the debt.

Should the suit be taken in execution of a judgment comprised in jail? On her death therefore this reason which is the only one why he should be joined is not. On the other hand it might be said that the suit being commenced during continuance the right of
"The creditor attached itself to the trust or property of the deceased, and this on the general principle which prevails in all cases, "That where one's right is attached to another's property, by the commencement of a suit, such right shall not be defeated by any contingency which may happen before judgment."

Why may not a future convey is any real estate subject the trust? In each branch? What is the reason in Eng. ? The only reason given there is that it cannot commence in future, the estate would be suspended. If it appered the English writers not imagine such a case, But our lawyers have had sense enough to abolish this maxim. What then can be the policy of retaining it? Are the only reasons on which they rest founded failing?

When an act is lost on St. & for a penalty as in case of trespass for cutting trees on the damages must be estimated & appear on the face of the declar.
I few scattering ideas which escaped me in the first course of Mr. Todd's Lectures.

Sec. 25—95.

The wife’s liability for her contracts when under articles of separation.

Sec. 1. Durnf. 3. In this case it is apprehended that the Reporters have not done the judge justice in relating their opinions. The case was undoubtedly decided right but the ground upon which the decision is not given us by the Reporters. To arrive at the true reason why a woman, thus separated from her husband, ought to bind herself by her contracts, to the extent of such contracts, we must attending to consider the reasons why she may not bind herself in the same manner whilst they live together. These are first, because the law has thrown all her property into her husband’s hands. Still farther, it has given him the exclusive right to her services if not put it utterly out of her power to fulfil her contracts. All must agree that these are the only reasons why a woman under covertures may not bind herself by her bargains. If so, it follows as clear as daylight, that when these reasons totally cease, when the husband has renounced (as he does) by articles of separation, all his right to the property & services of his wife, the law founded on these reasons must
of course case of the wife bind herself as well as the she had never married. For the authorities on this subject see the 1st vol. of these Lectures.

Cowell in his Essay on Contracts speaks largely against the above doctrine. He seems to suppose that it is inconsistent with the state of marriage (which is dissolved by the articles of sep.) that the wife should bind herself by her own contracts. But this certainly can be no reason when it is considered that it has long been settled law that she may, when living with the husband, bind herself by her own contracts to the extent of her separate property. This is enough to show that there is no magic in coverture, which disables the wife from rendering herself liable to keep or discharge her debts.

The husband's liability for his wife's contracts.

Where she goes from the husband's contract for necessaries according to her rank, this distinction is to be observed as to when the husband is or is not liable — where he was the criminal cause of her departure as for instance if he drives her out of doors, or if he so abuse her that she is obliged to depart for safety. He is in all such cases liable for contracts for necessaries. But on the other hand if she departs without any sufficient cause, as where she
leave him merely because she fancy's he is not the most agreeable partner, or where he
was runs away with an adulterer. They it is apprehended ought to be on the same ground
in such cases she cannot charge him fairly by her contracts—unless indeed she contracts, where he has usually allowed her & at the time, the person who trusted her did not know of her elopement. A case however was decided in Eng. against this last doctrine. The wife eloped with an adulterer & that good of a merchant who knew not of her elopement. It had been allowed her by her husband to con-
tract. The merchant sued the husband. I failed to recover. But it is apprehended that this case was decided on mistaken principles. The Judges (as the practice is among the En-
glish Lawyers) looked to the rule of assent. They frequently find his assent where there is an overt dissent on his part; yet in this instance the Judges said that 'no man could assent to the contracts of a wife who run off with an adulterer.' They therefore refused to make him liable. But to consider this on principle because must he be held to other analogous cases. A merchant, for example, allows his Clerk generally to contract for him & his Clerk runs away & takes effects on his master's credit of a person who knows
not of his having ran off—or again a
man in any business employs an agent or
as the law expresses it a servant to contract
for him if the agent obtains property out
of another's hand on his master's credit &
takes this opportunity of running away
with such property. In both these instances
the master would seem an indisputably
be held liable, though for the benefit &
for his agent's deceit. Why then in the name
of common sense shall not the husband
be liable for his wife's contracts which she
makes with one not knowing her to be an
on the ground of her being the devisor or agent
of her husband? Is it more reasonable that an
innocent man who has been allowed to trust
another's wife by his consent to use his
money, or the &dquo;which has put confidence
in this wife and suffered her to contract for
him&mdash;If the other in this case had resisted
to the true distinction that she left the use
without cause (instead of hunting her down
in debt) here would probably have come a
relate with the Clerk Act &dquo; &dquo; that
in notice of the agent, the husband
be charged in the contracts as the master
was. She in the other cases then the same
example &mdash; A case in Shew 875 where she
went away and not with an adulterer
not liable&mdash;
Sept. 9 - Nov. 26th

What agreements between Husband & Wife are valid

There is a circuitous method of conveying his real estate to her. This is done by his conveying it to one who is to convey it to her husband. It is thus continued because of the unity which is said to subsist between them which would according to that idea prevent a direct conveyance from him.

The husband may convey an estate to her use, by an English statute executing that use, it amounts to a direct conveyance. C. 112 - 3 Alb 393

She also may hold

The wife may give her separate property to her husband.

A man may devise property to a femme couерт, with a provision to convey it to whom she pleases. In such case she may execute that power in favor of her husband.

C. 112 - Where the husband was indebted to the wife before marriage by bond, there has been a difference in opinion, whether or not she might not sue her husband for his death. Such bond is discharged. The prevailing opinion is that it is at the not discharged. It is agreed by all so far as this that it can't be collected during coverture, soon after that is ended provided the tears of her mother, however it is discharged which is the probable idea, clearly it cannot survive to her even if it was not torn off.
A contract entered into before marriage by the husband to the wife, to be performed after his death, is valid. The intention of the parties ought to prevail notwithstanding the old maxim that "when a personal contract is once suspended, it is annihilated." See Ritton. 17. Nov. 226, C. 1. Q. 571, Comm. Rep. 67, 1 Stalk 328, Earth. 312. The Chancellor will decree that the executors specifically in such case (see 20. Gen. 481, 2 Cent. 343).

A conveyance is made to A. B. C. D. in 1803 and married; they take but half in 1807. Where the wife is under a separate maintenance, A. B. C. D. is a bankrupt, Chancery will not decree her allowance in toto, but the necessity of both have other creditors, averaged. 30 Bro. Can. 614.

The husband, who lives, separate by article, was about to compel his wife to dwell with him, but Chancery stopped him. 2 Blaw. 540. 1. This proves he has no right to her services. It seems by an authority in Isa. 470, that the husband may restrain the wife's liberty, when she is wasting his property. Chancery will compel the husband to give up a legacy bequeathed to his wife while under articles of separation.
Of Parent & Child

On the Liability of the Infant for his Contract

The reason why a minor cannot bind himself by a bond is not as is said, because it is not for his benefit that he should subject himself to a penalty; for courts of law will always chance down the penalty of a bond, even when given by adults—but the true reason is that the consideration cannot be enquired into. He is not liable upon his contract as such but on the ground that he has had an article necessary for him sought, therefore to pay a quantum valebat. To show that this distinction is just & reconcilable to the authorities we need only remember that he is not liable for articles not necessary at the time, even if they form a contract; 

As if a physician finds an infant in sickness & supplies him with medicine & alms the minor makes no contract about it; he is liable if it seems to be law that where a minor has entered into an immoral contract, he is not liable. But the items of an immoral compo may be enquired into? why therefore should he not be liable? The way in which this absurdity has crept into the books is appreixedd to be this, formerly the items of such acts could not be enquired into & then because it was not proper that minors should be answerable, but afterwards when the law was altered & the items were allowed to be gone into, it seems the courts did not observe this but as they do

A reasonable settlement by a minor on his wife's child in good faith in Chancery, where in Eng. an act could get a judgment vacated on, Courts would consider the whole transaction void, then there is no practice with of vacating the judgment formally.  

The manner of furnishing minors is different from that of furnishing adults.  

In capital crimes it is the same as with them as others.  

But in moderate furnishing, as in trespasses, &c., where corporal punishment are created by Stat. they are not inflicted upon minors unless particularly specified by the statute.  

In such cases they are to receive the common punishment only.  

In crimes of non-feasance an infit. is never to be furnished, as if A, B, C, & D were in company, & A should kill B. — If C & D were adults, they would be furnished for not preventing it, but if minors, not furnishing.

An minor at 17 may execute a power over personal estate for he is then of age to devise such property.  

But he cannot execute a power over real estate where he has any interest, till 21.  

He may, however, where he is the mere instrument or conduit.  

Pipe Eel. 200

A child may not be convicted in specie to take, receive, &c.  

Moore 177 637 Eliz. 123  

Ann 153 Dowell 163  

Carth. 399

Minors are not liable for their conduct as attorneys.  

DeCoff. 172  

Carth. 169  

Palm. 528 " Elap. 409

Respect to minor's liability for loss of exchange.  

Carth. 166

He cannot be a surgeon.  

Carth. 325
When a man enters upon a minor's land he holds possession, he shall not be considered a wrong doer so as to give the inf't to an action before he can gain possession, but such trespass shall not give the minor's possession. 2 Vern: 342-275. Also after an ancestor decays the entry of another as in care with adults. A minor is however liable for waste even if not done by himself. If there is a condition annexed to land which the minor holds that the owner shall of such land shall repair the bridge he must repair it. Or if the estate holds upon any other condition as if an estate is to commence on the estate of performing a certain act, or an estate is to be defeated on his doing a certain act in the former case if he does not comply with the condition the estate will never vest, & in the latter if he does the act his estate shall be defeated. 2 Vern: 200. D Rep: 44. Prec: Can: 565. 2 Vern: 500. Cert: 246, 2 3d, 415. That 92.

When a minor fails in a suit, & goes out at him, but the cost is finally recov'd out of the guardian a neat est is to be returned as to the inf't. When a fine facias on the judgment goes as the garden A minor must always defend by guardian. All judgments minors not tried by guardian are erroneous, but such being errors in fact are to be enquired into by the same court, unlike errors in law. Where several are joined & among the rest a minor
...judgment is rendered or all, every one not awarded the
judgment as to the minor but it stands as to others.

When several have been concerned in a transaction
and one only suit the whole is recoverable of him
if the cause of action founded in contract he
can recover the several proportionable parts
out of the rest, but if in tort it is otherwise.

Of Bastardy

The County Ct has original jurisdiction in cases of bas-
tardy. The process is always criminal till judgment of
the civil. It is for maintenance only and damages.
The Ct computes the cost of bringing up the child for 4 years
and calculates to make the father pay half that sum.
The expenses are
one quarterly. In the first is included expenses of living
he must find securities by the judgment for the pay of the $30
or whatever sum $ if he obtain none he will be committed
if bond are given by an order of the Ct. The imprisonment
out the bondsman liable.

Can there be appeals in such cases from the County Ct?
This depends upon the process being criminal or civil. In criminal cases there is no appeal if
to preserve a uniformity no appeal is allowed the pro-
cess being criminal in dress the civil in its effects.
There have been contradictory decisions on this point
but all the late cases are that there is no appeal.
They may be, and are usually tried by jury.

In criminal cases no depositions are admitted. Number
none in any case are admitted at common law. This depends
a statute. These however being criminal in their proof
no depositions are admissible.

It has been the practice for the girl who prosecutes
to give bond to answer for cost but none are required
the process being criminal and it being settled that no
bond are necessary in any criminal cause.

(see a case in Kirby's Reports)
Of Common Recoveries & Fines

A common Recovery is a fictitious action.
In this lands are recovered from the owner, which recovery binds all persons & vests a fee simple absolute in the recoverer.

The fiction is carried on this way. The man who wishes to sell land, suffers the purchaser for to bring an action for the land he claims in a better title than has ten in possession. The tenant appears & vouches in a man of whom he pretends to have had the land to defend. This vouchee appears & defends, but the demandant asks leave of the court to inspect or confer privatively with the vouchee. This conference has the desired effect, for the vouchee appears no more, & the judge consequently is apt him by default & the tenant takes judgment to recover lands of equal value of the vouchee, who happening to be worth nothing all the Trustees are arrested for the demandant has now a fee simple estate. 

nonsense
Of Fines & Common Recoveries

Fines are of great antiquity. There are instances of them before the Norman invasion. A fine is defined as acknowledgment of a servitude or record of all the face of a servitude. It is indeed more fine for it is recorded in the Chirographer's Office & indentures delivered to both parties. John Stiles wishes to sell a piece of land to Tom Jones. Tom must pretend a covenant on the part of Stiles to convey this land to him. On a supposed breach of this covenant, Tom grounds an action of coram & after paying a clever fee to the King he may proceed with his writ. After the suit is commenced, Stiles proposes to compromise matters without going thru a course of judicial proceedings. Tom glad to see John so complying asks leave of the C. to settle the business which he is graciously suffered to do on his putting another fee into his majesty's pocket. The agreement is then made, noted & sealed. The whole business is recorded & indentures delivered. A fine binds not only the parties but all other persons unless their claims are pursued within 5 years after the fine is levied unless such persons were under particular disabilities. 5 years are allowed after such disabilities are removed.
Henry 1st son of Geo Cong. 1100
12 Stephen 2nd to Henry 1135
Henry 2nd grandson to Henry 1st 1154
Leg. Rich. 1st son of Henry 2nd 1189
John son of Henry 2nd mag. Chart. 1199
13 Henry 3rd son of John 1210
Edward son of Hen. 1275
Edward 2nd his son 1307
Edward 3rd son of Edward 2nd 1321
Richard 2nd grandson of Edward 2nd 1377
Henry 4th grand. 1399
Edward 5th his mpt son 1471
Richard 3rd brother of Edward 4th 1483
Henry 7th 1495
Henry 8th son of Henry 1509
Edward 6th 1547
Jane Gray his cousin 1553
Mary daughter of Henry 1555
Elizabeth daughter of Henry 8th by Ann. 1603
James 1st of Eng 2nd of Scott 1625
Charles 2nd his son 1653
Cromwell the vampyr 1683
Richard his son 1685
Charles 2nd son of Car. 1st 1688
James 2nd brother to Car. 2nd 1702
William 3rd 1st prince of Orange 8th May. 1727
Anne 1782
George 1st 1784
Geo. 2nd his son 1797
Geo. 3rd grandson to Geo. 2nd 1800
(House of Plantagenet) Grandson of Henry 1st by his daughter the Empress Matilda and her 2nd husband Geoffrey Plantagenet.

House of Lancaster

House of York

House of Tudor

Great grandson of James 4th of Scotland by Margaret daughter of Henry 7th.

House of Stuart

This Mary, wife of William, was daughter of James 2nd and included the son of James 2nd called the Pretender who went with his party when he abdicated but was exiled from the succession by Act of Parliament, being a Roman Catholic.

House of Hanover

N. B. Elizabeth, daughter of James 2nd, married the Elector Palatine and left a daughter Princess Sophia who married the Duke of Brunswick-Lauenburg by whom Sophia had George Ist, Elector of Hanover who took the throne by Act of Parliament expressly made in favor of his brother.